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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	8 April 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 209 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA

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Delegations will find attached document COM(2016) 209 final.

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Encl.: COM(2016) 209 final



Brussels, 8.4.2016  
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2013/0091 (COD)

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA**

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**1. BACKGROUND**

Date of transmission of the proposal to the European Parliament and to the Council 27.03.2013  
(document COM(2013) 173 final – 2013/0091 COD))

Date of the opinion of the European Economic and Social Committee: n/a

Date of the position of the European Parliament, first reading: 25.02.2014

Date of transmission of the amended proposal: n/a

Date of adoption of the position of the Council: 10.03.2016

**2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION**

The proposal aimed at **aligning Europol with the requirements of the Treaty of Lisbon** by setting up the legislative framework of Europol in a regulation and by introducing a mechanism for control of Europol's activities by the European Parliament, together with national parliaments. The proposal also intended to **increase Europol's efficiency, effectiveness and accountability**. This was to be achieved by enhancing Europol's analytical capabilities and triggering operational action on the part of Member States while at the same time strengthening even further the agency's data protection regime. In order to enhance efficiency, and in line with the Common Approach on Decentralised Agencies, the proposal intended to merge Europol with the European Agency for Law Enforcement Training (CEPOL). Finally, the proposal aligned Europol's governance with the principles set out in the Common Approach on the EU decentralized agencies.

### **3. COMMENTS ON THE POSITION OF THE COUNCIL**

Political agreement was reached between co-legislators at the trilogue meeting of 26 November 2015, and was endorsed by COREPER on 27 November 2015, and by the LIBE Committee on 30 November 2015.

The main differences between the Common Position and the original Commission proposal are set out below.

#### **Merger between Europol and CEPOL (Title, Article 1)**

As a result of the widespread and strong opposition expressed both in Council formations and in LIBE against the merger of Cepol with Europol, the Commission decided to renounce to this aspect of its legislative proposal. A Regulation reforming CEPOL has been meanwhile adopted. Therefore, no reference to the merger is made in the text of the Common position.

#### **Internet Referral Unit (Article 4)**

The Common position lays down provisions necessary for the functioning of the Internet Referral Unit (IRU), which is one of the important anti-terrorist measures designed to reduce the volume and accessibility of the terrorist propaganda online. IRU was a new element to the regulation introduced following the terrorist attacks in Paris in 2015, highly promoted by the European Agenda on Security and vital in the current security context. The text allows Europol to transfer publicly available personal data to private parties, if necessary to support Member States in the prevention and fight against the crime falling under Europol's mandate, committed or facilitated by the use of internet.

#### **Governance provisions**

Provisions on governance as presented in Commission's original proposal stemmed from the Common Approach on EU Decentralised Agencies. Governance was one of the most controversial issues discussed during the negotiations. The following compromises were agreed by the co-legislators:

- (a) Composition of the Management Board (Article 10)

The Common position limits the number of representatives of the Commission in the Management Board to one instead of two (as foreseen in the Common Approach on Decentralised Agencies).

- (b) Executive Board (former Chapter IV)

The Commission proposal provided for the optional establishment of an Executive Board, in charge of delivering administrative support to the Management Board and to the Executive Director. As a consequence of the strong opposition of the co-legislators, the Common position does not include the possibility to set up such a body. The Commission accepted the deletion of the option to set up an Executive Board. However, on the basis of Article 68 of the Common position, the Commission will have the possibility to assess in the future the necessity of establishing an Executive Board. The Commission also explained this in a declaration and committed to an evaluation of the situation in two years. In order not to jeopardise future negotiations on the Eurojust proposal, the declaration is complemented with a statement underlining the value of the Executive Board in the management of EU agencies.

(c) Appointment of the Executive Director (Article 54)

The text of the Common position departs from Commission's proposed procedure, which was aligned with the Common Approach on Decentralised Agencies (pre-selection of candidates by the Commission and the appointment by the MB).

The Common position sets out a procedure where the appointment is done by the Council on the basis of a shortlist drawn up by a mixed committee, consisting of a Commission representative and representatives of the Member States.

Given the abovementioned deviations from the Common Approach on Decentralised Agencies, the Commission decided to make a political declaration underlining that the agreed text is not fully aligned with the principles of the Common Approach.

**Access by Eurojust to information stored by Europol (Article 21)**

Following a strong request by the European Parliament, the access by Eurojust to information stored by Europol has been limited to an indirect one, based on a hit-no-hit system. This is in line with the mirror provision contained in the Eurojust regulation.

**Cooperation between the European Data Protection Supervisor and national supervisory authorities (Articles 44 and 45)**

The Common position enhances the cooperation between the European Data Protection Supervisor (EDPS) and national supervisory authorities, while at the same time ensuring EDPS independence and effectiveness. Cooperation is enhanced in two ways:

- (a) A “Cooperation Board” is introduced as a formal discussion platform for the EDPS and national data protection supervisory authorities to regularly discuss general data protection strategy, draw up harmonized proposals for joint solutions requiring national involvement, examine difficulties with interpretation of the Europol regulation, etc. This new Cooperation Board is however not a decision-making body but an advisory body only.

- (b) A reinforced "daily" cooperation between the EDPS and the national supervisory authorities (the EDPS will use the expertise and experience of the national supervisory authorities in all cases where he carries out his duties; there will be joint inspections of the EDPS and national supervisory authorities, the EDPS will consult the national supervisory authorities concerned in cases relating to data originating from one or several Member States, etc.)

The creation of a Cooperation Board was accepted by the Commission. However, in order to ensure effectiveness and consistency and avoid unnecessary duplication, the Commission issued a declaration stressing that the functions exercised by Cooperation Board set up in the Europol Regulation shall be swiftly taken up by the European Data Protection Board created in the context of the Data Protection reform (see Statement n. 2 in Section 5).

### **Parliamentary scrutiny (Chapter VIII)**

By means of as general provision, the Commission proposal ensured that Europol's activities were subject to parliamentary scrutiny, as required by Art.88 TFEU.

During the negotiations, the European Parliament stressed the need to spell out more in detail the way in which parliamentary scrutiny is carried out.

As a consequence, the creation of a Joint Parliamentary Scrutiny Group (JPSG) was included in the text of the Common position. The JPSG will be a specialised body established together by the national parliaments and the competent committee of the European Parliament, responsible for the political monitoring of Europol's activities. This monitoring will comprise inter alia information on planning and reporting documents, consultation of the European Parliament and national parliaments on Europol's multi-annual work programme<sup>1</sup>, and inviting the Executive Director and the Chairperson of the Management Board to discuss issues related to Europol.

## **4. CONCLUSION**

Despite the changes that the Common position has introduced, the text of the Common position constitutes the best possible outcome that the Commission could reach in the two-year negotiations with the Parliament and the Council on a very complex text.

The Commission's objectives for the Europol reform have been achieved by aligning Europol with the requirements of the Treaty of Lisbon and by increasing its efficiency, effectiveness and accountability.

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<sup>1</sup> The JPSG will also be used as the body through which consultation with national parliaments on multi-annual programming is channelled. This would alleviate the responsibility for Europol to consult 28 National Parliaments and the European Parliament on its multi-annual programming (as foreseen in Commission's original proposal).

The alignment of Europol's governance with the principles set out in the Common Approach on the EU decentralised agencies was not entirely achieved, due to the strong resistance of the co-legislators. The Commission will have a role the management of the agency, i.e. it will have a voting representative in the Management Board and will participate in the pre-selection of the Executive Director.

## **5. STATEMENTS BY THE COMMISSION**

### **1. On the Common Approach to the EU Decentralised Agencies**

"The Commission recalls that the agreed text is not fully aligned with the principles of the Common Approach on the EU decentralised agencies. Therefore the agreement reached between the EP and the Council on the governance of the agency is without prejudice to any future legislative texts. The Commission remains convinced of the benefits of establishing an Executive Board as part of the governance structure of Europol and other agencies. The Commission will review the situation concerning Europol governance within the next two years, in particular with a view to determining whether further proposals on this point will be warranted."

### **2. On the Cooperation Board**

"The European Commission consider that, following the adoption of the proposed General Data Protection Regulation and Data Protection Directive for data processing in the police and justice sector and in light of the announced review of Regulation (EC) No 45/2001, to ensure effectiveness and consistency and avoid unnecessary duplication, the functions exercised by Cooperation Board set up in this Regulation shall be exercised by the newly created European Data Protection Board."

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