



Activity Report

2017-2018

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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 first 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: <http://collections.internetmemory.org/haeu/20170706142918/http://europoljsb.europa.eu/about.aspx>

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 2017-2018, four meetings of the Europol Cooperation Board have taken place in Brussels on the following dates:

- 14 June 2017;
- 16 November 2017;
- 30 May 2018;
- 3 October 2018.

Those four meetings were held at the European Parliament and organised back-to-back with the meetings of the Customs Information System Supervision Coordination Group (CIS SCG), in order to reduce the financial, travel and administrative burdens for attendees.

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

Meeting of 14 June 2017

The ECB convened its first meeting on 14 June 2017 and adopted its Rules of Procedure by simple majority of its members, in accordance with Article 45(6) of the Europol Regulation.

On this occasion, the ECB elected from among its members Mr François Pellegrini, representative of the French DPA, as Chair, and Ms Gabriele Löwnau, representative of the German DPA, as Vice-Chair, for a term of office of two years.

Meeting of 16 November 2017

The ECB started discussing the content of its first Work Programme for the following years. The EDPS shared information about their supervisory activities, including regarding their first inspection of Europol in which other members of the ECB were involved. The ECB decided to start its work by updating several documents adopted by the former Europol JSB: a list of the national competent authorities for data subjects to address when exercising their right of access in relation to Europol data processing activities, a Handbook for Europol National Units and a Leaflet to inform data subjects of how to exercise their data protection rights in relation to Europol data processing activities.

Meeting of 30 May 2018

The ECB finalised and adopted its Work Programme for 2018 to 2020. The EDPS shared information about their supervisory activities, including regarding their second inspection of Europol in which other members of the ECB were involved. The ECB discussed its future webpage, on which it will publish the documents that it will adopt, and which shall contain all relevant documents for data subjects to know their rights. The ECB continued to work on the list of the national competent authorities for data subjects to address when exercising their right of access, the Handbook for Europol National Units and the Leaflet to inform data subjects of how to exercise their data protection rights.

Meeting of 3 October 2018

The ECB invited the Data Protection Officer of Europol and discussed ongoing data processing activities of Europol. The EDPS and other members of the ECB shared information about their supervisory activities and other relevant developments at EU level and national level. The ECB discussed the European Tracking Solution envisaged by Europol and a consultation by the FIU.net Advisory Group. In addition, the ECB continued to work on its future webpage, the list of the national competent authorities for data subjects to address when exercising their right of access, the Handbook for Europol National Units and the Leaflet to inform data subjects of how to exercise their data protection rights. Finally, the ECB discussed the consequences of “Brexit” for Europol activities.

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, until the end of 2018, 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 until the end of 2018 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 started working on this activity and, by the end of 2018, managed to achieve the following results:

- Adopt an updated list of national authorities competent to receive requests from data subjects and their contact details. This is an important tool to allow Europol to comply with its obligation to sufficiently inform data subjects about their rights under Article 36(3) of the Europol Regulation;
- Start the update of the “Know Your Rights” leaflet, to include the changes brought by the Europol Regulation. This leaflet was developed and distributed by the former Europol JSB in order to inform data subjects about the protection of personal data that Europol collects and analyses, their rights towards Europol, and how to exercise these rights. This is an important tool to raise awareness among potential data subjects with respect to the functions and duties of competent authorities;
- Start 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. Monitoring the review of Regulation (EC) 45/2001 - Closed

The Work Programme identified as an activity of the ECB, the monitoring of the proposal to review Regulation (EC) 45/2001. The ECB closely followed the legislative developments of this proposal and its potential impact on Europol data processing activities, until its adoption in November 2018. In December 2017, the ECB voiced its concerns regarding the extension of the scope of the revised Regulation 45/2001 to the processing of operational personal data by EU agencies in the Justice and Home Affairs area, including Europol, by sending a letter to the European Commission, the European Parliament and the Council of the EU.

3. Update of the Handbook Europol National Units - Ongoing

The Work Programme included the update of the Handbook Europol National Units (ENUs), to take into account the changes brought by the Europol Regulation. This Handbook was initially developed and distributed at national level by the former Europol JSB, in order to provide 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 ECB has started the update of this Handbook and will continue its work on the basis of the input provided by the members and the ENUs.

3.2 OTHER ACTIVITIES

1. Consultation by the FIU.net Advisory Group - Ongoing

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 had a first exchange of views among its members on the matter of FIU.net embedment into SIENA, and discussed this issue with the Data Protection Officer of Europol. The discussions about FIU.net within the ECB are still on-going. The ECB will answer to the consultation by the FIU.net Advisory Group.

2. European Tracking Solution - Ongoing

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 will continue to work on those two documents and finalise them.

3. Joint inspections of Europol

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 two on-site inspections of Europol in 2017-2018.

IV. WHAT TO EXPECT NEXT

Given the work already achieved in 2017 and 2018 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 the following:

- the review of cooperation agreements with third countries;
- the processing of data originating from private parties;
- the implementation of recommendations on the project on victims of human trafficking;
- the processing of data concerning minors;
- the interconnection through the “interoperability” mechanism.