Council Regulation (EC) No 371/2009 of 27 November 2008 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

COUNCIL REGULATION (EC) No 371/2009

of 27 November 2008

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

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,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the Court of Justice[(2)],

Having regard to the opinion of the Court of Auditors[(3)],

Whereas:

(1) According to Article 6 of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)[(4)], 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.

(2) When the possibility for Europol officials to participate in joint investigation teams was introduced by the Protocol amending the Europol Convention[(5)], 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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 371/2009. (See end of Document for details)*

(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 Decision 2009/371/JHA 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[(6)] 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 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 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)[(7)].

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2010.

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

Done at Brussels, 27 November 2008.

For the Council

The President

M. ALLIOT-MARIE