

ITALIAN SENATE

----- XVIIth PARLIAMENTARY TERM -----

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RESOLUTION OF SELECT COMMITTEE No 1

**(Constitutional Affairs, Prime Minister's Office and Home Affairs, General Affairs of State
and Administrative Affairs)**

(Rapporteur Campanella)

adopted at the session held on 16 July 2013

ON THE

**PROPOSAL FOR A REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN
UNION AGENCY FOR LAW ENFORCEMENT COOPERATION AND
TRAINING (EUROPOL) AND REPEALING COUNCIL DECISIONS
2009/371/JHA AND 2005/681/JHA (COM (2013) 173 final)**

within the meaning of Article 144(1) and (6) of the Regulation

Sent to the Prime Minister's Office on 18 July 2013

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The Committee, having examined the proposal for a regulation COM (2013) 173, which establishes the European Agency for Law Enforcement Cooperation and Training (Europol), which replaces and succeeds the current European Police Office (Europol) and the European Police College (CEPOL), whose functions it takes over, and repeals Council Decisions 2009/371/JHA of 6 April 2009 and 2005/681/JHA of 20 September 2005,

Whereas:

the proposed regulation seeks to bring Europol into line with the requirements of the Lisbon Treaty, enhancing its role particularly as regards the exchange of intelligence among Member States' law enforcement authorities, the absorption of the tasks of CEPOL (which is thus abolished), the strengthening of the data protection regime applicable to Europol, and improving the governance of the Agency, in particular by streamlining the decision-making procedures of its managing bodies, the structure of which is also somewhat different to that of the current Office;

with that in mind, the proposed regulation seems to be aimed at increasing the amount of information the Member States have to give to Europol, strengthening the obligation of Member States to provide relevant data and coordinating the Agency's investigations and operational tasks whilst ensuring that decision-making is simplified,

Noting that:

the proposed regulation, on the one hand, seems fit for the purpose of achieving the objectives it sets itself, but on the other has some grey areas that require revision and clarification of the text;

in particular, as regards training, it would appear necessary to assess more carefully the operational implications of the incorporation of CEPOL into Europol so as to ensure the effectiveness of cost savings and the greater efficacy of training activities;

in the document under discussion, the Commission does not give any indication of its assessment on the compatibility of the proposal with the subsidiarity principle other than in the standard expression in the 59th recital of the proposed regulation itself,

Whereas:

Europol can pursue a very significant role in exchanging information, coordinating operations between Member States

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of the European Union for the purposes of preventing and combating transnational organised crime and terrorism, and given the wide range of issues that come within Europol's competences;

it is necessary to ensure a higher level of training of officials working for authorities tasked with combating organised crime, which is currently provided by CEPOL, which it is proposed should be merged with Europol;

more needs to be done to reconcile the provisions on the processing of information in connection with law enforcement with the protection of natural persons and their sensitive data;

Supporting the aim of closer integration of training and operations, welcomes the proposal with the following provisos:

that, with reference to Article 3, the limits of cooperation be clearly defined with reference to the expansion of Europol's remit in the light of the existence of other cooperation bodies (Interpol and Schengen Information System);

that, with regard to cooperation, it be specified in Article 4(1)(c) that the task of conducting investigative and operational action is conferred upon Europol solely within the scope of the usual coordinating functions already conferred upon it and set out in the Lisbon Treaty;

that those activities that are currently carried out by CEPOL but are not institutional and will thus presumably not be transferred to Europol be clearly specified;

that, with reference to Article 7(5), the role of the Europol National Unit be maintained;

that, with reference to Article 6, the current wording of Article 7 of the Regulation be maintained with regard to the obligation on Member States and authorities responsible for initiating investigations to send reasoned communications to Europol;

that, in Article 12, the option of establishing as yet unforeseen bodies on the basis of a decision of the Management Board be ruled out or at least restricted, thus boosting the cost-saving aspect;

specifically, that the possibility of conferring upon the Executive Board mentioned in Articles 21 and 22 functions carried out by the Executive Director mentioned in Article 18 be ruled out;

with reference to Article 25, that the homogeneity of each body's competences be ensured by redefining the power of each body, in particular the Member States, to determine autonomously restrictions on access to information;

that the provisions aimed at preventing and punishing any abuse in the area of access to and processing of personal data be strengthened, while also reconsidering whether Europol should be able to set restrictions as regards data obtained from publicly available sources;

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that the category of private bodies with which information could be exchanged and shared be either deleted or at least defined using strict criteria, and that there be a requirement to justify each such transaction;

that, with reference to Article 54 and access by the European Parliament to classified information and to non-classified sensitive data processed by or through Europol, the requisite further provisions be added to ensure the confidentiality of investigations and the protection of sensitive data; with reference to Chapter IX on parliamentary scrutiny:

a) that specific provisions be introduced aimed at strengthening the role of national Parliaments and the scrutiny instrument consisting of inter-parliamentary meetings of the relevant thematic committees, in accordance with what was agreed in the conclusions of the Stockholm Conference held on 15 May 2013;

b) that suitable arrangements be introduced for parliamentary scrutiny both of the policy orientations of Europol's activities and, more importantly, of the outcomes of those activities and of the results achieved;

c) that provision be made for suitable forms of parliamentary participation in the procedures for assessing the suitability of candidates for top functions in the Agency.

OPINION OF SELECT COMMITTEE No 14

(EUROPEAN UNION POLICY)

(Rapporteur: SUSTA)

26 June 2013

The Committee, having studied the document,

whereas the purpose thereof is to establish a European Union Agency for Law Enforcement Cooperation and Training (Europol) to improve mutual cooperation among law enforcement authorities in the European Union, to strengthen and support their actions as well as to deliver a coherent European training policy;

whereas the proposal under consideration provides the legal basis for a new Europol, which replaces and succeeds the European Police Office (Europol), established by Council Decision 2009/371/JHA of 6 April 2009, and the European Police College (CEPOL) established by Decision 2005/681/JHA of 20 September 2005, merging the two agencies and conferring upon the new agency resulting from that merger the task of implementing a European training programme for law enforcement authorities;

whereas the European Police Office came into operation on 1 July 1999 following the ratification of the Europol Convention by all Member States; and whereas on 1 January 2010, following the adoption of the relevant Council Decision which replaced the Europol Convention, it became a fully-fledged agency of the European Union;

whereas Article 88 of the Treaty on the Functioning of the European Union (TFEU) provides that Europol is to be governed by a new legal instrument whereby the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, are to determine Europol's structure, operation, field of action and tasks;

noting that that article also requires the establishment of procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments;

having regard to the report on the proposal under discussion, sent by the Interior Ministry's Office for Legislative Affairs and Parliamentary Relations, within the meaning of Article 6(4) of Law No 234 of 24 December 2012,

welcomes the proposal and makes the following comments:

the legal basis is correctly identified as Article 88 of the Treaty on the Functioning of the European Union (TFEU) and Article 87(2)(b) TFEU, which provides for measures concerning support for the training of staff and cooperation on the exchange of staff;

the proposal appears to comply with the subsidiarity principle as its stated aim, namely the establishment of an entity responsible for law-enforcement cooperation and training at Union level cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level;

the proposal also appears to comply with the principle of proportionality as it is limited to what is necessary to achieve its objectives.

Specifically, the Committee welcomes the aim of the current proposal to bring Europol into line with the provisions of the Lisbon Treaty aimed at enhancing its legitimacy and its democratic accountability to European citizens;

expresses appreciation for the European Commission's concern to ensure that Europol supports and strengthens action by the competent authorities of the Member States and their mutual cooperation in accordance with the "Stockholm Programme – An open and secure Europe serving and protecting citizens", which called on Europol to evolve and become a hub for information exchange between the law enforcement authorities of the Member States, a service provider and a platform for law enforcement services;

hopes that Europol will indeed be given more impetus to pursue its pivotal role in a multilateral strategy to combat serious and organised crime, which, as explained in Europol's 2011 assessment of the threat posed by organised crime in the European Union and its 2013 Serious and Organised Crime Threat Assessment (SOCTA), have increased noticeably in the last ten years and have at the same time become more complex and diverse, especially as regards terrorist threats and internet-based cybercrime;

considers appropriate the changes made with a view to strengthening the scrutiny of Europol's activities by the European Parliament in conjunction with national parliaments. These comply with the provisions of the above-mentioned Article 88 of the Treaty on the Functioning of the European Union and are in line with the Communication of the European Commission to the European Parliament and the Council on the procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments (COM(2010) 776 final), adopted on 17 December 2010;

also points out that Select Committee No 14 has already commented on that communication in a resolution adopted at the session of 30 March 2011, in which it emphasised, amongst other things, the distinction between the national and the European level as regards parliamentary scrutiny. In particular, it supported the idea backed by the European Commission in paragraph 5.1 of the above-mentioned communication of setting up a permanent joint forum made up of members of the national Parliaments' and the EP's committees responsible for police matters, which draws on the experience of the inter-parliamentary meetings between the European Parliament and national Parliaments that have been taking place in recent years;

notes that the European Commission has shown its agreement with the opinion of the Italian Senate as regards the benefits of effective and regular inter-parliamentary cooperation with the Union, allowing for the possibility of that forum constituting a formal arrangement for the exchange of information and coordination between national parliaments and the European Parliament. The Committee considers the provisions on parliamentary scrutiny set out in Article 53 of the proposal to be an encouraging step in this direction: these stipulate that the Chairperson of the Management Board and the Executive Director shall appear before the European Parliament, jointly with national Parliaments, at their request to discuss matters relating to Europol;

notes that, with regard to the proposal to repeal decision 2005/681/JHA establishing the European Police College (CEPOL), handing its tasks to Europol, ensuring the full implementation of the training programme for law enforcement authorities, as proposed in the communication published by the European Commission on 27 March 2013 entitled Establishing a European Law Enforcement Training Scheme (COM(2013) 172 final), concerns have been expressed both in the Council and by numerous European Union legislative assemblies, and that these concerns were shared and highlighted by the Interior Ministry's report on the proposal under discussion;

on this subject, notes that there is no specific legal basis in the Treaty on the Functioning of the European Union for assigning to Europol the competence for carrying out, developing and coordinating training for law enforcement authorities, as Article 87 of the TFEU merely provides that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning support for the training of staff and cooperation on the exchange of staff;

as regards the economic benefits that the European Commission believes would derive from the merger between Europol and CEPOL, invites the Commission to clarify the actual savings arising from the duplication of support functions in the two agencies, given that the proposal allows for the establishment of new internal structures within Europol (see Article 14(1)(p) of the proposal), and also given that, in the chapter on budgetary impact in the explanatory memorandum

to the proposal, mention is made of the need for additional resources "for Europol to implement the new tasks related to training of law enforcement officials, and to process and analyse the expected increase in information flows";

appreciates the European Commission's concern to ensure that there is mutual recognition of training of law enforcement authorities in Member States and to develop research relevant to training activities, including by promoting and establishing partnerships with EU bodies and public and private academic institutions. It hopes, however, that these plans will not end up limiting the role and tasks of national training centres, which, as stated in the technical report sent by the Interior Ministry, would become a mere "network of training institutes". In this context, the Committee points out that Article 14 of Council Decision 2005/681/JHA establishing the European Police College conferred a specific function, which ought to be preserved, on the "CEPOL national contact points", of ensuring effective cooperation between CEPOL and the training institutes;

finally, draws attention to various other critical points mentioned in the Government's report which should be clarified in the negotiations:

- the need for the system of protection of personal data (see Chapter VII of the proposal) not to affect the flexibility of the computer system when it comes to exchanging information;

- the requirement for Member State competent authorities to inform Europol of the reasons for following up the request to conduct or coordinate a criminal investigation (Article 6 of the proposal);

- the provision set out in Article 7(5) of the proposal, under which Member States are required to supply Europol with the information necessary for it to fulfil its objectives, not only via their national units but also via their competent authorities (the Government considers it desirable to maintain the central role hitherto performed by national units in the exchange of information, as provided for in Council Decision 2009/371/JHA currently in force);

- the provision granting the European Parliament access to classified information and sensitive non-classified information handled by Europol (see Article 54 of the proposal) whilst maintaining the confidentiality of investigations;

- the sharing of data with "private parties" (see Article 29 of the proposed regulation), which need to be defined more clearly;

- the definition of the limits to the cooperation taking place through Europol, which Article 3 of the proposal extends to "forms of crime which affect a common interest covered by a Union policy", so as to avoid overlap with other channels of cooperation.