

# DECISIONS

## COUNCIL DECISION (EU) 2015/1889

of 8 October 2015

### on the dissolution of the Europol pension fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

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

Having regard to the Council Act of 12 March 1999 adopting rules on the Europol pension fund, and in particular Article 13 thereof,

Having regard to the proposal submitted by the Management Board of Europol after hearing the management board of the Europol pension fund (the 'fund'),

Whereas:

- (1) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) <sup>(2)</sup> ('Europol Decision') replaced, as from the date of its application, namely 1 January 2010, 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 ('Europol Convention') <sup>(3)</sup>.
- (2) The Europol Decision provides that all measures implementing the Europol Convention shall be repealed with effect from 1 January 2010, unless otherwise provided in the Europol Decision.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) Article 57(5) of 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, as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(4)</sup> ('Staff Regulations').
- (4) The Europol Decision also provides that the Staff Regulations shall apply to the Director, the Deputy Directors and to Europol staff engaged after 1 January 2010.
- (5) The Europol Decision further 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 engaged pursuant to a contract in force on 1 January 2010 are to be offered the possibility of concluding temporary agent or contract agent contracts under the Conditions of Employment of Other Servants of the European Union. A great majority of 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 to the Europol Staff Regulations, have steadily decreased since January 2010. The contributions were ultimately discontinued when the last employment contract to which the Europol Staff Regulations apply expired on 31 December 2014.

<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> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (8) To date, the fund has already paid out a large majority of the pension benefits and severance grants awarded to its participants on the basis of the Europol Staff Regulations. Its remaining pension liabilities are exclusively limited to the monthly payment of benefits to a very limited and constantly diminishing population of pensioners and former staff members, or the payment to them of a severance grant.
- (9) The liabilities of the fund are to end earlier than foreseen at the time when the fund was created, and can be determined using actuarial expertise.
- (10) The assets currently available in the fund exceed the capital needed in order to meet its liabilities.
- (11) The Europol pension fund was established, pursuant to Article 37(1) of Appendix 6 to the Europol Staff Regulations, with the main purpose of managing the pension contributions from Europol and the fund participants and of providing for the pension benefits or severance grants awarded to the fund participants on the basis of the Europol Staff Regulations. The fund has fulfilled its purpose as an independent provisional pension fund.
- (12) In view of the reduced activity of the fund and its present financial state, the administrative arrangements in place for the fund should be simplified by adapting the manner in which benefits derived from the pension scheme of the Europol Staff Regulations are financed and paid out.
- (13) Consequently, the fund should be dissolved and its residual activity entrusted to Europol, which should be made responsible for executing the payments of benefits under the pension scheme of the Europol Staff Regulations.
- (14) The assets of the fund should be transferred to Europol insofar as they are required for meeting the liabilities transferred to it. The funds transferred by the fund to Europol for the purpose of executing the payment of benefits under the pension scheme of the Europol Staff Regulations are to be earmarked for that purpose.
- (15) It is for the Council to make provision for the settlement of any assets left in the fund, which are to be used for the purpose most in line with the purpose of the fund.
- (16) The general purpose of the fund was to provide Europol employees and their beneficiaries with a regular source of income upon retirement, while limiting the cost of staff members' pensions for the budgets of the Member States. Therefore, the redistribution of any assets left in the fund among its original contributors is most in line with the purpose of the fund.
- (17) The Management Board of Europol, following consultation of the management board of the Europol pension fund, unanimously agreed to propose to the Council the dissolution of the fund and the redistribution of the general reserve to each contributor pro rata to their contributions, in accordance with Article 13 of the rules on the Europol pension fund,

HAS ADOPTED THIS DECISION:

#### *Article 1*

### **Dissolution of the Europol pension fund and transfer of activity**

The independent pension fund established by the Council Act of 12 March 1999 adopting rules on the Europol pension fund, pursuant to Article 37 of Appendix 6 to the Europol Staff Regulations, is hereby dissolved.

The residual activity of the fund shall be automatically transferred to Europol on 1 January 2016.

#### *Article 2*

### **Legal succession**

Europol shall be considered the legal successor of the fund in respect of all contracts concluded by, liabilities incumbent on and property acquired by the fund, and of claims of the fund towards third parties.

This Decision shall not affect the legal force of agreements concluded by the fund.

*Article 3***Preparation actions for the transfer**

Prior to the date of application of this Decision, assets that are invested by the fund shall be liquidated and deposited in a bank account in the name of the fund.

After consulting an independent qualified actuary, the management board of the fund shall prepare a report showing the fund's closing asset and liability situation (the 'closing report'). The closing report shall include a detailed actuarial assessment of the pension liabilities transferred to Europol on the basis of the parameters resulting from the provisions of the Europol Staff Regulations, of the nature of the remaining pension liabilities, as well as of the actuarial assumptions listed in the Annex to this Decision. The closing report shall set out the amount of financial provisions needed to meet those liabilities, due account being taken of the margin of error resulting from the size of the population concerned.

The closing report shall be forwarded to the Management Board of Europol and audited by the European Court of Auditors, in accordance with Articles 43 and 58(2)(a) of the Europol Decision.

*Article 4***Allocation of the assets of the fund**

1. A portion of the fund's assets corresponding to the amount necessary to cover the pension liabilities transferred to Europol, as approved by the Management Board of Europol on the basis of the closing report, shall be transferred to Europol. Those assets shall be earmarked for the specific purpose of paying out pension benefits pursuant to Article 5.
2. After all pension liabilities have been met, the remainder of the portion of the assets defined in paragraph 1 shall become other revenue for the Europol budget.
3. The difference between the total of the fund's assets and the amount referred to in paragraph 1 shall be allocated in the following way:
  - (a) two thirds of the difference shall be repaid to Europol. Europol shall determine which part of that amount must be regarded as:
    - (i) a remainder of the surpluses of the budgets, approved on the basis of Article 35(5) of the Europol Convention, to be paid back to Member States pursuant to the principles on which Article 58(5) of the Europol Decision was based,
    - (ii) a remainder of the subsidies paid to Europol from the general budget of the European Union, pursuant to Article 42 of the Europol Decision.
  - (b) one third of the difference shall be transferred to Europol and earmarked for the specific purpose of being distributed to the former active participants of the fund or, where the participants are deceased, their lawful heir, in proportion to the total amount of the contributions they respectively paid to the fund during the period they were employed under the Europol Staff Regulations.

Where not in employment with Europol, potential beneficiaries of a payment under this point shall communicate to Europol their contact details, a proof of identity and a proof of their quality of heir if applicable, within a period of two years following the date of publication of this Decision in the *Official Journal of the European Union*. Europol shall have no obligation to actively research former active participants of the fund whose contact details communicated to Europol have ceased to be valid, nor any obligation to actively research the heirs of deceased former active participants.

The costs incurred by Europol for the purpose of the distribution shall be paid from the amount defined in paragraph 1.

The remainder of this portion of the assets after payment has been made to the identified beneficiaries shall become other income for the Europol budget.

*Article 5***Payment of pension benefits awarded on the basis of the Europol Staff Regulations**

Benefits derived by individuals from the social security scheme referred to in Article 78 of the Europol Staff Regulations shall be charged to the Europol budget and shall be paid out by Europol from the earmarked revenue referred to in Article 4(1).

Any ancillary expenditure connected to the payment of the abovementioned benefits shall be borne by Europol and shall be paid from the same earmarked revenue.

Except for liabilities covered by Europol's reinsurance schemes, Europol shall cover any shortfall where the earmarked revenue referred to in Article 4(1) is not sufficient to meet the liabilities of the fund.

*Article 6***Management board of the Europol pension fund**

The members of the management board of the fund shall remain in function until the board has approved the last annual report and the closing report has been audited by the European Court of Auditors.

After the functions of the members of the management board of the fund have terminated, their liability shall remain limited to cases of gross negligence and serious wrongdoing in the fulfilment of their tasks while they were in function.

*Article 7***Entry into force**

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

It shall apply from 1 January 2016. However, Article 3 shall apply from the date of entry into force of this Decision.

Done at Luxembourg, 8 October 2015.

*For the Council*  
*The President*  
J. ASSELBORN

## ANNEX

## ACTUARIAL ASSUMPTIONS

Real discount rate	In accordance with the guidelines issued by De Nederlandsche Bank
Actuarial value of the entitlements of deferred pensioners and participants who are not entitled to the payment of a pension	Actuarial value of the option (payment of a pension, transfer of rights, payment of a severance grant) that has the highest cost for the pension fund or Europol
Mortality table (healthy people)	Tables laid down by the Council Act of 20 December 2012 <sup>(1)</sup> , in force on 1 January 2016
Mortality table (invalids)	Tables for healthy people + an additional 3 years
Invalidity rate	Proportion of beneficiaries of invalidity pension amongst the total number of remaining participants
Marriage rate when leaving the service	Based on real situation
Difference of age between spouses	Based on real situation
Future administrative costs to be added to the actuarial value of the entitlements	To be calculated on the basis of the foreseeable administrative costs necessary for the payment of remaining entitlements and the redistribution of the amount referred to in Article 4(3) of this Decision.

<sup>(1)</sup> Council Act of 20 December 2012 laying down the mortality tables referred to in Articles 6 and 35 of Appendix 6 to the Staff Regulations applicable to Europol employees.