COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.5.2008
COM(2008)305 final

2008/0102 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Council Decision […] establishing the European Police Office (EUROPOL Decision), under which EUROPOL is to be funded from the Community budget, will apply from 1 January 2010 or from the date of application of the proposed amendment to Council Regulation (Euratom, ECSC, EEC) No 549/69 whichever is the latest date.

In order to ensure that the EUROPOL Decision is applied from 1 January 2010, the amendment to Council Regulation No 549/69 clarifying that immunity from legal proceedings does not apply to EUROPOL staff participating in joint investigation teams, needs to be adopted in good time.

- **General context**

During the preparation of the EUROPOL Decision the issue of immunities of EUROPOL staff participating in joint investigation teams was discussed in depth.

The Council Conclusions of 12-13 June 2007 on replacing the EUROPOL Convention by a Council Decision stated that 'EUROPOL would be funded from the Community budget as from 1 January 2010 provided that satisfactory solutions are found on the following three outstanding issues: 1. the lifting of immunity for EUROPOL officials when participating in operational activities, especially Joint Investigation Teams (JITs), ….'.

Following the discussions in the Council on this issue, the Commission agreed on 20 February 2008, that it would submit a proposal to amend Regulation No 549/69 with a view to clarifying the scope of jurisdictional immunities.

- **Existing provisions in the area of the proposal**

– Protocol on the Privileges and Immunities of the European Communities (1965), in particular its Chapter V (Articles 12 – 16), which specifies immunities and privileges that officials and other servants of the European Communities enjoy in the territories of the Member States. According to Article 16 of the Protocol the Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities to whom the provisions of Article 12, the second paragraph of Article 13, and Article 14 shall apply, in whole or in part.

– Council Act of 18 December1997 drawing up, on the basis of Article K3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations.

– Council Regulation (Euratom, ECSC, EEC) No 549/69 of 25 March 1969 determining the categories of officials and other servants of the European

Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply, as amended.

– Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

– Council Framework Decision of 13 June 2002 on joint investigation teams.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposed amendment corresponds to the request that immunity from legal proceedings (Article 12 (a) of the Protocol on the Privileges and Immunities) should not apply in respect of EUROPOL staff placed at the disposal of a joint investigation team in respect of official acts required to be undertaken in fulfilment of operational tasks set out in Article 6 of the Council Decision […] establishing EUROPOL.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

To propose an amendment clarifying that EUROPOL staff participating in joint investigation teams do not enjoy immunity from legal proceedings.

- **Legal basis**

Article 16 of the Protocol on the Privileges and Immunities

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal is consistent with the principle of proportionality for the following reason:

Article 16 of the Protocol on the Privileges and Immunities provides that the Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities to whom the provisions of Article 12, the second paragraph of Article 13, and Article 14 shall apply, in whole or in part. There are no other, less far-reaching means of achieving the objectives of this proposal.

- **Choice of instruments**

Proposed instrument: regulation.

Other means would not be adequate for the following reason(s).

The proposal concerns the amendment of an existing instrument.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 291 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 16 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the Court of Justice[3],

Having regard to the opinion of the Court of Auditors[4],

Whereas:

(1) According to Article 6 of Council Decision [*the decision establishing Europol*][5] EUROPOL staff may participate in a support capacity in joint investigation teams created by and at the initiative of two or more Member States provided those teams are investigating criminal offences for which Europol is competent. These joint investigation teams are headed by a team leader representing the competent national authority participating in criminal investigations from the Member State in which the team operates. During the operation of a joint investigation team, EUROPOL staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

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1 OJ C […], […], p. […].
2 OJ C […], […], p. […].
3 OJ C […], […], p. […].
4 OJ C […], […], p. […].
5 See page ... of this Official Journal.

(2) When the possibility for Europol officials to participate in joint investigation teams was introduced by the Protocol amending the Europol Convention[6], it was considered that, given the specificities of the participation of Europol officials in joint investigation teams created by Member States in the context of criminal investigations falling under the competence of Europol, Europol officials should not enjoy immunity from legal proceedings in respect of official acts undertaken when participating in those teams.

(3) The privileges and immunities that the Protocol on the Privileges and Immunities of the European Communities grants, solely in the interests of the Communities, to their officials and agents, have a purely functional character, in that they are intended to avoid any interference with the functioning and independence of the Communities. Given that Council Decision [*the decision establishing Europol*] does not change the specificities of the participation of Europol staff in joint investigation teams, its adoption should not extend immunity from jurisdiction to Europol staff participating in such teams. Therefore Regulation (Euratom, ECSC, EEC) No 549/69[7] should be amended in order to clarify, in the context of that Decision, and exclusively for the purpose of its application, the scope of immunity of Europol staff placed at the disposal of a joint investigation team,

HAS ADOPTED THIS REGULATION:

Article 1

The following Article 1a is inserted in Regulation (Euratom, ECSC, EEC) No 549/69:

'Article 1a

Article 12 (a) of the Protocol on the Privileges and Immunities of the Communities shall not apply to EUROPOL staff placed at the disposal of a joint investigation team in respect of official acts required to be undertaken in fulfilment of the tasks set out in Article 6 of Council Decision [*the decision establishing Europol*].'

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union [publication on the same day as the decision establishing Europol*].

It shall apply from 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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6 OJ C 312, 16.12.2002, p. 1.

7 OJ L 74, 27.3.1969, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1749/2002 (OJ L 264, 2.10.2002, p. 13).

Done at Brussels, […]

For the Council
The President
[…]