



Activity Report

2019-2020

v1.1 18 December 2020

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FOREWORD

The new Europol Regulation of May 2017 has opened-up a new chapter of cooperation among the Data Protection Authorities of the European Union regarding the supervision of Europol. While the European Data Protection Supervisor (EDPS) has taken over the supervision of Europol's processing activities, the Europol Cooperation Board (ECB) has been set up to facilitate the cooperation between the national supervisory authorities and the EDPS on issues requiring national involvement.

This second activity report coincides with the conclusion of the first ECB work programme, for years 2018–2020. Therefore, many of the tasks reported here correspond to items of this work programme. Some of them have been completed, while some others will be pursued in the context of our second work programme, for years 2021–2023.

Also, several tasks that did not belong to our work programme have been undertaken, to handle swiftly unforeseen developments. Most of these tasks, as well as hearings conducted during ECB meetings, concern the compatibility between emerging technological tools and the Europol Mandate.

All these actions illustrate the commitment of the ECB to the protection of the fundamental rights of data subjects, through its contribution to the consistent supervision of Europol.

The members of the Europol Cooperation Board

I. INTRODUCTION

Europol is an agency of the European Union (EU) that supports and strengthens action by competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.

Europol was originally established in 1995, when the Europol Convention¹ was signed. It became an agency of the EU in 2009, when the Europol Convention was replaced by Council Decision 2009/371/JHA². The Treaty of Lisbon³ that entered into force in 2009 then required the adoption of a new legal basis for Europol. This new legal basis is Regulation (EU) 2016/794⁴ (“the Europol Regulation”), which was adopted in May 2016 and became applicable on 1 May 2017.

Under Council Decision 2009/371/JHA, the Europol Joint Supervisory Body⁵ (JSB) was the independent body in charge of supervising Europol's activities to ensure the protection of individuals in relation to Europol's storage, processing and use of personal data. The Europol Regulation opens a new chapter regarding the supervision of Europol's activities in relation to data protection. The European Data Protection Supervisor (EDPS) becomes the supervisor of Europol and has now the task and duty of carrying out supervision activities over Europol. However, the involvement of national Data Protection Authorities (DPA) remains essential, since a large majority of the data collected and processed by Europol originates from Member States and will at a certain point be sent back to them. To maintain cooperation between the EU and national levels, Article 45 of the Europol Regulation establishes a new model of cooperation: the Europol Cooperation Board (ECB). The ECB has an advisory function and is composed of representatives of the national supervisory authorities of the Member States (except Denmark) and of the EDPS.

Article 17 of the ECB Rules of Procedure provides that at least every two years the Chair with the support of the Secretariat must draw up an activity report, in which insight is given on the activities of the ECB over the past period. The present document is the second Activity Report adopted by the ECB. Special attention is also given to the extent to which the intended activities of the ECB, as laid down in the first work programme, have been carried out.

1 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), OJ C 316, 27.11.1995, p. 1.

2 Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

3 Article 88 of the Treaty on the Functioning of the European Union (TFEU) provides for Europol to be governed by a regulation to be adopted in accordance with the ordinary legislative procedure. It also requires the establishment of procedures for the scrutiny of Europol's activities by the European Parliament, together with national parliaments.

4 Regulation (EU) 2016/794 of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53, hereinafter “the Europol Regulation”.

5 See archives of the Europol Joint Supervisory Authority's website available, at:

II. ORGANISATION OF THE MEETINGS

2.1 MAIN PRINCIPLES

The ECB elected a Chair and a Vice-Chair from among its members for a term of office of two years. The Chair of the ECB is mainly in charge of representing the Board, convening the meetings, setting the draft agenda and chairing the meetings. The Vice-Chair performs these tasks when the Chair is unable to attend.

The EDPS provides the Secretariat of the ECB. The Secretariat assists the ECB in the performance of its tasks and acts solely in the best interests of the ECB. When carrying out its tasks, the Secretariat is only subject to the instructions of the Chair.

The ECB may establish one or more subgroups or appoint one or more rapporteurs to prepare its position on certain matters and decide on their mandate. The Secretariat also supports the work of the subgroups and the rapporteurs as decided by the ECB.

The ECB must draw up a draft work programme at least once every two years, in which an overview is given of the intended activities of the ECB during the period covered by the work programme.

2.2 ORGANISATION OF THE MEETINGS

In accordance with Article 45(5) of the Europol Regulation, the ECB must meet at least twice a year. The Chair may convene further meetings of the ECB on its decision or at the request of at least one third of its members. The costs and servicing of the Board's meetings shall be borne by the EDPS.

In the period 2019-2020, four meetings of the Europol Cooperation Board have taken place in Brussels on the following dates:

- 8 May 2019;
- 28 November 2019;
- 16 June 2020;
- 24 November 2020.

The first two meetings were held at the European Parliament while the last two were organised remotely, due to the COVID-19 pandemic. In order to reduce the financial, travel and administrative burdens for attendees in case of in-person meetings, the first meeting of 2019 was organised back-to-back with the Customs Information System Supervision Coordination Group (CIS SCG). The meetings in 2020 were organised remotely due to the COVID-19 pandemic and were organised back-to-back with other SCGs.

The following paragraphs summarises the topics discussed and actions taken during those four meetings.

Meeting of 8 May 2019

The ECB fifth meeting started with a presentation by the DPO of Europol on several events that occurred since the last ECB meeting, including exchanges of correspondence with the EDPS and handling of several requests from data subjects. Members also had an exchange of views on FIU.net file and the consequences of Brexit for Europol activities. The EDPS shared information about its supervisory activities, including its inspection report. The ECB continued to work on the Handbook for Europol National Units and the Leaflet to inform data subjects on how to exercise their data protection rights. The ECB also decided to develop a guide of access in relation to Europol's activities which aims to provide an overview of the competent authority in each Member State and the contact information of the DPAs to which a complaint may be sent. A draft letter to the Commission concerning the Review of Europol Cooperation Agreements with third countries was adopted on 2 March 2018 by written procedure. During the meeting, the ECB also elected by means of a secret ballot the Chair, Mr Pellegrini, and the Vice- Chair, Ms Löwnau.

Meeting of 28 November 2019

The ECB invited two representatives of the European Commission to share information on the following four points: exchange of data between Europol and private parties, agreements with third countries for transfer of Europol data, third country liaison officers at Europol and the consequences of Brexit for Europol activities. Subsequently, the ECB discussed the outcome of the 5th meeting of the Joint Parliamentary Scrutiny Group ("JPSG") for Europol as well as the consultation by the FIU.net Advisory Group. The EDPS informed the ECB of its supervisory activities, in particular with regard to FIU.net and the Computer Forensic Network ("CFN"). The ECB members shared information regarding the supervisory activities carried out by their DPAs in relation to Europol activities. In addition, the ECB continued to work on the letter addressed to the Commission concerning the review of cooperation agreements with third countries, which was adopted by written procedure on 16 August 2019. Finally, on 11 September 2019 the ECB addressed a letter to the Chair of the FIU.net Advisory concerning the ECB consultation regarding the embedment of FIU.net into SIENA.

Meeting of 16 June 2020

The ECB invited a representative from the European Commission to present the inception impact assessment for the revision of the Europol Regulation. On a different topic, the ECB invited two representatives from ICANN to have an exchange of views on the WHOIS database, of which ICANN is in charge. The EDPS updated the ECB on its supervisory activities, including the upcoming annual inspection of Europol. The ECB Members then shared information on supervisory activities of national DPAs. The ECB continued working on the update of the Europol National Units Handbook. The ECB also continued working on the Guide of Access. In addition, the ECB adopted by written procedure the recommendation and the Opinion on the European Tracking Solution on 20 February 2020. Finally, the ECB adopted by written procedure on 3 March 2020 an internal information and discussion note on "Interconnection through interoperability".

Meeting of 24 November 2020

The ECB eighth meeting started with a number of administrative announcements, most notably with regard to the elections of the Chair and Vice-Chair, which will take place during the next ECB meeting. The Chair then updated the members on recent events that took place since the last meeting, including the contribution to the Joint Parliamentary Scrutiny Group (JPSG). The

EDPS informed the ECB of its supervisory activities, in particular with regard to the 2020 annual inspections, ETS, FIU.net, the follow-up of recommendations from 2017 and 2018 inspections relevant for ECB member, data breaches and a consultation on United Kingdom data subjects' access requests. The ECB adopted by written procedure the ENU survey on 8 July 2020 and during the meeting of 24 November 2020 the EDPS presented key findings from the replies received by the national ENUs. The ECB also adopted by written procedure the Guide of Access on 23 September 2020. An amended version was adopted during the meeting of 24 November 2020. The ECB members shared information regarding the supervisory activities carried out by their DPAs in relation to Europol activities. Finally, the ECB members discussed the draft Activity Report 2019-2020 as well as the draft Work Programme 2021-2023. Both documents will be adopted by written procedure.

III. MAIN ACTIVITIES

The Work Programme for 2018 to 2020 adopted at the ECB meeting of 30 May 2018 not only aims at ensuring the follow-up to important activities initiated by the former Europol JSB, but also includes work related to the novelties in the Europol Regulation. It includes seven intended activities for the Europol Cooperation Board to carry out during the period covered. The progress achieved regarding those activities, during the reporting period, is detailed under Section 3.1 below.

At the same time, the Work Programme for 2018 to 2020 allows sufficient flexibility to add other activities not in order to discuss cases submitted by the EDPS in accordance with Article 44(4) and cases submitted by national DPAs, or to tackle unforeseen developments or events of relevance for the tasks of the ECB. The progress achieved regarding those other activities during the reporting period is detailed under Section 3.2 below.

3.1 ACTIVITIES IN THE WORK PROGRAMME

1 Promoting and facilitating the exercise of data subjects' rights - Ongoing

The Work Programme had identified several tasks to carry out the activity of promoting and facilitating the exercise of data subjects' rights. The ECB continued working on this activity and during the reporting period achieved the following results:

- Adopted the “Know Your Rights” leaflet, to include the changes brought by the Europol Regulation;
- Adopted the Guide of Access, which aims to explain to data subjects how to exercise their data protection rights in relation to the activities of Europol;
- Continued the preparatory work for the setup of the ECB website, which is necessary to publicise the activities of the ECB, as well as facilitate the exercise of data subjects' rights and raise awareness about such rights.

2 Supervision activities at EU and national level - Ongoing

Under the Europol Regulation, the EDPS conducted the inspections of Europol and used the expertise and experience of the national supervisory authorities gained in supervising Europol within the former Europol JSB. One of the main tasks of the ECB is to “discuss general policy and strategy on data protection supervision of Europol and the permissibility of the transfer, the retrieval and any communication to Europol of personal data by the Member States”.⁶ Therefore, the supervision of Europol has been among the items on the agenda of each meeting of the Board. In addition, national DPAs informed the Board of their supervisory activities carried out at national level in relation to Europol.

3 Review of cooperation agreements with third countries by the European Commission by 2021 - Ongoing

Pursuant to Article 25 of the Europol Regulation, Europol can transfer personal data to an authority of a third country on the basis of either an adequacy decision of the European Commission, an international agreement concluded by the Union pursuant to Article 218 TFEU or a cooperation agreement allowing for the exchange of personal data concluded between Europol and the third country before the entry into force of the Europol Regulation. Article 25(4) of the Europol Regulation provides that the European Commission should review all cooperation agreements concluded in the past with third countries by 2021. In this context, the ECB addressed a letter to the Commission on the review of cooperation agreements with third countries on 14 May 2020.

4 Update of the Handbook for Europol National Units (ENUs) - Ongoing

The former Europol JSB had adopted a Handbook for Europol National Units (ENU) that provides the Europol National Units with practical guidance on how to ensure compliance with national law and the Europol legal basis for the input/transfer of certain categories of data to Europol. The ENU Handbook was distributed at national level and aimed at harmonising the implementation of safeguards at national level as well as to function as an instrument for supervision by the national data protection authorities.

In order to update the ENU Handbook in a way that is meaningful for ENUs, the ECB prepared a survey, adopted by written procedure on 8 July 2020. The Survey was further distributed to the ENUs. The high return rate (all ENUs replied but 2) showed that the survey was well received. A summary of the answers was presented at the ECB meeting of 24 November 2020. These answers will guide the update of the Handbook.

5 Process personal data originating from private parties - Ongoing

According to the Europol Regulation, under certain conditions, Europol can process personal data originating from private parties (e.g., firms, business associations, non-profit organisations)⁷.

Europol may process such data on condition that they are received via:

- a national unit, in accordance with its national law;
- a contact point in a third country or an international organisation with which there is an established cooperation through a cooperation agreement concluded in accordance with

⁶ Article 45(3)(a) of the Europol Regulation.

⁷ Article 26 of the Europol Regulation.

Article 23 of Council Decision 2009/371/JHA prior to the entry into force of the Europol Regulation; or

- an authority of a third country or an international organisation which is subject to an adequacy decision of the Commission or with which the EU has concluded an international agreement pursuant to Article 218 TFEU.

In cases where Europol nonetheless receives personal data directly from private parties and the national unit, contact point or authority concerned cannot be identified, Europol may process those personal data solely for the purpose of such identification⁸.

The cooperation between Europol and private parties is one of the objectives set out by the European Commission's Inception Impact Assessment (IIA)⁹ related to the review of the Europol Regulation. The IIA sets out three policy options regarding Europol's processing of data originating from private parties:

- Option n.1: Europol would continue exchanging data with private parties within the existing legal framework;
- Option n. 2. Allow Europol to process data received directly from private parties for purposes other than simply identifying the competent authority in Member States;
- Option n. 3. In addition to the receipt of data set out in Option n. 2, to allow Europol to request data directly from private parties or query databases managed by private parties in specific investigations.

The Europol Cooperation Board will continue to follow this novelty of processing data originating from private parties, especially in light of the upcoming revision of the Europol Regulation.

6 Implementation of recommendations on the project on victims of human trafficking - Ongoing

The former Europol JSB had started a project to improve the accuracy of data processing relating to victims of human trafficking and made recommendations for this purpose. National DPAs were to monitor the implementation of the JSB's recommendations and exchange their experiences. This project was still at an early stage of implementation.

The Europol Cooperation Board took over this project. The EDPS has been taken this matter into account in the course of its inspections and supervisory tasks regarding Europol. Likewise, the national DPAs have been taken this into account in the course of their supervisory activities at national level.

7 Processing of data concerning minors- Ongoing

The Europol Regulation acknowledges that the processing of personal data concerning certain categories of data subjects should in particular be protected¹⁰ and provides for specific rules

⁸ Article 26(2) of the Europol Regulation

⁹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12387-Strengthening-of-Europol-s-mandate>

¹⁰ Recital 43 of the Europol Regulation.

for the processing of data concerning these categories of persons¹¹. Persons under the age of 18, also referred to as “minors”, are one of these categories. Processing of personal data in respect of persons under the age of 18 can only be allowed if it is strictly necessary and proportionate for preventing or combating crime that falls within Europol's objectives.

Therefore, the Europol Cooperation Board has paid particular attention to the processing of personal data of minors by Europol and ENUs. A dedicated subgroup composed of several members of the Board has been put in charge of analysing all issues related to the processing of personal data of minors by Europol and ENUs.

8 Interconnection through interoperability - Ongoing

On 22 May 2019, the new rules establishing a framework for interoperability between EU information systems in the field of borders and visa (Regulation (EU) 2019/817) and in the field of police and judicial cooperation, asylum and migration (Regulation (EU) 2019/818) were published in the Official Journal of the European Union (O.J. L 135). The Regulations, which had been initiated by the Commission in December 2017, were adopted by the Council and Parliament in May 2019. After publication in the Official Journal, the Regulations entered into force on 11 June 2019. The various interconnection components, however, require technical implementation, which is why the date of the operational use of the components is to be determined by the Commission. It is expected that they would be available by 2023. The ECB drafted an internal information and discussion note on “Interconnection through interoperability” which was adopted by written procedure on 3 March 2020 and will continue to follow this file

3.2 OTHER ACTIVITIES

1 Consultation by the FIU.net Advisory Group - Closed

FIU.net is a computer network supporting Financial Intelligence Units in the EU, in their fight against money laundering and the financing of terrorism. The FIU.net Advisory Group consulted the ECB in July 2018, regarding the potential embedment of FIU.net into SIENA. The FIU.net Advisory Group also consulted the EDPS separately. The ECB replied to the Chair of the FIU.net Advisory Group on 11 September 2019.

2 European Tracking Solution - Closed

The EDPS issued an Opinion on Europol’s new European Tracking Solution (ETS) early 2018, in the context of a consultation under Article 39 of the Europol Regulation. The ECB, taking note of this opinion, started working on two documents in relation to ETS: 1) a recommendation addressed to the European Commission, the European Parliament and the Council of the EU in relation to ETS’ primary purpose, i.e., the cross-border exchange of geolocation data between Member States and/or third parties, with Europol acting as a so-called service provider; and 2) an opinion on ETS that shall be sent to national competent authorities and Europol. The ECB adopted by written procedure the recommendation and the Opinion on the European Tracking Solution on 20 February 2020.

¹¹ Article 30 of the Europol Regulation.

3 Joint inspections of Europol - Ongoing

In accordance with Article 44(2) of the Europol Regulation, the EDPS involved members and staff of the national DPAs to participate as national experts in joint inspections of Europol. To this end, the ECB created a pool of national experts available to participate in joint inspections with the EDPS, and suggested to the EDPS the participation of several experts in view of such joint inspections. As a result, several members and staff of the national DPAs participated in on-site inspections of Europol in 2019-2020.

4 Monitoring the Review of Regulation (EU) 2016/794 (Europol Regulation) - Ongoing

In line with the Council Conclusions of December 2019,¹² the Commission announced in its Work Programme 2020¹³ a legislative proposal to “strengthen the Europol mandate in order to reinforce operational police cooperation”.

The proposal for a Regulation on the European Union Agency for Law Enforcement Cooperation (Europol) amending Regulation (EU) 2016/794 is expected for adoption in Q4 2020.

The Europol Cooperation Board has been following the latest developments in light of the Commission Inception Impact Assessment.¹⁴ It will continue to follow the legislative developments regarding Regulation (EU) 2016/794 and the potential impact on Europol data processing activities, voicing its opinion where necessary during this process.

IV. WHAT TO EXPECT NEXT

Given the work already achieved in 2019 and 2020 regarding the activities included in the first ECB Work Programme for 2018 to 2020 and other activities that started, the themes that will require further discussion and assessment from the ECB are notably the following:

- the review of the Europol regulation;
- the review of cooperation agreements with third countries;
- the update of the Handbook for Europol National Units (ENUs);
- the design of a common audit framework for ENUs;
- the processing of personal data originating from private parties;
- the implementation of recommendations on the project on victims of human trafficking;
- the processing of data concerning minors.

¹² <https://data.consilium.europa.eu/doc/document/ST-14745-2019-INIT/en/pdf>

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2020 A Union that strives for more, COM(2020) 37 final, p.7.

¹⁴ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12387-Strengthening-of-Europol-s-mandate>