



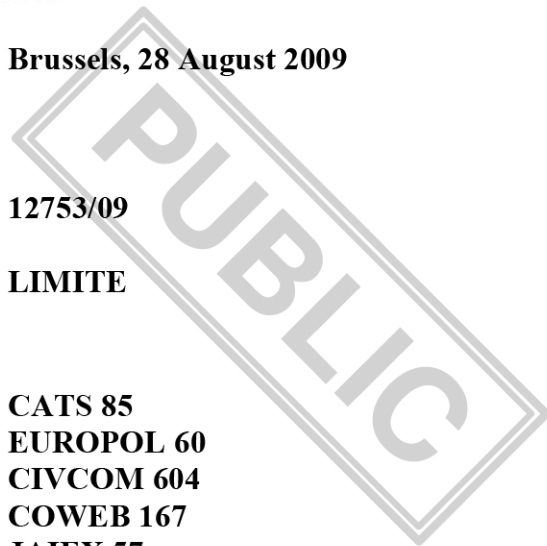
**COUNCIL OF  
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**CATS 85  
EUROPOL 60  
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**NOTE**

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from: Presidency  
to: Article 36 Committee

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Subject: Joint evaluation of the implementation of the information exchange mechanisms between the GSC/civilian ESDP missions and Europol

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Delegations will find in Annex an evaluation report of the implementation of the information exchange mechanisms between the GSC / civilian ESDP missions and Europol. This document has been drafted jointly by Europol and the General Secretariat of the Council (CPCC<sup>1</sup>).

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<sup>1</sup> Civilian Planning and Conduct Capability.

## Europol – General Secretariat of the Council (CPCC)

The aim of this joint evaluation is to report on the progress made in the implementation of the information exchange mechanisms between civilian ESDP police missions and Europol and to make recommendations on the way forward.

The report will assess the two types of mechanism currently in place, namely:

- The administrative arrangement agreed between the General Secretariat of the Council (GSC) and the Director of Europol, in force since 25 August 2008, allowing for the exchange of non-personal data<sup>2</sup> between Europol and all civilian ESDP police missions, via the GSC<sup>3</sup>;
- The information exchange mechanism allowing for the exchange of personal data between the EULEX Kosovo Mission and Europol, via the Europol National Units (ENUs) of volunteering Member States.

### 1. Background

The need for better inter-pillar cooperation in the field of security policy has been emphasized for several years by both second pillar and third pillar actors. The EU regularly called for Europol and civilian ESDP missions to be authorised to exchange information and to find practical arrangements for cooperation<sup>4</sup>.

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<sup>2</sup> “Non-personal data” or “strategic information” means information not containing any data related to an identified individual or which could in any way lead to the identification of an individual.

<sup>3</sup> Administrative Arrangement between Europol and the General Secretariat of the Council on the exchange of information in the context of civilian ESDP Missions, 22 September 2008, Doc. 13311/08.

<sup>4</sup> *Progress Report on civilian aspects of crisis management*, 2 December 2003, Doc. 15625/03; *European Security Strategy*, 12 December 2003, Doc. 15895/03; *Action Plan for Civilian Aspects of ESDP*, 17 June 2004, Doc. 10307/04; *Declaration of the EU Chiefs of Police on police aspects in the ESDP Framework*, Warnsveld, 25 October 2004; Doc. 13383/04; *Strategy for the External Dimension of JHA*, 6 December 2005, Doc. 15446/05; *JHA External Relations Multi-Presidency Work Programme*, 7 January 2008, Doc. 5005/08.

The first reason supporting these calls is that in an interconnected and globalised world, one of increasingly open borders, the internal and external aspects of security policies are inextricably linked. They have to be coordinated in a holistic manner.

Secondly, these ESDP civilian crisis management missions are mainly staffed by rule of law officials (e.g. police officers, judges, prosecutors and border guards) from the EU Member States. In order to ensure a maximum optimisation of resources in EU efforts in the fight against crime, inter-pillar coordination should be enhanced so that justice and home affairs expertise is fully incorporated in the planning process of ESDP civilian missions. This would not only limit the duplication of efforts and optimise the resources invested, but it would also improve the coherence of the various EU initiatives in specific regions.

EU external activities can help to improve the internal security of the EU. By helping to restore the rule of law, strengthening state institutions and reducing instability and insecurity in post-conflict zones throughout the world, ESDP missions are instrumental in cutting down the volume of criminal activities affecting the EU but originating from these regions.

Furthermore, improving information-sharing between the second and third pillar structures would greatly enhance the efforts to tackle organised crime within the EU. Civilian ESDP missions should be considered as a valuable asset for Europol and the EU Member States in this endeavour. They have access to local information and they work directly with local law enforcement agencies and justice systems and potentially can provide a detailed overview of the local organised crime structures and practices. If made available to Europol and to the Member States law enforcement authorities, this specific expertise could make a big difference for ongoing investigations in the EU.

Europol's analytical capacities and unique information exchange structures linking all 27 EU Member States' law enforcement authorities can help ESDP missions to adjust their methods and refine their objectives in light of the pan-European picture of organised criminality provided by Europol.

Allowing the connection between the two ends of the EU security framework will accelerate the development of an EU capability spanning across pillars and it will unleash the EU potential to fight crime.

Against this backdrop, the Slovenian Presidency of the EU, supported by France, the Czech Republic and Sweden, launched a series of meetings between various stakeholders in 2007 (General Secretariat of the Council, Europol, representatives of incoming Presidencies and of ESDP police missions)<sup>5</sup>.

These meetings led to the adoption of Council Conclusions on 5-6 June 2008<sup>6</sup>, which:

- invited the Member States to facilitate the implementation of an administrative arrangement allowing for the exchange of non-personal data between Europol and the civilian ESDP police missions;
- and invited them to examine proposals by the GSC and Europol on possible ways of exchanging personal data between Europol and civilian ESDP police missions via the Europol National Units (ENUs) of the Member States.

Both information exchange mechanisms were agreed in the course of 2008. In accordance with the Council Conclusions of 27-28 November 2008<sup>7</sup>, it is time to take stock of the implementation of these mechanisms and for the Council to decide whether adjustments should be adopted to improve their functioning and efficiency.

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<sup>5</sup> Doc. 5466/1/08.

<sup>6</sup> Doc. 7821/3/08.

<sup>7</sup> Doc. 15771/08.

## **2. Taking stock of the implementation of the cooperation mechanisms**

### **2.1. Administrative arrangement between Europol and the GSC on the exchange of non-personal data with all civilian ESDP police missions**

In an exchange of letters, the Secretary General/High Representative of the Council (SG/HR) and the Director of Europol agreed on the administrative arrangement which took effect on 25 August 2008<sup>8</sup>.

A Standard Operating Procedure (SOP) was subsequently developed and agreed between the Civilian Planning and Conduct Capability (CPCC) and Europol in January 2009. The SOP describes the information exchange flows between Europol and all civilian ESDP police missions, via the CPCC Conduct of Operations Unit located in the GSC. The document also delineates the roles and responsibilities of the various actors involved in the exchange of information and the rules concerning information dissemination, security and confidentiality.

In February 2009, the CPCC Civilian Operations Commander, issued an instruction to the Heads of Mission of EUPM (Bosnia-Herzegovina) and EULEX Kosovo, the two civilian ESDP missions in the Balkans, to implement the administrative arrangement.

During the negotiations of the administrative arrangement, it was foreseen that the following type of information would be sent by civilian ESDP police missions to Europol:

- Activity reports and Crime Trend Analysis on Serious and Organised Crime (SOC) including crimes with an international dimension;
- Special reports on SOC;
- Assessment and analysis of SOC operations;
- Capacity building developments;
- SOC threat assessments.

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<sup>8</sup> Doc. 13311/08.

Europol would routinely send the following type of documents to civilian ESDP police missions:

- SOC trends analysis;
- *Modus operandi* and technical data;
- SOC threat assessments;
- Crime specific situation reports;
- Expertise for training and capacity building.

- *Figures reflecting the use of the administrative arrangement:*

Since 1 February 2009, date at which the SOP was fully operational, Europol has received 1 request for information emanating from EULEX Kosovo.

In the meantime, Europol has made 1 request for information to EULEX Kosovo, forwarded 2 of its assessment reports and responded to 1 request from EULEX Kosovo.

The strategic information exchanged between Europol and EULEX Kosovo relates to illegal immigration, drug trafficking and weapons and explosives trafficking.

The lack of a substantial volume of information exchanged does not permit a qualitative assessment of the information exchanged using the administrative arrangement. However, the communication channel is in place and it is expected that the flow of information exchanged will increase in the coming months.

## **2.2. Information exchange mechanism between Europol and EULEX Kosovo allowing for the exchange of personal data via the Europol National Units**

The reasons for proposing a specific arrangement with EULEX Kosovo are two-fold. Firstly, Europol is unable to negotiate an operational agreement directly with the Kosovo authorities, although it has been shown that activities of criminal organisations rooted in the region have a strong impact on the EU. Secondly, EULEX Kosovo is the only civilian ESDP mission with an executive mandate, which allows it to conduct investigations.

In this context, the GSC and Europol, in accordance with Council Conclusions of 5-6 June 2008, developed a joint paper, which was presented to CivCom on 5 November 2008<sup>9</sup>.

The document stresses that the ideal solution of directly exchanging information between Europol and EULEX Kosovo would require the signature of an operational cooperation agreement. However, to do so EULEX Kosovo should be considered as a “body” governed by public law established in the framework of the European Union in the sense of Article 10(9) of the Europol Convention<sup>10</sup>. However, ESDP missions do not have such legal personality and for the time being no cooperation agreement can be signed.

The GSC and Europol have then worked on an alternative scenario whereby the Europol National Unit of volunteering Member States would act as the ‘go-between’ ENU. In this context, the volunteering Member States endorse the responsibility concerning the lawfulness of collection and further processing of data exchanged between Europol and EULEX.

On the basis of this document, new Council Conclusions were adopted on 27-28 November 2008<sup>11</sup>. They called on Member States to implement an information exchange mechanism for the EULEX Kosovo Mission without delay via the National Units and in close cooperation with Europol and the GSC.

Meetings were held in Pristina (EULEX Police Headquarters) and in The Hague (Europol) to develop the implementation of the mechanism. On the side of the EULEX Kosovo mission, the EUOCI (European Union Office for Criminal Intelligence) was identified as the appropriate office to manage the exchange of data with the supporting ENUs. It was also agreed that volunteering countries would need to be member of Analytical Work Files (AWF) within Europol, relevant to Kosovo and organised criminality in the region, and have qualified national staff in the EUOCI.

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<sup>9</sup> Doc. 15063/08.

<sup>10</sup> As of 1/1/2010, Article 22 of the Council Decision on Europol will replace the definition currently found in Articles 10(9) and 10(4). Article 22 reads as follows: “institutions, bodies, offices and agencies set up by, or on the basis of, the Treaty on the European Union and the Treaties establishing the European Communities”.

<sup>11</sup> Doc. 15771/08.

The information exchange mechanism was then presented to the Heads of Europol National Units in March 2009. Following this meeting, three Member States who met the requirements mentioned above, volunteered and availed their ENU to support the exchange of personal data between EULEX Kosovo and Europol. These Member States are Finland, Sweden and the UK. Depending on the human resources available at EUOCI, other Member States could be solicited in the future.

In addition to the relevant staff member working in the EUOCI in the mission, there was also a necessity to ensure secure communications in order to transfer data, this being provided by the Member State of the ENU, with the communications infrastructure being facilitated by the mission. The current situation within the EUOCI is that Finland have both the staff and the means of secure communication in place and operational. The UK and Sweden have staff in place and the Member States are in the process of finalising the installation of the necessary equipment.

A SOP has been drafted and agreed between the stakeholders in April 2009. The Swedish Presidency is planning to organise a visit by representatives of Europol, the UK, Finland and Sweden to EULEX in September 2009, in order to establish personal contacts between officials in charge of running the information mechanism.

- *Figures reflecting the use of the information exchange mechanism*

Since April 2009, date at which the SOP has been finalised, Europol has sent 1 “personal data” request to EULEX Kosovo related to AWF HYDRA. EULEX has responded via the Finnish liaison bureau.

As at 16 August 2009 the Finnish liaison bureau has forwarded 2 requests from EULEX Kosovo to Europol, each being sent to AWFs HEROIN and COPPER. 1 further request has been forwarded by the UK liaison bureau from EULEX Kosovo to Europol AWF SUSTRANS. So far 1 of these requests has resulted in a 'hit' which is likely to generate further exchange of information.

In addition, these 3 requests have also been forwarded simultaneously to specific Member States which generated further exchange between EULEX and Member States through the volunteering liaison bureaux.



### 3. Recommendations

#### 3.1. Recommendations for the implementation of the administrative arrangement between Europol and the GSC on the exchange of non-personal data between Europol and all civilian ESDP missions, via the GSC

The procedure for routing information and requests in the framework of the administrative arrangement appears to be clear enough. The lack of significant volume of information exchanged to date does not allow for an extensive qualitative evaluation of the mechanism. The small number of exchanges may partially be explained by a relative low level of awareness about the existence of the arrangement. The GSC and Europol suggest the following recommendations:

##### 3.1.1. To be considered by CPCC and Europol:

- The level of awareness about the administrative arrangement in all civilian ESDP police missions (not only EUPM-Bosnia and EULEX Kosovo, but also EUPOL Afghanistan, EUPOL RD Congo, EU SSR Guinea Bissau, EUPOL COPPS, EUBAM Rafah, EUMM Georgia) should be increased. CPCC is taking appropriate action.
- Europol, supported by the CPCC, should offer an awareness-raising seminar for selected ESDP mission officials. It would provide an opportunity for them to get acquainted with the type of information available at Europol which could be valuable for the achievement of their duty.
- Europol should take a pro-active approach and draft an indicative list of documents produced regularly (threat assessments, bulletins, situation reports, trend analysis...) and which could be systematically circulated to ESDP missions for their information. In so far as possible, CPCC should be added to Europol's standard distribution list for strategic information.

3.1.2. To be considered by the Council:

- A reference to the possibility to exchange non-personal information via the administrative arrangement should be included in planning documents of future civilian ESDP missions.
- Future non-executive civilian ESDP missions deployed in countries which have signed a cooperation agreement with Europol and whose objective is to monitor, mentor and advise local law enforcement agencies, should encourage the local authorities to use this agreement to exchange information with Europol. A reference to this task should be included in planning documents of future civilian ESDP missions.

### **3.2. Specific recommendations for the exchange of personal data between Europol and EULEX Kosovo**

As EULEX is still in an early phase and links with supporting ENUs are still being established, more time is needed to assess the concrete added-value of the mechanism. However, Europol and the GSC can already formulate the following recommendations:

- Where possible, officials of EULEX Kosovo should be invited to attend meetings of Analysis Groups of relevant Analysis Work Files (AWF).
- Member States (Europol National Units) should indicate their readiness to act as intermediary for the sharing of personal data between Europol and the EULEX Kosovo in order to share on the rotating basis the additional workload falling upon the intermediary Member States.
- This information exchange mechanism, and the lessons learned, should be considered in the planning process of any future executive civilian ESDP mission.

#### 4. Conclusion

Within one year<sup>12</sup>, the European Union and its Member States have successfully established a crucial link between the second and third pillar instruments. Both mechanisms, allowing for the exchange of strategic (non-personal) and operational (personal) information between Europol and ESDP police missions, are now functioning. This preliminary assessment indicates that these information exchange mechanisms will not only be beneficial to Europol and to ESDP police missions but also to Member States competent authorities as they now have an official communication channel to the EU missions.

It is expected that the volume of information exchanged will increase substantially in the coming months, provided that the awareness of these information exchange mechanisms is raised amongst practitioners of both pillars.

#### 5. References

- Council Conclusions on "Possible cooperation mechanisms between ESDP missions and Europol as regards mutual exchange of information", 5-6 June 2008, Doc. 7821/3/08 REV 3;
- Administrative Arrangement between Europol and the General Secretariat of the Council on the exchange of information in the context of civilian ESDP Missions, 22 September 2008, Doc. 13311/08;
- Possible cooperation mechanisms between ESDP Missions and Europol as regards mutual exchange of information, 5 February 2008, Doc. 5466/1/08;
- Common considerations by the General Secretariat of the Council (GSC) and Europol in view of the possible establishment of co-operation mechanisms for the exchange of personal data between Europol and civilian ESDP missions, 31 October 2008, Doc. 15063/08;
- Adoption of draft conclusions of the Council of the European Union on possible cooperation mechanisms between civilian ESDP missions and EUROPOL as regards the mutual exchange of information, 14 November 2008, Doc. 15771/08, (adopted by Council on 27-28 November 2008).

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<sup>12</sup> *Council Conclusions on 5-6 June 2008*, Doc. 7821/3/08.