



Proposals on the second draft produced by the Troika Working Group on 16 December 2016

Joint Parliamentary Scrutiny Group for Europol

The German Bundestag thanks the Troika Working Group for its second draft of conclusions for the Conference of Speakers and Presidents of European Parliamentary Assemblies, to be held in Bratislava from 23 to 25 April 2017, and for its work relating to the establishment of the Joint Parliamentary Scrutiny Group for Europol.

Under Article 88(2) of the Treaty on the Functioning of the European Union (TFEU) and Article 51(1) of Regulation (EU) No 2016/794, hereinafter referred to as the 'new Europol Regulation', scrutiny of Europol activities is exercised by the European Parliament together with national parliaments. To this end, a specialised Joint Parliamentary Scrutiny Group, hereinafter referred to as the 'JPSG', is to be established by the national parliaments and the competent committee of the European Parliament.

This means that, for the first time, the European Parliament and national parliaments will jointly oversee a European executive authority. Interparliamentary cooperation in permanent bodies has hitherto been restricted to exchanges of good practice. Article 51(1) of the new Europol Regulation goes much further and lays the foundations for permanent interparliamentary scrutiny.

In order to ensure that such permanent interparliamentary scrutiny possesses sufficient legitimacy, balanced representation of the various political groups must be guaranteed in the new JPSG. In the view of the Bundestag, this can only be achieved if the national parliaments are able to send a sufficient number of representatives to the JPSG.

From the very start, the JPSG should be able to perform its tasks as defined in the new Europol Regulation. Accordingly, before the group is constituted, it is not enough to reach agreement on the number of representatives to be sent to the JPSG and on the frequency of its meetings. The Bundestag proposes that, as soon as possible and in good time for the Conference of Speakers of 23 to 25 April 2017, agreement be reached on other key features of the JPSG's *modus operandi*, such as the decision-making procedure, hearing and questioning rights, appointment of subgroups and creation of a secretariat. This groundwork should ensure that interparliamentary scrutiny can be permanently and effectively exercised.

On the basis of the foregoing remarks, the Bundestag wishes to comment as follows on the current draft from the Troika Working Group (part I) and on other matters concerning the operating procedures of the JPSG (part II):



I.

1. Composition of the TPSG

- A. In the view of the Bundestag, the JPSG should have at least four members from each national parliament.

Rationale

In this way the composition of national parliaments can be taken into account. The number of representatives of national parliaments should be increased so as to maintain the balance between the political groups in each parliament that send members and to ensure that opposition groups are duly represented. By having the number of its members increased from six, as proposed in the first draft from the Troika Working Group, to ten, the European Parliament has ensured that all of its political groups are represented in the JPSG. The national parliaments are seeking equal treatment in this respect.

- B. The Bundestag welcomes the reference in the present draft to long-term continuity in the composition of the JPSG. The members selected by parliaments should be appointed for the duration of the electoral term of the parliament in question. The Bundestag proposes that this matter be clarified in the draft conclusions for the Conference of Speakers.

Rationale

The purpose of this proposal is to guarantee the availability of specialised expertise and operational continuity and to make it possible to form a network of experts.

- C. The Bundestag proposes that the national parliaments or their chambers appoint substitute members of the JPSG who can represent the full members of the JPSG in their absence.

Rationale

This kind of substitution arrangement ensures full representation of the national parliaments and the European Parliament in the JPSG as well as corresponding to the practice of parliamentary bodies.

- D. The Bundestag welcomes the fact that the second draft from the Troika Working Group gives Member States with bicameral systems sufficient flexibility to determine themselves how their national representation is to be divided between the two chambers of Parliament.



Rationale

This flexibility takes account of the diverse constitutional and political circumstances in Member States.

2. Extraordinary meetings

The Bundestag welcomes the fact that the number of ordinary meetings of the JPSG has been increased to two in the new draft and that an extraordinary meeting may also be held. In this context, the Bundestag deems it desirable not to limit the number of extraordinary meetings. In the view of the Bundestag, besides the European Parliament and the national Parliament of the Member State holding the presidency of the Council, one third of the members of the JPSG should also be able to require the convening of an extraordinary meeting.

Rationale

Within one year, several situations could arise in which there appeared to be an urgent need to convene a meeting and discuss an issue. In view of the small number of ordinary meetings, the obstacles to convening an extraordinary meeting should not be unduly great.

II.

The Bundestag also proposes the following additional principles for the *modus operandi* of the JPSG:

1. Quorum and decision-making

The summary conclusions prescribed by Article 51(5) of the new Europol Regulation should be adopted by a majority of the members.

Rationale

Provision should be made for a voting procedure which lends the conclusions the degree of legitimacy required for the scrutiny of Europol. Unlike the interparliamentary conferences held for the purpose of exchanging good practices, such an arrangement seems necessary for a group that exercises the rights of scrutiny enshrined in primary legislation and in the new Europol Regulation.

2. Rights of hearing and questioning

- A. One third of the members of the JPSG should be able to require the Chairperson of the Management Board, the Executive Director or their



respective Deputies and the European Data Protection Supervisor to appear at meetings of the JPSG to discuss matters relating to the activities of Euro pol.

Rationale

Under the new Europol Regulation, the Chairperson of the Management Board, the Executive Director or their Deputies are to appear before the JPSG at its request to discuss matters relating to Europol activities (Article 51(2)(a)), and the European Data Protection Supervisor is to appear before the JPSG at its request to discuss general matters relating to the protection of fundamental rights and freedoms of natural persons in the context of Europol activities (Article 51(2)(b)). This significant right of oversight will enable the JPSG to ensure that it is well informed when adopting conclusions under Article 51(5) of the new Europol Regulation. For this reason, and in view of the small number of its ordinary meetings, there must not be unduly high barriers to the exercise of the JPSG's right to hear the aforementioned persons.

- B. The right of the JPSG to hold such hearings should be accompanied by a right vested in each individual member of the Group to obtain oral answers to his or her questions. So that well-founded answers can be given to these questions, the questions should be submitted to the chair of the JPSG two weeks before the meeting. The chair would then forward the questions to the competent Europol departments so that an answer can be formulated in preparation for the meeting.

Rationale

If there is an effectively structured right to ask questions, the JPSG will be able to exercise adequately its right to hold hearings as enshrined in Article 51(2) of the new Europol Regulation.

- C. Besides the right to obtain oral answers to questions in connection with the right to hold hearings, each member and substitute member of the JPSG should be permitted, outside the framework of the Group's meetings, to address an appropriate number of written questions to the Management Board and the Executive Director.

Rationale

With regard to the permanent scrutiny for which Article 51(1) of the new Europol Regulation provides, the members of the JPSG must be given effective access to information outside as well as inside their meetings. This is the purpose of the right to have their written questions answered.



3. **Appointment of subgroups**

So that its oversight duties can be performed effectively, the JPSG should be able to appoint subgroups - a steering committee and two to three other subgroups - or, where necessary, *ad hoc* bodies. A steering committee should draft the political and strategic objectives of the JPSG. Potential thematic focal points for the other subgroups are Europol's cooperation with EU agencies such as Frontex or with non-EU countries and international organisations, protection of personal data in the context of Europol activities and budgetary matters. The subgroups should make recommendations to the full JPSG relating to particular points in the conclusions referred to in Article 51(5) of the Europol Regulation, these recommendations having been adopted by a majority of the subgroup members. The subgroups themselves should determine how frequently they meet.

Rationale

The establishment of operationally efficient and well-informed subgroups to prepare and support the work of the JPSG and the pooling of specialised expertise will enable the Group to exercise effectively its scrutiny of Europol activity.

4. **Creation of a secretariat**

The JPSG and its subgroups should be assisted by a secretariat. Among the tasks of the latter would be to draw up the meeting agendas jointly with the European Parliament and the Parliament of the Member State holding the presidency of the Council after consulting the steering committee, to organise meetings, to send meeting documents and preparatory documentation to Group members and to draw up the minutes of meetings.

Rationale

Permanent administrative support must be guaranteed so as to ensure that the JPSG and its subgroups can function properly.

Translation

*His Excellency
The Speaker of the National Council
of the Slovak Republic
Dr. Andrej Danko
Bratislava
SLOVAKIA*

Berlin, 2nd February 2017

Dear Mr. Speaker,

The German Bundesrat would like to thank the Troika for the good preparatory work and guidance of discussions so far on provisions pertaining to the Rules of Procedure for the Joint Parliamentary Scrutiny Group for Europol. Parliamentary scrutiny of a European agency, exercised jointly by the European Parliament and national parliaments, is to be implemented/or the first time.

As policy issues concerning the police in Germany fall primarily within the ambit of the federal states, represented in the Bundesrat, it is particularly important to us to ensure that we are also involved in parliamentary scrutiny of the European Police Office, Europol.

The Bundesrat would therefore like to focus its comments in particular on Point 2 of the Troika draft on the composition of the JPSG, and proposes the following wording:

"Each Parliament shall have the right to nominate 4 members of the JPSG, in case of bicameral parliaments each Chamber shall have the right to nominate 2 members of the JPSG. The European Parliament shall have the right to nominate 10 members of the JPSG."

Substantiation:

The Bundesrat recognises the need to limit the size of the group to ensure efficient scrutiny of Europol. At the same time, the Troika's current proposal, which envisages two members per national parliament or one member per chamber, poses considerable challenges for bicameral parliaments in particular, as adequate representation must be ensured for both chambers and also in keeping

with parliamentary practice-for representatives of majority and minority parliamentary groups. Increasing the number of members to be appointed to this group to four per national parliament or two members per chamber would take this concern more fully into account.

The Bundesrat would like to emphasise in particular the importance of upholding independent rights for both parliamentary chambers to appoint members to the group. The Bundesrat is of the opinion that there is no need for the formulation currently envisaged in the Troika draft, whereby it is also possible for alternative arrangements to be agreed upon by the two parliamentary chambers ("unless otherwise agreed between the two Chambers"). If both chambers are in agreement, the original wording already offers scope for the chambers to decide upon a different arrangement. If it is not possible for both chambers to reach an agreement, the current wording could lead to misunderstandings and differing interpretations.

Yours most respectfully

(signed)

*Malu Dreyer
President of the Bundesrat*

The conclusions of the Conference of Speakers of Parliaments of the European Union of 23-25 April 2017 in Bratislava pertaining to the Joint Parliamentary Scrutiny Group (JPSG)

The Conference of Speakers of Parliaments of the European Union agrees that as concerns the Joint Parliamentary Scrutiny Group (JPSG) to carry out scrutiny of Europol's activities:

- 1) *Members of the JPSG shall be selected individually by each Parliament/Chamber, bearing in mind the necessity to ensure substance matter expertise as well as long-term continuity and recommending to draw from the responsible committee/committees in Parliaments/Chambers;*
- 2) *Each Parliament shall have the right to nominate 2 members of the JPSG, in the case of bicameral parliaments each Chamber shall have the right to nominate 1 member of the JPSG (unless otherwise agreed between the two Chambers). The European Parliament shall have the right to nominate 10 members of the JPSG;*
- 3) *The JPSG shall be presided jointly by the Parliament of the country holding the rotating presidency of the Council of the European Union and the European Parliament;*
- 4) *The JPSG shall meet twice a year. In the first half of the year, the JPSG shall meet in the Parliament of the country holding the rotating presidency of the Council of the European Union. In the second half of the year, the JPSG shall meet in the European Parliament. If necessary, an extraordinary meeting can be convened upon agreement of the Parliament of the country holding the rotating presidency of the Council of the European Union and the European Parliament, to address matters of urgency or matters that cannot be reasonably included in the agenda of the ordinary meetings. Time and place of the extraordinary meeting shall be decided by the Parliament of the country holding the rotating presidency of the Council of the European Union and the European Parliament;*
and recommends that a constituent meeting of the JPSG should be held as soon as possible in order to adopt its rules of procedure so as to enable full work to begin in the second semester of 2017.¹

Amendment to the conclusions proposed by the Sejm:

- 2) *Each Parliamentshall have the right to nominate 6 members of the JPSG, in the case of bicameral parliaments each Chambershall have the right to nominate 3 members of the JPSG (unless otherwise agreed between the two Chambers). The European Parliamentshall have the right to nominate 6 members of the JPSG;*

Substantiation:

From the very outset the Sejm of the Republic of Poland has stressed the need to nominate more than 2 members to the JPSG in order to take better account of bicameral parliaments, to reflect the political diversity and to ensure an appropriate composition of the committees in particular parliaments. The extended JPSG is justified by the already functioning structures of cooperation such as the Interparliamentary Conference for the Common Foreign and Security

¹ Draft text of Troika Working Group for the Conference of Speakers of 23-25 April 2017, p.4.

Policy (CFSP) and the Common Security and Defence Policy (CSDP), as well as the Interparliamentary Conference on Stability, Coordination and Governance in the Economic and Monetary Union (under Article 13).

The Sejm of the Republic of Poland maintains its view expressed in the on line questionnaire sent to the Troika Working Group and at the meeting of the Committee on Civil Liberties, Justice and Home Affairs (UBE) on 28 November 2016.



Nicosia, 3 February 2017

Amendments proposed by the House of Representatives of the Republic of Cyprus to the Draft Text of the Conclusions of the Conference of Speakers of EU Parliaments of 23-25 April in Bratislava as pertaining to the Europol JPSG.

Amend paragraph 2 as follows:

2) Each Parliament shall have the right to nominate 2 members of the JPSG (and 2 substitutes), in the case of bicameral Parliaments each Chamber shall have the right to nominate 1 member (and 1 substitute) of the JPSG (unless otherwise agreed between the two Chambers). The European Parliament shall have the right to nominate 10 members (and 10 substitutes) of the JPSG. Substitutes will be able to participate only when titular members are absent.

Justification:

The option of substitute members would guarantee effective participation of all National Parliaments and the European Parliament without compromising the necessity to maintain participation of MPs with substance matter expertise to ensure continuity of the work of the JPSG.

Amend paragraph 4 as follows:

4) The JPSG shall meet twice a year. In the first half of the year, the JPSG shall meet in the Parliament of the country holding the rotating presidency of the Council of the European Union. In the second half of the year, the JPSG shall meet in the European Parliament. If necessary, an extraordinary meeting can be convened upon agreement of the Parliament of the country holding the rotating presidency of the Council of the European Union and the European Parliament or by at least one third of the member National Parliaments to address matters of urgency or matters that cannot be reasonably be included in the agenda of the ordinary meetings. Time and place of the extraordinary meeting shall be decided by the Parliament of the country holding the rotating Presidency of the Council of the European Union and the European Parliament.

Justification:

One third of participating National Parliaments should be considered as a significant number indicating that an issue causes extensive concern and is deemed important to discuss.

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