



Brussels, 8 September 2020
(OR. en)

10316/20

LIMITE

ENFOPOL 196
JAI 655

NOTE

From:	Presidency
To:	Delegations
Subject:	Future of Europol: Current Challenges and Role in EU Law Enforcement

At the last meeting of the Law Enforcement Working Party (LEWP) on 23 July 2020, Member States unanimously agreed that the future of Europol is a key issue for Member States and that it is therefore essential they take an active part in shaping the future direction of the agency. To that end, a discussion was held on the topic “Future of Europol: Current Challenges and Role in EU Law Enforcement”, which allowed Member States to make progress towards a common understanding of existing operational needs and challenges, notably with regard to several fundamental issues. The main outcomes of this discussion and the written comments by Member States are summarised in this document.

In addition, this document looks at certain aspects of Europol's operational cooperation from a police point of view in preparation for the next LEWP meeting. These include operational aspects of the European Commission's current consultation on expanding the role of Europol in the Schengen Information System (SIS) and in connection with the European Public Prosecutor's Office (EPPO) as well as Europol's cooperation with private parties, for which the European Commission will present the results of the evaluation according to Article 26(10) of the Europol Regulation¹.

Current challenges and role in EU law enforcement – main outcomes of LEWP discussion

At the beginning of the discussion at the last LEWP meeting, the European Commission presented the main outcomes of their technical workshop on the Revision of the Europol Regulation on 1 July 2020, as well as the main outcomes of a questionnaire they had subsequently sent to national law

¹ Regulation (EU) 2016/794 of the European Parliament and of the Council 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.

enforcement authorities via the Heads of Europol National Units (HENUs). Europol presented document 9658/20, outlining the current challenges from the agency's operational perspective. In particular, Europol highlighted that the wider implication of the European Data Protection Supervisor (EDPS) decision on FIU.net may have serious and far-reaching consequences for Europol's analysis activities. Europol also highlighted the current legal framework for cooperation with third countries, considering it dysfunctional from an operational perspective.

Based on presidency document 9655/20 and taking into account the presentations by the European Commission and by Europol, the Member States came to a number of key conclusions:

All Member States unanimously agreed that the future of Europol is a very important issue for their internal security and must therefore be shaped by their interests, with Member States playing an active role. In this context, several Member States stressed the limits set out in primary legislation, especially Article 4(2) of the Treaty on European Union (TEU), Articles 72 and 88 of the Treaty on the Functioning of the European Union (TFEU) and the principle of subsidiarity.

There was broad consensus that Europol provides the greatest possible added value to Member States through its core tasks. National law enforcement agencies are particularly dependent on Europol's capabilities as an EU-wide information hub, in analysis and operational support and in the field of innovation. Member States therefore attached substantial importance to Europol being able to perform its core tasks in a reliable and high quality manner. New tasks should not come at the expense of core tasks. Rather, the latter should be strengthened and more efficiently connected in order to make full use of the current legal framework. Particular urgency was seen in the context of the EDPS decision.

The vast majority of Member States questioned the operational necessity of amending Article 6 of the Europol Regulation and explained why they were opposed to it, rejecting the idea of allowing Europol to request the launching of cross-border investigations beyond the current possibility provided for in that Article, or for Europol to be authorised to launch its own investigations independently.² Besides questioning whether there is a real need for such an amendment (Europol explained that no formal use had yet been made even of the mechanism currently provided for in Article 6 of the Europol Regulation), Member States emphasised that carrying out operational measures is their prerogative. Some Member States made explicit reference to national sovereignty.

Regarding cooperation with third countries, it was established that since the Europol Regulation entered into force in 2017, the conclusion of bilateral agreements has come to a practical standstill. All Member States therefore saw a clear operational need for facilitating such cooperation. They therefore advocated adapting the current regime to create an effective way of concluding agreements and sharing information and data with third countries based on the operational needs of Member States. The majority of Member States also outlined that police work is increasingly dependent on information held by private parties. Therefore, they agreed that the current

² cf. Inception Impact Assessment, Ares(2020)2555219.

possibilities allowing Europol to exchange personal information with private parties need to be extended, as expressed in the Council conclusions on Europol's cooperation with private parties.³

Given the ever-increasing tasks and challenges for Europol, many Member States stressed the importance of adequate budgetary resources and staffing.

Options to expand Europol's operational cooperation

In its Communication on the EU Security Union Strategy for the period 2020-2025 that was published on 24 July 2020⁴, the European Commission announced its plans in the field of cooperation and information exchange in relation to Europol:

Europol can also play a key role in expanding its cooperation with third countries to counter crime and terrorism in coherence with other EU external polices and tools. However, Europol today faces a number of serious constraints – notably as regards the direct exchange of personal data with private parties – which hinders it from effectively supporting Member States in combating terrorism and crime. Europol's mandate is now being assessed to see how it should be improved to ensure that the agency can fully perform its tasks. In this context, relevant authorities at EU level (such as OLAF, Europol, Eurojust and the European Public Prosecutor's Office) should also cooperate more closely and improve the exchange of information.

Similarly, at the last LEWP meeting the European Commission explained that it was looking into Europol's cooperation with the EPPO and into the possible policy option of creating a dedicated SIS information alert category for Europol. These aspects require further consideration by Member States.

Europol's role in the SIS

With a view to ensuring that information and the results of analysis based on data Europol receives from third countries are promptly shared with Member States, the European Commission considered in its Inception Impact Assessment the possible policy option of expanding the agency's role in contributing to the SIS. Following the discussion at the last LEWP meeting and the questions raised by Member States as to whether Europol should be allowed to issue SIS alerts, the European Commission explained that it was looking into the possibility of creating a dedicated information alert for Europol. A technical workshop on this topic was held by the European Commission on 1 September 2020.

³ 14745/19.

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, 10010/20, p. 21.

Member States agreed that it is crucial for internal security that relevant information from third countries is available to national law enforcement authorities when they need it. At the same time, it seemed that a number of aspects would have to be looked into in more detail. Possible ways for Europol to support Member States in this context should be assessed vis-à-vis the operational needs and challenges, e.g. the extent of the current "information gap" (taking into account other relevant ways of disseminating information that are already available to Member States, such as INTERPOL alerts), institutional implications but also the need for information in the SIS to be reliable and actionable. Lastly, apart from the aforementioned issues, some Member States also raised concerns as to whether Europol would have sufficient resources to carry out such a task adequately. In that context, Member States reiterated that the assignment of new tasks must not come at the expense of Europol's core tasks.

Strengthening Europol's ability to support the EPPO

Effective cooperation between the EPPO and Europol will be important for success in combating crimes against the financial interests of the European Union. This applies to the receipt of spontaneous information by way of reports to the EPPO on relevant criminal conduct⁵ as well as to the possibility for the EPPO to obtain additional information or analysis from Europol on request⁶.

It will be equally important for the EPPO to develop and be able to rely on good cooperation with police and customs authorities of the Member States. In particular, national authorities will also be obliged under Article 24(1) of the EPPO Regulation to inform the EPPO about any relevant criminal conduct in respect of which the EPPO could exercise its competence. Moreover, when conducting investigations, the success of the EPPO's work will heavily rely on good cooperation with the national authorities, in particular police, customs and tax authorities, which can be requested by the EPPO to undertake investigation measures in accordance with Article 28(1) of the EPPO Regulation.

In a technical workshop organised by the European Commission on EPPO-Europol Cooperation on 2 September 2020, Member States had an initial informal discussion on the future cooperation mechanism between the agencies. Member States stated that where necessary, the Europol Regulation may have to be amended to reflect the cooperation between Europol and the EPPO specified in Article 102 of the EPPO Regulation. At the same time it was stressed that it is important to ensure that internal mechanisms and procedural rules of Europol (ownership of data, responsibility, handling codes, legal protection) are observed and that confusion in information flows and double reporting to the EPPO (by national authorities and by Europol acting as an EU agency) are avoided.

⁵ Article 24(1) EPPO Regulation.

⁶ Article 102(2) EPPO Regulation: *"the EPPO shall be able to obtain, at its request, any relevant information held by Europol [...] and may also ask Europol to provide analytical support to a specific investigation"*.

Cooperation with private parties

Given the need for Europol to cooperate effectively with private parties, the Council adopted conclusions on Europol's cooperation with private parties⁷ under the Finnish presidency in December 2019. The Council made clear that Europol should be able to request and process data from private parties in order to fulfil its role as the EU criminal information hub more effectively. Furthermore, the Council stressed that the principles of consent by the Member States, voluntary transmission and absence of feedback are to be respected.

The European Commission has meanwhile conducted an evaluation of the practice of direct exchanges of personal data with private parties as provided for by Article 26(10) of the Europol Regulation, analysing the current regime of cooperation.

In view of the findings of the study, the presidency would like to take the opportunity to invite Member States to take a closer look at operational issues and needs based on the Council conclusions and would be grateful if the European Commission could explain open questions.

Questions

- Regarding Europol's ability to make third country information available to Member States, which aspects do Member States consider most relevant in the discussion?
- Do Member States see a need for strengthening Europol's ability for cooperation with the EPPO beyond the possibilities currently provided for in the legal framework of both agencies? In which situations do you consider it appropriate for Europol to report possible criminal conduct to the EPPO and how should the reporting mechanism be reflected in the Europol Regulation?
- In view of the findings of the study on the practice of Europol's direct exchange of personal data with private parties, do you think cooperation between Europol and private parties should be on a voluntary basis? Do you have any other comments on the key findings of the study?

⁷ 14745/19.