



EUROPEAN COMMISSION

*Brussels, 20.01.2014
C(2013) 93 final*

Dear President,

The Commission would like to thank the Senát for its Opinion concerning the proposal for a Regulation on the European Agency for Law Enforcement Cooperation and Training {COM(2013) 173 final}.

The Commission would like to comment on the following points raised in the Opinion.

The scope of Europol's tasks.

The Senát indicates in its Opinion the need to specify Europol's tasks of coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities.

The Commission wishes to underline that Article 4 of the proposed Regulation builds upon the established practice of Council Decision 2009/371, governing the current framework for Europol's action. Aligned to the wording of the Treaty, the core of Europol's tasks remain in the proposed Regulation as they exist today. The entry into force of the Lisbon Treaty entails an extension of Europol's tasks, to include also "coordination, organisation and implementation of investigative and operational actions (Article 4(1)(c)). Of course, these notions need to be interpreted in the light of Europol's mission established in Article 88 of the Treaty on the Functioning of the European Union (TFEU) and in Article 3 of the proposal. Europol's scope is "to support and strengthen action by Member States and their mutual cooperation". As a consequence, the actions mentioned under Article 4(1)(c) need to be carried out in liaison and in agreement with the authorities of the Member State whose territory is concerned.

In order to leave room for practical implementation in accordance with the internal organisation and operational needs of each Member State, the Commission has not articulated in the proposed Regulation the ways in which such support should take place.

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CZ-118 01 PRAGUE 1*

The legal certainty introduced by the Treaty is accompanied by the flexibility which is deemed necessary to accommodate the differences between Member States' competent authorities.

Coercive measures.

As regards the coercive measures, the Commission takes note of the Sénat's concern. The Commission observes, however, that the mission and limits of Europol's action are set in the Treaty, namely in Article 88(3) TFEU, which clearly states that Europol is not entitled to apply coercive measures, which remain an exclusive responsibility of the competent national authorities.

Moreover, in its Communication on the procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments¹, the Commission clarifies the limits of Europol's action, specifying that «Europol has none of the powers which typically fall within the remit of national police forces. The provision granting Europol the right to request that Member States initiate criminal investigations only enables it to instigate action in specific cases and not to force a Member State to do so. Europol cannot independently conduct enquiries in the Member States».

Parliamentary scrutiny.

The Sénat makes reference to the Opinion it had issued with respect to the aforementioned Communication on the procedures for the scrutiny of Europol's activities by the European Parliament, together with the national Parliaments. In that Opinion, it recommended to establish a scrutiny mechanism on the national level that involved the participation of Europol's representatives.

The Sénat also asks to better specify, in the Regulation, the meaning of the term "consultation" of the European Parliament and of the national parliaments by the Management Board prior to the adoption and update of the Europol's multi-annual work programme.

During the consultations on the above-mentioned Communication and the debates that followed, several solutions and possibilities were discussed in the different fora where the stakeholders met as to how to set the cooperation between the European and the national Parliaments. The Commission had expressed support for establishing a formal mechanism for information exchange and coordination between the national Parliaments and the European Parliament.

As it was the case then, the Commission reiterates its opinion that it lies within the power of both the European Parliament and the national Parliaments to coordinate their work and enhance their cooperation, and that they should be encouraged to take that initiative as well as ownership of their own procedures.²

Therefore, in order to respect the independence of national Parliaments and of the European Parliament as well as their freedom to organise themselves, the Commission considers that it is not among its competence to set the rules, the modes and definitions of such joint cooperation.

¹ COM (2010) 776

² COM (2010) 776 final, p. 15

Information management

In its Opinion, the Senát raises some concerns and provides some recommendations on the management of information as envisaged in the proposed Regulation.

The Commission would like to reassure the Senát, noting that Europol has a positive track-record in terms of data protection and respect of the owner principle. The novelties introduced by the Regulation are aimed at enhancing Europol's capabilities as a hub for information exchange between the law enforcement authorities in the Member States.

The envisaged 'privacy-by-design' approach ensures high data protection and security standards, supervised by the European Data Protection Supervisor. At the same time, the proposed system will enable Europol to better perform its daily tasks and hence improving its intelligence picture.

The Commission hopes that these clarifications address the concerns raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*