



EUROPEAN COMMISSION

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C(2014) 2648 final

*Dear President,*

*The Commission would like to thank the French Assemblée nationale 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 respond as follows to the points raised in the Opinion.*

*Involvement of national parliaments in the scrutiny of Europol's activities (paragraphs 1-5).*

*The Commission shares the view of the Assemblée nationale on the importance of parliamentary scrutiny to ensure increased accountability of Europol, in particular as far as national Parliaments are concerned. Such parliamentary scrutiny is indeed necessary to enhance the democratic legitimacy of this area of transnational EU cooperation.*

*In the case of Europol, Article 88 of the Treaty on the Functioning of the EU provides for the establishment of procedures for scrutiny by the European Parliament together with national Parliaments.*

*The Treaty being silent on the forms of practical cooperation between the parliaments, the Commission issued in 2010 a Communication on the procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments.<sup>1</sup>*

*During the consultations on the Communication and the debates that followed, several solutions were discussed. The Commission expressed support for the setting up of an inter-parliamentary forum in order to establish a formal mechanism for information exchange and coordination between national Parliaments and the European Parliament. Nonetheless, the Commission considered that it lies within the power of both the European Parliament and the*

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<sup>1</sup> COM (2010) 776

*Mr Claude BARTOLONE  
President of the  
Assemblée nationale  
Palais Bourbon  
126 rue de l'Université  
F – 75007 PARIS*

*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.<sup>2</sup>*

*The Commission maintains this position and considers that, in order to respect the independence of national Parliaments and of the European Parliament as well as their freedom to organise themselves, it is not for the Commission to set the rules and modes of such joint cooperation.*

*Procedures concerning the Executive Director and on the Commission's voting rights (Paragraphs 6 and 9).*

*The Assemblée nationale raises the issue of the role of the Commission in the governance architecture outlined in the proposal for a Regulation on Europol. In particular, the Assemblée nationale considers "unjustified" the fact that the appointment of the Executive Director is based on a list proposed by the Commission. Equally, the Opinion sets out some concerns on the Commission's voting rights in the Management Board.*

*The Commission would like to reassure the French Assemblée nationale and to note the following:*

*The proposed governance architecture stems from the Common Approach on EU Decentralised Agencies, which has been endorsed by the Council, the Commission and the European Parliament in 2012. The Common Approach has the two-fold objective of harmonising the rules governing the EU decentralised agencies and guaranteeing at the same time that these procedures are clear, streamlined and transparent.*

*For these reasons, the Common Approach, endorsed by the three institutions, outlines procedures modelled on those used in the EU public administration.*

*This is the case for the list of candidates for Executive Director of an EU Agency. When it draws up this list, the Commission follows an open and transparent procedure that is well established and modelled on the procedures used for appointing senior managers within the Commission.*

*With regard to the possibility for national Parliaments to be involved in the appointment and revocation or extension of the Executive Director's term of office, the Commission reiterates that the procedures in the proposal follow the lines suggested by the Common Approach and replicate those applied in most EU agencies. The (existing) power of the European Parliament to summon Europol's Director should be understood, in the future, as applying also to any inter-parliamentary meeting.*

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<sup>2</sup> COM (2010) 776 final, p. 15

*The same reasoning applies to the access to classified and sensitive non-classified information. In this regard, the Commission notes that the scrutiny function attributed to national Parliaments is built on Article 12 of the Treaty on the European Union, stating that these are involved in the political monitoring of Europol, in compliance with Article 88 TFEU. Therefore, access to classified information may be granted to the European Parliament in those cases where such access is justified.*

*As for the presence of two representatives of the Commission in the Management Board, this replicates what is already found in several EU agencies and it is as part of the Common Approach. It reflects the Commission's double role in the Board: from the point of view of policy knowledge of the area (for example the Commission has the political responsibility of informing the other EU institutions in case of misconduct of the agency) and from a technical one (for example on budgetary rules). However, the presence of two full members does not imply that the Commission will outweigh the other members of the Management Board given that each Member State has one representative.*

*While acknowledging the particular nature of Europol tasks and the sensitivity of its tasks, the Commission does not consider that the contested measures could hamper the correct functioning of the agency or disrupt the balance with the representatives of the Member States.*

*The European Data Protection Supervisor (paragraph 11).*

*The Assemblée nationale states that entrusting the European Data Protection Supervisor (EDPS) as the data protection authority for Europol risks to diminish the level of data protection.*

*The Commission stresses the fact that the EDPS has for 10 years already exercised competence in law enforcement-related areas. The provisions concerning the EDPS, and in particular those relating to cooperation with national authorities, are in fact built on the existing structures of cooperation in related areas: the Schengen Information System, the Visa Information System and Eurodac.*

*Unlike the current Europol Joint Supervisory Body, the European Data Protection Supervisor meets all the criteria for independence set out in the case-law of the Court of Justice, including budgetary independence as regards the financing of its activities. In addition, the EDPS enjoys full enforcement powers, which ensures the effectiveness of its supervision. Finally, the proposal introduces elements of 'joint supervision' on data transferred to and processed at Europol. In cases calling for national involvement or a coordinated approach, the European Data Protection Supervisor and national supervisory authorities will co-operate with each other.*

*For these reasons, the Commission does not share the view and concerns of the Assemblée nationale, and considers instead that the new streamlined data protection regime for Europol is an improvement on the current system, and respects the specific nature of Europol and more broadly of law enforcement activities.*

*Finally, the Commission shares the opinion expressed by the Assemblée nationale on paragraph 8 on the central role of Europol National Units, and considers that this is reflected in its proposal for a Europol Regulation.*

*The Opinion also stresses some concerns on the conditions for assuming Member State's consent for the transfer of personal data to third countries (paragraph 10). While stressing that the aim of the provision is to allow for more flexibility and limit the burden on Europol's activities, the Commission takes note of the concerns of the Assemblée nationale.*

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

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*