

Background paper for session '*Organisation and co-operation of parliamentary scrutiny*'
COSAC chairs meeting, Monday 8 February 2016, 09h00-10h30 a.m.

Parliamentary oversight - the example of the Europol regulation

During the COSAC Chairs meeting a session is foreseen on the organisation and co-operation of parliamentary scrutiny. This will be done on the basis of a case study, using the Europol regulation as the concrete example. The background paper provides information on the case study in order to facilitate the debate.

The objective of the session: to exchange practices and (in)direct instruments national Parliaments use to scrutinise and influence the EU decision making process. To learn and exchange views on how national Parliaments cooperate amongst themselves and with the EP.

EU agencies and national parliaments

During the COSAC LII meeting in December 2014 in Rome, the Italian parliamentary presidency put the topic of EU agencies and national Parliaments on the agenda. In the COSAC contributions (inter alia) it was concluded that:

4.2. COSAC notes that some Parliaments/Chambers expressed concerns in relation to the role and the functioning of some EU agencies, especially with reference to the **lack of adequate oversight**, governance and accountability, the risk of agency capture by sectoral interests, the usefulness or cost-effectiveness of agencies, their proliferation and a possible duplication of their activities, and would urge that these matters be given greater and the most detailed and transparent consideration before further agencies are proposed or established.

4.4. COSAC considers the current mechanisms making agencies accountable to the European Parliament adequate, **although it is essential that instruments enabling national Parliaments to monitor such agencies should be explored.**

The issue of (lack of) democratic control of EU Agencies is still very topical, also in the case of Europol.

Background of the Europol regulation

The involvement of the European Parliament and the national Parliaments in the evaluation and scrutiny of Europol's activities are described in article 88 of the Treaty on the Functioning of the European Union. According to art.88.2 "The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks (....). These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments".

Europol is the European Union's law enforcement agency assisting Member States in their fight against serious international crime and terrorism, by gathering, analysing and sharing information. With the steady increase of Europol's competences after Lisbon, the call for more accountability, dataprotection and legitimacy also grew. The draft Commission regulation of March 2013 initially aimed at merging Europol and CEPOL into a single agency, besides strengthening the obligatory sharing of information by data centres and authorities, and a new dataprotection regime of privacy by design. The proposed merger of both agencies met so much resistance that it was put off. In the spring of 2014, the Council and the EP took position on the draft text. Both institutions weakened the proposed competences for Europol. EP strongly advocated for better dataprotection rules.

One of the main topics of discussion during the trilogue phase of the negotiations, was the issue of democratic accountability of the agency vis-a-vis the member states and parliaments. Where the Council foresaw a small role of the European Parliament, the EP pushed for strong parliamentary control together with national Parliaments. This would be the task of the newly to be established Joint Parliamentary Scrutiny Group (JPSG). A final compromise between Council and EP was reached on 26 November 2015. The LIBE committee agreed on the text of the draft regulation on 30 November. Article 53 of the draft regulation reads that the EP and the national Parliaments will shape the JPSG together. This is the challenge for the EP and national Parliaments in the coming months.

Key moments in the EU decision making process

- 27 March 2013:** Commission adopts proposal [COM\(2013\)173](#) / 2013/0091(COD) REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA
- 21 May 2013: Committee referral in EP, 1st reading
- 6 June 2013: Council discussion
- 25 February 2014:** EP [opinion 1st reading](#), approval with amendments
- 3 March 2014: Council discussion
- 20 May 2014: Commission position on EP amendments 1st reading
Partial agreement
- 5 June 2014: Council discussion
- 24 September 2014:** Opening of interinstitutional negotiations after 1st reading
- Oct 2014 - Nov 2015: in total 10 trilogue negotiations (Commission, EP, Council)
- 26 November 2015:** Concept agreement between Council and EP
- 30 November 2015: EP [vote](#)
Adopts compromise text agreed during interinstitutional negotiations
- 4 December 2015:** Council [approves](#) compromise text on Europol regulation
- next steps: start of legal-linguistic revision before formal adoption of Council's position at first reading
- April 2016: Vote in second reading at plenary session of the EP

Activities of national Parliaments

Scrutinizing and controlling the position of the national government in EU negotiations in Council are the main tasks of national Parliaments. National Parliaments have many *indirect* instruments available to perform these tasks, e.g. asking written and oral questions, debates with Minister, mandating Minister, reporting by Minister to Parliament before or after Council meetings. Since the Lisbon Treaty national Parliament can also engage *directly* in the process of EU decision making by using the subsidiarity mechanism or the political dialogue. Furthermore parliaments have developed procedures and instruments for inter-parliamentary cooperation, such as conferences, meetings and IPEX, the digital platform for EU interparliamentary exchange. Several national Parliaments have introduced additional informal instruments to increase parliamentary influence over EU policy making, that are not strictly related to the Lisbon Treaty.

IPEX was used for the overview below of the direct instruments national Parliaments used to influence the Europol regulation.

[IPEX COM/2013/0173](#): 25 June 2013 was the Subsidiarity deadline for national Parliaments

Cat. 1: Reasoned Opinions (Subsidiarity issues)

Germany

- i. Bundesrat: 07/06/2013 [Reasoned opinion](#) send (does not comply with subsidiarity, nor conferral), 28/11/2013 Response EC.

Spain

- i. Cortes Generales: 07/05/2013 Committee EU appoints Rapporteur for Subsidiarity check. 18/06/2013 Reasoned Opinion: no compliance with subsidiarity and proportionality because of Europol CEPOL merger.

Belgium

- i. House of Representatives: 19/06/2013 [Reasoned opinion](#) send (does not comply with subsidiarity), 24/09/2013 [Response](#) EC.

Cat. 2: Subsidiarity check: no issues

Sweden

- i. Parliament: 16/05/2013 In compliance with subsidiarity.

Slovenia

- i. National Assembly: 07/06/2013: Committee on EU affairs adopts position: does not support regulation, merger can negatively affect costs and quality (passed on to internal Committees, not to EP, Council or EC as far as IPEX goes).

Poland

- i. Senate: 12/06/2013 Subsidiarity check: no breach.

Portugal

- i. Assembleia da República: 18/06/2013 Committee European Affairs finds no subsidiarity issues.

Romania

- i. Chamber of Deputies: 27/06/2013: Subsidiarity check concluded: no breach. 03/07/2013: Final opinion sent, 07/11/2013 Response from EC

Lithuania

- i. Seimas: 19/03/2014 Committee Legal Affairs Subsidiarity check: no breach.

Cat. 3: Political Dialogues

Italy

- i. Senate: 24/07/2013 political dialogue: endorses proposal
- i. Chamber of Deputies: 15/10/2013 Communication/Political Dialogue to EP, Council and EC: favourable opinion if national parliaments involvement instruments and procedures are clarified.

Czech Republic

- i. Senate: 21/08/2013 Adopts [resolution](#)/political Dialogue (Does not support merger, more parliamentary influence). 20/01/2014 [Response](#) EC

The Netherlands

- i. [Senate](#): 08/10/2013 | Political dialogue with EC (concerns costs & education quality), 01/04/2014 Response EC. 16/12/2013 Written contribution to information request from EP rapporteur Mr. Diaz de Mera.

France

- i. Assemblée Nationale: 20/12/2013 [Resolution](#)

United Kingdom

- i. House of Lords: 03/12/2014 Political dialogue with EC (and EP & Council): concerns about new non-flexible parliamentary scrutiny amendments of Europol proposal.
- i. House of Commons: 26/11/2014: Political dialogue with EC (and EP & Council): worries about far-reaching prescriptions for Parliamentary scrutiny group for Europol.

Cyprus

- i. House of Representatives: 19/11/2015 Political dialogue regarding the Joint Parliamentary scrutiny Group in Europol's activities

Cat. 4 other:

Lithuania

- i. Seimas: 28/01/2014: [Letter](#) to EP, from Defence, Internal Affairs Committee. 02/04/2014: Opinion from Committee European Affairs: engagement of national parliaments needs to be ensured.

Ireland

- i. Houses of Oireachtas: Scrutiny 11/12/2013 – 28/10/2015,
11/12/2013: proposal warrants scrutiny, requests to be kept updated.
03/12/2014: proposal warrants scrutiny, requests to be kept updated
21/10/2015: proposal warrants scrutiny, requests trilogue updates

Netherlands

- i. Tweede Kamer: letter to EP rapporteur, Commission and Council Presidency
12/02/2015: supports the principle of a JPSG, but not too much details in the regulation itself
04/11/2015: letter to Minister requesting updates about the JPSG in the trilogue negotiations

Denmark

- i. 03/12/2015: Referendum: no-vote to flexible opt-in arrangement for Denmark under EU Justice and Home Affairs laws, as such cannot remain full Europol member.

Activities of the European Parliament to involve national Parliaments

- 16 July 2013: EP rapporteur Agustín Díaz de Mera García Consuegra invites all national parliaments via email/letter to give input on how to organise parliamentary scrutiny on Europol
- 20 June 2013: LIBE committee organises an ICM with national Parliaments to discuss Europol regulation
- 14 November 2013: LIBE discusses amendments of the draft report from the rapporteur, national Parliaments are invited to be present
- 19 March 2014: LIBE organises another ICM with national Parliaments. One of the sessions is about Europol

Questions for the discussion during COSAC Chairs

Please find below some questions delegations can use to prepare and structure the discussion.

1. Parliamentary oversight (internal procedures)

How active has your Parliament been in scrutinizing the shaping of the draft regulation? What kind of instruments -indirect ones- towards your government/Council (e.g. oral and written questions to government, motions, discussions with responsible Minister, report of committee) or direct vis-à-vis the Commission (use of political dialogue and subsidiarity, invite Commissioner in national Parliament, dialogue at inter-parliamentary conferences) have you used? In what committee(s) was the draft regulation discussed? Or wasn't it subject to any discussion at all, and why? What do you consider the most effective way to influence the decision-making? What is the least effective instrument in your opinion?

2. Interaction/cooperation with the European Parliament and amongst national Parliaments

The European Parliament has taken initiatives to involve national Parliaments in sharing thoughts about the setting up of the Joint Parliamentary Scrutiny Group. Has your Parliament been active in its contacts with the EP (e.g. input in ICM's, a letter to the rapporteur, inviting the rapporteur to your Parliament, contacts with MEPs of your own political party, contact with MEPs in LIBE committee, etc.). Did you have contacts with other national Parliaments on this topic to share ideas on how to shape this new JPSG. Are direct contacts with EP and/or national Parliaments effective instruments to influence EU negotiations? Do you have any best practices to share? What is going well? What can be improved?

3. Democratic control on EU Agencies

In the Europol regulation the Joint Parliamentary Scrutiny Group will monitor the activities of Europol in order to improve the Agency's accountability and legitimacy. Are there already any further discussions, thoughts in national Parliament about the democratic control on Agencies in general and/or on Europol in specific? Which information would be necessary to share between national Parliaments and the EP for the JPSG to function?

Chapter IX

JOINT PARLIAMENTARY SCRUTINY

Article 53

Joint Parliamentary scrutiny

1. Pursuant to Article 88 TFEU the scrutiny of Europol's activities shall be carried out by the European Parliament together with national Parliaments. This shall constitute a specialised Joint Parliamentary Scrutiny Group (JPSG) established together by the national parliaments and the competent committee of the European Parliament. The organisation and the rules of procedure of the JPSG shall be determined together by the European Parliament and the national parliaments in accordance with Article 9 of Protocol No 1 to the TFEU.

2. The JPSG shall politically monitor Europol's activities in fulfilling its mission, including as regards their impact on the fundamental rights and freedoms of natural persons.

To that end:

(a) the Chairperson of the Management Board, the Executive Director or their Deputies shall appear before the JPSG at its request to discuss matters relating to the activities mentioned in the first subparagraph of this paragraph, including the budgetary aspects of such activities, the structural organisation of the Agency and the potential establishment of new units and specialised centres, taking into account the obligations of discretion and confidentiality. The Group may decide to invite to its meetings other relevant persons, if appropriate;

(b) the European Data Protection Supervisor shall appear before the JPSG at its request and at least once per year to discuss general matters relating to the protection of fundamental rights and freedoms of natural persons, and in particular the protection of personal data, with regard to Europol's activities, taking into account the obligations of discretion and confidentiality.

(c) The JPSG shall be consulted in relation to the multiannual programming of Europol in accordance with Article 15(1).

3. Europol shall transmit the following documents for information to the JPSG, taking into account the obligations of discretion and confidentiality:

(a) threat assessments, strategic analyses and general situation reports relating to Europol's objective as well as the results of studies and evaluations commissioned by Europol;

(b) the administrative arrangements adopted pursuant to Article 31(1);

(c) the programming document containing the multiannual programming and the annual work programme of Europol, referred to in Article 15(1);

(d) the consolidated annual activity report on Europol's activities, referred to in Article 14(1)(d);

(e) the evaluation report drawn up by the Commission, referred to in Article 70(1).

4. The JPSG may request other relevant documents necessary for the fulfilment of its tasks relating to the political monitoring of Europol's activities, subject to Regulation (EC) No 1049/2001¹⁹ and without prejudice to Articles 54 and 69.

5. The JPSG may draw up summary conclusions on the political monitoring of Europol's activities and submit those conclusions to the European Parliament and national parliaments. The European Parliament shall forward them for information to the Council, the Commission and Europol.

1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Article 54

Access by the European Parliament to information processed by or through Europol

1. For the purpose of enabling it to exercise parliamentary scrutiny of Europol's activities in accordance with Article 53, access to sensitive non-classified information processed through or by Europol to the European Parliament upon its request shall be in compliance with the rules referred to in Article 69(1).

2. Access by the European Parliament to European Union Classified Information processed through or by Europol shall be consistent with the Interinstitutional Agreement between the European Parliament and the Council concerning the forwarding to and the handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy and in compliance with the rules referred to in Article 69(2).

3. The necessary details regarding access by the European Parliament to the information referred to in paragraphs 1 and 2 shall be governed by working arrangements concluded between Europol and the European Parliament.