

# DECISIONS

## COUNCIL DECISION

of 28 June 2011

### amending the Council Act of 12 March 1999 adopting rules on the Europol pension fund

(2011/400/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Staff Regulations applicable to Europol employees, as laid down in the Council Act of 3 December 1998 ('Europol Staff Regulations')<sup>(1)</sup>, and in particular Article 37(3) of Appendix 6 thereto,

Whereas:

- (1) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)<sup>(2)</sup> ('Europol Decision'), replaces the Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office<sup>(3)</sup> ('Europol Convention') as of its date of application, that is as of 1 January 2010.
- (2) The Europol Decision provides that all measures implementing the Europol Convention shall be repealed with effect from 1 January 2010, unless otherwise provided in the Europol Decision.
- (3) The Europol Decision further provides that the Europol Staff Regulations and other relevant instruments shall continue to apply to staff members who are not recruited under the Staff Regulations of Officials of the European Union and the Conditions of employment of other servants of the European Union in accordance with Article 57(2) of that Decision.
- (4) The Europol Decision also provides that the Staff Regulations of Officials of the European Union and the Conditions of employment of other servants of the European Union, as laid down in Regulation (EEC, Euratom, ECSC) No 259/68<sup>(4)</sup> shall apply to the Director, the Deputy Directors and to Europol staff engaged after 1 January 2010.
- (5) The Europol Decision furthermore provides that all employment contracts concluded by Europol as

established by the Europol Convention and in force on 1 January 2010 shall be honoured until their expiry date and may not be renewed on the basis of the Europol Staff Regulations after the date of application of the Europol Decision.

- (6) The Europol Decision also provides that members of staff under contract on 1 January 2010 shall be offered the possibility of concluding temporary agent or contract agent contracts under the Conditions of employment of other servants of the European Union. Several members of staff have made use of this possibility.
- (7) Consequently, the number of staff members continuing to be employed under the Europol Staff Regulations, and hence their contributions to the Europol pension fund pursuant to Article 37(1) of Appendix 6 of the Europol Staff Regulations, have, as from 1 January 2010, steadily decreased and are to be discontinued once the last employment contract to which the Europol Staff Regulations apply has expired.
- (8) As a result, the management of the fund is to be adapted to the decreased volume of both the contributions and disbursements to be made by the fund, by reducing the number of members of the Board of the fund and the number of its meetings.
- (9) It is also reasonable to limit the personal liability of members of the Board acting in the fulfilment of their tasks to gross negligence and serious wrongdoings.
- (10) The liabilities of the fund are also to end at an earlier stage than foreseen when it was created. In the event that the fund's assets would not suffice to fulfil its liabilities, the shortfall should be covered by Europol's budget. Given the present financial state of the fund, this eventuality appears to be theoretical, taking also into account that Europol has reinsured the risks stemming from its obligations under Articles 63 to 71 of the Europol Staff Regulations by concluding an insurance on invalidity and survivors' pensions.

<sup>(1)</sup> OJ C 26, 30.1.1999, p. 23.

<sup>(2)</sup> OJ L 121, 15.5.2009, p. 37.

<sup>(3)</sup> OJ C 316, 27.11.1995, p. 1.

<sup>(4)</sup> OJ L 56, 4.3.1968, p. 1.

(11) The Council Act of 12 March 1999 adopting rules on the Europol pension fund <sup>(1)</sup> should thus be amended accordingly. Other technical amendments to that Act resulting from the entry into force of the Europol Decision should also be introduced,

HAS ADOPTED THIS DECISION:

*Article 1*

The Council Act of 12 March 1999 adopting rules on the Europol pension fund is hereby amended as follows:

(1) in Article 1 the following point is inserted:

‘(aa) “Europol Decision” means the Council Decision of 6 April 2009 establishing the European Police Office (\*) and replacing the Europol Convention;

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(\*) OJ L 121, 15.5.2009, p. 37.;

(2) in Article 1, point (b) is replaced by the following:

‘(b) “Europol” means the European Police Office as established by the Europol Decision;’

(3) in Article 1, point (g) is replaced by the following:

‘(g) “Management Board of Europol” means Europol’s Management Board as mentioned in Article 37(1) of the Europol Decision;’

(4) in Article 1 the following point is added:

‘(h) “Europol Staff Committee” means the Staff Committee set up in accordance with Article 4 of the Staff Regulations or, in case it ceases to exist, the Staff Committee mentioned in Article 9(1) of the Staff Regulations of Officials of the European Union (\*).

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(\*) OJ L 56, 4.3.1968, p. 1.;

(5) in Article 3(1), point (g) is replaced by the following:

‘(g) other income, including exceptional contributions received from Europol pursuant to Article 12b.;

(6) in Article 3(2), point (d), the words ‘or desirable’ are deleted;

(7) Article 4(2) is replaced by the following:

‘2. The Board shall consist of four members.’;

(8) Article 4(3) is replaced by the following:

‘3. Of the four members, two shall be appointed by the Management Board of Europol, one shall be appointed by Europol, and one shall be appointed by the Europol Staff Committee. Each member may be assisted at the Board’s meetings by a maximum of two experts; the costs of any outside experts will be borne by the fund only if the Board so decides.’;

(9) in Article 4(7), the words ‘the secretary shall in all cases be from the members appointed by Europol or the Europol Staff Committee’ are replaced by the words ‘the secretary shall in all cases be either the member appointed by Europol or the one appointed by the Europol Staff Committee’;

(10) in Article 5, the following paragraph is added:

‘6. The Board and its members shall represent the interests of all participants and the interests of Europol.’;

(11) in Article 6(1), the word ‘twice’ is replaced by the word ‘once’;

(12) Article 7(1) is replaced by the following:

‘1. Decisions of the Board can only be taken at meetings where at least one member appointed by the Management Board of Europol and the representatives of the other parties are present.’;

(13) in Article 8(1), the words ‘solvability, liquidity, rentability’ are replaced by the words ‘solvency, liquidity, profitability’;

(14) in Article 10(3), the second sentence is replaced by the following:

‘To this end, the Board shall appoint a certified accountant registered in accordance with the applicable Dutch law.’;

(15) Article 10(4) is replaced by the following:

‘4. The yearly report shall be forwarded to the Management Board of Europol, and shall be controlled by the European Court of Auditors, in accordance with Articles 43 and 58(2)(a) of the Europol Decision.’;

<sup>(1)</sup> See document 5397/99 on the Council’s public register: <http://register.consilium.eu.int/>

(16) the following Article is inserted:

*'Article 12a*

**Limitation of liability**

1. The members of the Board shall be released from any liability for claims concerning the fulfilment of their tasks referred to in Article 5.

2. Europol shall indemnify the members of the Board against any claims for damages brought by the participants to the fund and/or by other interested parties concerning the fulfilment of their tasks referred to in Article 5.

3. By way of derogation from paragraphs 1 and 2 of this Article, members of the Board shall be liable for gross negligence and serious wrongdoings, including but not limited to, fraud, corruption, misappropriation of funds and theft.;

(17) the following Article is inserted:

*'Article 12b*

**Monitoring of the fund's assets**

1. In addition to the report drawn up in accordance with Article 10, the Board shall produce, every quarter, a financial report monitoring the coverage ratio of the fund. In case the coverage ratio is lower than the threshold set out in Article 132 of the Dutch *Pensioenwet*, the Board shall carry out a risk assessment to evaluate a potential situation of insolvency of the fund during the next five budgetary years. The results shall be reported to the Management Board of Europol and to the Europol

Director and shall indicate the reasons, the preventive measures proposed, the expected financial evolution and the estimated needed cash flow for each budgetary year for which exceptional contributions from Europol are required.

2. Notwithstanding the possibility to dissolve the fund in accordance with Article 13, Europol shall cover any shortfall in case the assets of the Europol Pension Fund are not sufficient to fulfil its liabilities, except for liabilities covered by Europol's reinsurance schemes.;

(18) Article 13(1) is replaced by the following:

'1. The fund has been established for an undetermined period. It may only be dissolved by unanimous decision of the Council. Such decision shall be taken on the basis of a proposal from the Management Board of Europol, submitted after hearing the Board.;

(19) Article 14 is repealed.

*Article 2*

This Decision shall enter into force on the day following its adoption.

Done at Luxembourg, 28 June 2011.

*For the Council*  
*The President*  
FAZEKAS S.