

RIKSDAG ADMINISTRATION
SECRETARY-GENERAL OF THE RIKSDAG

SVERIGES
RIKSDAG
THE SWEDISH PARLIAMENT

10 March 2011

To the European Commission
sg-national-parliaments@ec.europa.eu

The Swedish Parliament has referred the Commission's communication *on the procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments*, COM(2010) 776, to the Committee on Justice for examination.

The Committee has reported to the Chamber on its examination of the communication in statement 2010/11:JuU21. The statement was decided upon on 9 March 2011.

The statement is enclosed.

[Signature]

Kathrin Flossing
Secretary-General of the Riksdag

Scrutiny of Europol's activities

Summary

This statement by the Committee concerns the Communication from 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).

In the Stockholm Programme, the Council called on the Commission to produce a reflection document on the new legal procedures put forward in Article 88 of the Treaty on the Functioning of the European Union. Pursuant to said Article, regulations are to be adopted which, *inter alia*, lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

In its Communication, the Commission presents an overview of the opinions put forward in the past decade on the issue of parliamentary scrutiny of Europol. The Commission also gives an account of the current procedures for scrutiny of Europol's activities. The Commission supports the idea of setting up a joint permanent interparliamentary forum, consisting of both the national Parliaments and the European Parliament's committees responsible for police matters. This joint body could meet at regular intervals and invite the Director of Europol to discuss questions relating to the agency's work. With a view to increasing transparency, the Commission also supports the idea of introducing a new communication strategy between Europol and the European Parliament and the national Parliaments. The Commission considers that it would be useful to hold a debate in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on Europol's multiannual strategy and on its annual work programme. The Commission also considers that Europol should send to the European Parliament and to the national Parliaments a regular update of its operational achievements and the results of the 'user survey' that is conducted every other year.

In the opinion of the Committee on Justice, parliamentary scrutiny is important to ensure that a balance is maintained between measures intended to protect citizens and measures intended to protect the privacy of the individual. This applies to both Europol and Eurojust. The Committee considers that the Commission should draw up a joint schedule and a joint procedure for parliamentary scrutiny of Europol and Eurojust.

The Committee is pleased to note that the Commission shares the conviction of the national Parliaments that it is important for national Parliaments to be involved at an early stage of the process in discussing various forms of cooperation for parliamentary scrutiny. With regard to the forms that parliamentary scrutiny might take, the Committee considers that these should be simple, quick and concrete, and that no new authorities need to be set up for this purpose. The scrutiny should focus primarily on following up results and strategies, rather than on monitoring individual decisions. It is therefore necessary that representatives from all the national Parliaments' specialist committees (responsible for police matters), as well as representatives from the corresponding committees in the European Parliament, participate in parliamentary scrutiny on the same terms. The Committee supports the Commission's proposal to establish a joint interparliamentary forum. In the Committee's view, however, it is important that the work on preparing a regulation in accordance with Article 88 of the Treaty on the Functioning of the European Union continues at the same time.

One reasoned reservation has been raised in this matter (Sweden Democrats).

Table of Contents

Summary	1
Committee's proposal for a decision by the Riksdag.....	3
Account of the matter.....	4
The matter and its preparation	4
Background.....	4
Main content of the document	4
The Committee's examination	7
Views of the Committee on Justice.....	7
Reservation	9
Scrutiny of Europol's activities – grounds for reservation (Sweden Democrats).....	9
Appendix.....	10
List of proposals discussed	10

Committee's proposal for a decision by the Riksdag

Scrutiny of Europol's activities

The Riksdag hereby places the statement on file.

Reservation (Sweden Democrats) – grounds

Stockholm, 17 February 2011

On behalf of the Committee on Justice

Morgan Johansson

The following members took part in the decision: Morgan Johansson (Social Democratic Party), Johan Linander (Centre Party), Krister Hammarbergh (Moderate Party), Ewa Thalén Finné (Moderate Party), Kerstin Haglö (Social Democratic Party), Ulrika Karlsson in Uppsala (Moderate Party), Christer Adelsbo (Social Democratic Party), Helena Bouveng (Moderate Party), Elin Lundgren (Social Democratic Party), Anna Wallén (Social Democratic Party), Arhe Hamednaca (Social Democratic Party), Caroline Szyber (Christian Democrats), Kent Ekeröth (Sweden Democrats), Lena Olsson (Left Party), Pia Hallström (Moderate Party), Roger Haddad (Liberal People's Party) and Agneta Börjesson (Green Party).

Account of the matter

The matter and its preparation

Pursuant to Chapter 10 Section 5 of the Riksdag Act (*Riksdagsordning*), the Chamber has referred the Communication from the Commission of 17 December 2010 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) to the Committee on Justice for examination and a statement.

The matter of parliamentary supervision of Europol was dealt with in the conclusions from the EU Speakers' Conference held in Stockholm on 14–15 May.

COSAC (the Conference of parliamentary committees for Union affairs) has also discussed the matter of parliamentary scrutiny of Europol on several occasions, including 24–26 October 2010.

Through its Secretariat, the Committee on Justice was represented at an interparliamentary committee meeting on 4–5 October in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). Parliamentary evaluation of Europol was one of the issues on the agenda at this meeting. The Committee on Justice was further represented at an informal consultation meeting in the Commission, DG HOME, on 24 January 2011. At this meeting, the Communication from the Commission and the forthcoming review of Europol's legal basis were discussed.

Background

Europol is the EU's common police agency. Its objective is to help the EU Member States cooperate more closely and effectively to prevent and combat serious international crime. Europol serves to support law enforcement authorities in the EU Member States and collects, analyses and exchanges information in matters concerning two or more Member States.

On 6 April 2009 a Council Decision was taken establishing the European Police Office (2009/371/JHA). The Decision, which came into force on 1 January 2010 and which forms the new legal basis for Europol, replaced the Europol Convention and its additional protocols. The objective of the Council Decision was primarily to replace the legal basis for Europol with an instrument that is more flexible than an international agreement. With the Council Decision, funding from the Member States was also replaced by a contribution from the EU's budget, which means that Europol now has the status of an EU agency.

Article 88 of the Treaty on the Functioning of the European Union prescribes a new legal regime for Europol. According to the Article, regulations adopted in accordance with ordinary legislative procedure shall determine Europol's activities etc. The regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments. Similarly, under Article 85 of the same Treaty, Eurojust shall be regulated by regulations which, inter alia, shall determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

In the Stockholm Programme (OJ C 115, 4.5.2010, p. 1), the Council has called on the Commission to produce a reflection document on these new procedures.

Main content of the document

According to the Communication, Europol's future legal framework is the subject of ongoing reflection, led by the Commission, involving all key institutions and stakeholders (in particular the European Parliament and Council representatives). In the course of this reflection, the institutions will be invited by the Commission to make concrete proposals as to how mechanisms of parliamentary scrutiny can be put in place and efficiently implemented in practice in line with Article 88 of the Treaty on the Functioning of the European Union.

In the Communication, the Commission presents an overview of the opinions put forward in the past decade on the issue of parliamentary scrutiny of Europol. The Commission further gives an account of the current procedures for scrutiny of Europol's activities, draws certain conclusions and issues recommendations with a view to providing a basis for future discussion.

The current framework for parliamentary scrutiny

In the Communication, the Commission gives an account of the new powers given to the European Parliament with the Council Decision establishing Europol. With Europol incorporated within the EU legal framework, the European Parliament is now directly involved in steering its activities. The European Parliament also has responsibility for control of Europol's budget and, on the basis of a recommendation from the Council, gives a discharge to Europol's Director regarding budget implementation. According to a provision in the Decision, the Presidency of the Council, the Chair of Europol's Management Board and the Director of Europol are to appear before the European Parliament, at its request, to discuss matters relating to Europol. There are also rules governing the provision of information from Europol's Management Board and the Joint Supervisory Body to the European Parliament.

With regard to the national Parliaments' supervision of Europol's activities, the Commission states that this is exercised through their control over their respective governments, in accordance with the constitutional rules of each Member State. Europol's Management Board, which is composed of one representative from each Member State, reports to the Council, whose members are subject to national parliamentary controls. The Commission notes that the procedures for parliamentary scrutiny vary. In some Member States, for example, the control exercised is confined to a document-based scrutiny of Europol when they discuss acts, while other parliaments use their right to hold their governments to account in EU matters as a means of obtaining information about Europol. There are parliaments that discuss Europol matters if the point is on the agenda of the Council meeting, and in some Member States, the national Parliament's approval is needed for the government to agree to measures in the area of Justice and Home Affairs.

The debate on parliamentary scrutiny of Europol

In the Communication, the Commission gives an account of various points of view and proposals from the European Parliament on the scrutiny of Europol. The European Parliament has, for example, proposed that Europol should inform the European Parliament of its activities on a quarterly basis, that the procedures for parliamentary scrutiny by the European Parliament and the national Parliaments should be strengthened and that greater transparency should be created through better provision of information from Europol.

The Commission also outlines points of view put forward by the national Parliaments within the framework of COSAC (the Conference of parliamentary committees for Union affairs). According to the Communication, COSAC has especially highlighted the need for concerted parliamentary oversight of Europol by the European Parliament and the national Parliaments. In 2009, in preparation for its 41st conference, the COSAC Secretariat also compiled a report based on the responses to a questionnaire sent out to all national Parliaments in the EU. The national Parliaments have, for example, proposed that parliamentary cooperation for scrutiny of Europol be exercised by means of existing interparliamentary meetings, by establishing a specific joint committee composed of members of national Parliaments and the European Parliament, or by enhancing the role of the existing COSAC.

Conclusion and recommendations

In its Communication, the Commission states that scrutiny by the European Parliament and the national Parliaments is necessary in order to enhance democratic legitimacy in the field of cross-border police cooperation in the EU. The Commission states that there are many who perceive the

existing controls through the national Parliaments, the national data supervisory bodies, Europol's Joint Supervisory Body and the Management Board to be exercised in a manner which is indirect, fragmented and not easy to understand. According to the Commission, the national Parliaments consider the supervision process via the control of their governmental representative on the Board or in the Council to be cumbersome and it is difficult to coordinate their efforts among each other. The Commission also states that the European Parliament, in the absence of an incisive legislative role in the area of police cooperation, has for some time wished to exercise a closer and deeper scrutiny of Europol's activities.

The Commission proposes in the Communication that a joint, permanent, interparliamentary forum be set up, comprising the national Parliaments' and the European Parliament's committees responsible for police matters. The institutional framework of the Lisbon Treaty supports the establishment of such a forum. Setting up a joint, permanent, interparliamentary forum would provide a formal mechanism for information exchange and coordination between the national Parliaments and the European Parliament with a view to unifying parliamentary control of Europol at EU level.

The Commission also proposes that a new strategy for communication between the European Parliament and the national Parliaments be introduced with the aim of increasing transparency. In the opinion of the Commission, it would be useful to hold a debate in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on Europol's multiannual strategy and on its annual work programme. The Commission also considers that Europol should send an update of its operational achievements and the results of the user survey that is conducted every other year to the European Parliament and the national Parliaments. Finally, the Commission states that with a view to future regulation, it is important to ensure adequate separation between legislative and executive powers. It does not therefore recommend that the European Parliament appoint members to Europol's Management Board. The Commission also considers that Europol's Director should be appointed by Europol's Management Board and not by the Council or the European Parliament, to avoid turning the appointment into a political process.

The Committee's examination

Conference of Speakers of EU Parliaments

In the conclusions of the Conference of the Speakers of the EU Parliaments held in Stockholm on 14–15 May 2010, the Speakers declared their agreement with COSAC's request that the EU institutions should conduct a dialogue with the national Parliaments when they put forward and negotiate a new regulation of parliamentary supervision of Europol. The Speakers also stated that the national Parliaments should be given a reasonable amount of time to put forward their views, and they welcomed consultation documents from the Commission in this area. The Speakers also considered that interparliamentary meetings in a suitable form, guaranteeing satisfactory representation, preferably of the parliamentary committees responsible for these matters, should be arranged in connection with the control mechanism as part of the consultation process leading to a new regulation of Europol. The Speakers asked the incoming President of the Conference of Speakers to contribute to the preparations for such a meeting. They also asked the incoming Presidency to look into whether recurring conferences for parliamentary committees can be scheduled, for example within the framework of justice and home affairs in cooperation with the European Parliament.

COSAC

The conclusions of COSAC on 24–26 October 2010 indicate that COSAC, in the light of the coming consultation documents and legislative proposals on matters including Europol, wishes to emphasise how important it is that the Commission consults the national Parliaments on a broad basis at an early stage. COSAC also urged the Commission to submit proposals on legislation regarding Europol and Eurojust at the same time.

Conferences and meetings in the European Parliament and the Commission

On 4–5 October, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE) arranged an interparliamentary committee meeting entitled Democratic Accountability in the Area of Freedom, Security and Justice – Evaluating Europol, Eurojust, Frontex and Schengen. The programme stated that the meeting was taking place in the framework of a process launched by the Conference of the Speakers of the EU Parliaments in Stockholm in May 2010. The Committee on Justice was represented at the meeting by the Secretariat.

On 24 January 2011, an informal consultation meeting was held in the Commission at the Directorate-General for Home Affairs (DG HOME). At the consultation meeting, at which the Committee on Justice was represented, the Commission's Communication and the upcoming review of the legal basis for Europol were discussed.

Views of the Committee on Justice

Article 12 of the Treaty on European Union states that the national Parliaments should actively contribute to the smooth functioning of the Union in ways that include participating in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of the Treaty on the Functioning of the European Union. As the Commission writes in its Communication, the Committee on Justice considers it important that there should be parliamentary monitoring of activities directed towards combating crime. This applies to both Europol and Eurojust. Monitoring of this kind is particularly important because this type of activity often impinges on the fundamental rights and freedoms of citizens, for example the protection of personal privacy. In the Committee's opinion, it is important that there should be parliamentary scrutiny to ensure that a

balance is maintained between measures intended to protect citizens and measures intended to protect the rights of the individual.

The Committee considers that the Commission should draw up a joint schedule and a joint procedure for parliamentary scrutiny of Europol and Eurojust.

The Committee on Justice is pleased to note that the Commission shares the conviction of the national Parliaments that it is important for the national Parliaments both to be involved at an early stage in the process of discussing the different forms of cooperation for parliamentary scrutiny (for which there is already a legal basis) and to be involved in the process of drafting a new legal regulation in accordance with Article 88 of the Treaty on the Functioning of the European Union.

With regard to the forms that parliamentary scrutiny might take, the Committee on Justice considers that these should be simple, quick and concrete and that no new authorities need be established for this purpose. Scrutiny should focus primarily on following up results and strategies, rather than on scrutinising individual decisions.

The Committee on Justice supports the Commission's proposal to set up a joint interparliamentary forum for this purpose. However, it is important that each and every one of the national Parliaments (via representatives from the parliamentary committees responsible for police matters) and the European Parliament (via representatives from the corresponding committees there) participate on the same terms and that the forum can be used jointly by all parliaments. A forum of this kind would, in the opinion of the Committee on Justice, also be an excellent arena for exchange of information and the discussions proposed by the Commission on Europol's multiannual strategy and its work programme. Such a forum may already be established today with the support of the EU's institutional framework, according to the Lisbon Treaty. In the opinion of the Committee on Justice, it is, however, important at the same time to continue to prepare a regulation in accordance with Article 88 of the Treaty on the Functioning of the European Union.

In conclusion, the Committee agrees with what the Commission remarks on how important it is in any future regulation to ensure adequate separation between legislative and executive powers, and for this reason it is not appropriate for the European Parliament to appoint members of Europol's Management Board. The Committee also considers that, in order to avoid turning the appointment into a political process, Europol's Director should be appointed by its Management Board and not by the Council or the European Parliament.

Reservation

The Committee's proposal for a decision by the Riksdag and positions resulted in the following reservation. The heading indicates which item of the Committee's proposal for a decision by the Riksdag is referred to in that particular section.

Scrutiny of Europol's activities – grounds for reservation (Sweden Democrats)

Kent Ekeröth (Sweden Democrats)

Position

First, I find the continual extension of Europol's competence worrying. I do, however, welcome the debate on democratic scrutiny of Europol. At the present time there is no reason to abandon the existing model of parliamentary control. Nor is there any reason, beyond the examination already carried out today, to extend the Riksdag's scrutiny to an area that comes under the Government's sphere of responsibility. This would mean deviating from our long-established parliamentary traditions in Sweden. I do not think that members of the Riksdag should be part of a permanent parliamentary forum; particularly not when it concerns the establishment of a special sub-organisation for maintaining close contact with Europol. In my opinion, this is not the right way to deal with the democratic deficit. The only thing it will achieve is the establishment of yet another body of no real use. As regards the increased transparency that more information from Europol will hopefully achieve, I have no objections to this proposal. There may be benefits when a policy agency whose activities affect crime prevention in Sweden also publishes analysis of its annual operations. What I do wonder, however, is whether the information should be sent to the Government Offices first for initial consideration.

Appendix
List of proposals discussed

Communication from the 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