

Minor interpellation tabled by Member of the Bundestag Andrej Hunko et al. and the Left Party parliamentary group.

Restructured Analysis Work Files (AWFs) at EU police agency Europol

Bundestag printed paper 18/41

Questioners' preliminary remarks:

Previously numbering over twenty, the Analysis Work Files (AWFs) at EU police agency Europol are being restructured. Following a proposal by a working group made up of representatives from Europol and EU Member States, the Heads of Europol National Units (HENUs) agreed unanimously in August 2011 on a new concept described in "New AWF Concept Guide for MS and Third Parties". The document is not public, but has been made available on the Internet by British civil liberties organisation Statewatch (<http://www.statewatch.org/news/2013/jan/europol-awf-new-concept.pdf>). According to this information, only two Analysis Work Files remain: "Serious and Organised Crime" and "Counter Terrorism", to which 24 Focal Points (FP) are now associated. Previous AWF terms have been retained for the Focal Points – for example, "Hydra" for "global Islamist terrorism" and "Dolphin" for "terrorism within the EU". A Focal Point has a coordinator and consists of "experts" from Europol and Member States, but also "third parties", including, for example, other EU agencies. Focal Points can be set up in consultation with the Heads of Europol National Units (HENUs). Their goal is to coordinate thematic projects. Focal Points should meet at least once a year to share their knowledge. They can also perform "proactive" information gathering and exchange.

New are the Target Groups (TGs). They are described as an "operational project" to support international investigations. New is that the decision to open a Target Group lies with Europol. A distinction is made between a "criminal investigation" and a "criminal intelligence operation". Nevertheless, in the view of the questioners, by gathering information before punishable offences have even been committed, Europol is assuming powers that come close to those of an intelligence service.

Europol assigns Regional Support Officers (RSOs) who are responsible for certain regions. Their task is to "actively promote" Europol. Europol's Liaison Officers (ELIOs), meanwhile, represent the interests of their sending state at Europol.

In a Catalogue of Products and Services, Europol pledges to cross-check all incoming requests against its Analysis Work Files as well as the Europol Information System (EIS) ("Information will always be cross checked against Europol's datasets"). The databases of Interpol and the Schengen Information System would also be searched. Results are communicated to national contact points as well as liaison officers, who already have read access to Analysis Work Files.

Furthermore, sensitive information is not only gathered on suspects and convicted persons. Extensive data on contact persons, witnesses, victims or informants are also stored. Sufficient grounds are considered to exist "provided there is reason to assume that they are required for the analysis of such person's role as witnesses, victim and informants." Alongside "hard" data such as residence, e-mail addresses, Internet connections, physical appearance, voice profile or "dental information", information about employment, education, qualifications and other fields of knowledge can also be processed. Other information includes financial data, links with companies, but also behavioural data, movements, places frequented, danger rating or suspected drug abuse. "Political opinions", "religious or philosophical beliefs", "health" or "sex life" are processed as well. Moreover, information on "racial or ethnic origin" can still be included in the restructured Analysis Work Files. This information is considered to be "strictly necessary" to associate forms of crime. As an example, Europol describes cannabis cultivation as being frequently associated with "Vietnamese/Chinese". The same applies to "Moroccan, Pakistani, Afghan, Kurds / Turkish". The questioners see in this practice racial discrimination and advocate that the categories be banned from the data collections of both German authorities and EU agencies. Germany is among the three main suppliers to the agency. In the case of data queries, the competent Federal Criminal Police Office also leads the way. Europol employs "data mining" and "knowledge management" applications to browse databases and "to quickly examine complex data volumes using mathematical algorithms" (Bundestag printed paper 17/3143). This is done ostensibly to reveal "key players" or "hidden patterns". In addition, there are considerations regarding automatic cross-checking of incoming information.

Preliminary remarks:

Unless otherwise explicitly defined, it is assumed that the questioners are referring to "Analysis Work Files" (AWFs) when using the terms "file", "system" or similar.

Europol has its legal foundation in the Council Decision of 6 April 2009 establishing a European Police Office (Europol) (2009/371/JHA), published on 15 May 2009 in the Official Journal of the European Union (L 121/37) and referred to in the following as the Europol Council Decision / ECD.

1. To the knowledge of the Federal Government, when did implementation of the new Analysis Work File concept begin and when did it end?

Reply to question 1.

The "New Analysis Work File (AWF) Concept" project was started at the end of 2010. On 31 August 2011, the Heads of Europol National Units (HENUs) unanimously agreed on the new AWF concept. It became effective in July 2012.

2. To the knowledge of the Federal Government, how do the new Focal Points differ from the previous Analysis Work Files?

a) What was the position or involvement of the Federal Government with regard to the restructuring and what is its assessment of the restructuring now?

Reply to question 2.

Europol developed the new AWF concept in close cooperation with Member States (MS). Among other things, Europol organized a HENU workshop on 18 January 2011 in which various representatives participated for Germany.

Unlike the previous AWF concept, only two AWFs have been set up instead of the (former) 24 AWFs (AWF Organised Crime and AWF Counter Terrorism). The previous AWFs have been renamed Focal Points (FPs). The data from the previous AWFs were merged into the two new AWFs. In particular, the aim was to reduce the administrative burden at Europol while maintaining a steady level of resources and preserving high standards of quality and data security.

3. *To the knowledge of the Federal Government, how many Focal Points (FPs) are currently in use at Europol and what is the purpose of each FP?*

- a) *Which Member States and "third parties" are involved in each case?*
- b) *Who are the coordinators in each case?*
- c) *To what extent has the process for nominating "First" and "Second Officer" as well as "Assistants" been applied?*

Reply to question 3.

As present, twenty Focal Points have been set up in the area of Serious and Organised Crime (AWF SOC):

1. Human trafficking
2. Intellectual property rights infringement
3. VAT carousel fraud
4. Property crime
5. Drugs/cocaine
6. Drugs/heroin
7. Drugs/cannabis
8. Drugs/synthetic drugs and raw materials
9. Internet-related crime
10. Smuggling
11. Italian organised crime
12. Organised crime/outlaw motorcycle gangs
13. East European organised crime
14. Money laundering
15. Child pornography
16. Payment card fraud
17. Organised crime/ethnic Albanian suspects
18. Money counterfeiting
19. Cigarette smuggling
20. Arms trafficking

In the area of Counter Terrorism (AWF CT), five Focal Points (FPs) have been set up:

1. Check the Web portal
2. Non-Islamist terrorism
3. Islamist terrorism
4. Maritime piracy
5. Exchange of financial messaging data between the EU and the USA under the Terrorist Financing Tracking Programme agreement

Furthermore, AWF SOC also includes the "General Nature and Strategic Type Resource" FP aimed at general and strategic analysis.

a)

The Federal Government is not aware of an association of further Member States or third parties with the files or Focal Points at Europol.

b)

Section 5.1.3. of the new AWF concept describes the function of National Focal Point Coordinator and his/her tasks. For Germany, these are staff members of the national units. In the case of Germany, this means staff members of the Federal Criminal Police Office (*Bundeskriminalamt – BKA*). They are not delegated to Europol.

c)

"First Officer", "Second Officer" and "Assistants" were post designations at Europol until 2010 that must be regarded separately from any usage within an AWF.

As a result of the Europol Council Decision (ECD) of 1 January 2010, Europol became an EU agency funded from the general budget of the Union to which subsequently the same regulations and procedures applied as to other EU agencies, resulting in the replacement of previous post designations.

4. To the knowledge of the Federal Government, which Target Groups (TGs) exist at Europol and into which Analysis Work Files or Focal Points are they integrated?

- a) To the knowledge of the Federal Government, who triggers the opening of a TG?*
- b) Which Member States and "third parties" are involved in each case?*
- c) Who are the coordinators in each case?*
- d) To what extent has the process for nominating "First" and "Second Officer" as well as "Assistants" been applied?*

Reply to questions 4., a) and b)

Germany is not a member of every Target Group (TG). The Federal Government does not have an overall picture of all TGs that exist at Europol as well as the corresponding members. Regarding question 4 b), please see the reply to question 3 a).

c)

The new AWF concept introduces the function of "National Target Group Coordinator" and his/her tasks. For Germany, these are staff members of the national units. Similar to the reply to question 3b, this means in the case of Germany the staff members of the Federal Criminal Police Office. They are not delegated to Europol.

Please see the reply to question 3c.

5. To the knowledge of the Federal Government, have there been instances in which a request by "third parties" for access to a Focal Point or Target Group has been denied and, if so, what was the reason?

Reply to question 5.

Please see the reply to question 3a.

6. To the knowledge of the Federal Government, to what extent are Target Groups a continuation of the former Joint Investigation Teams (JIT), and what changes have resulted in the process?

a) To the extent these represent different arrangements, what do they have in common and how do they differ?

Reply to question 6.

The TGs and Joint Investigations Teams (JITs) are different arrangements, or forms of cooperation. A TG is an operational police project with a dedicated Europol analysis team to support an international criminal investigation or police intelligence operation.

The formation of a JIT represents a special form of legal assistance (in criminal matters) requiring conclusion of an agreement to set up the JIT in addition to consent by the competent judicial authority regarding the legal assistance. Members of a JIT are generally prosecuting authorities and police.

Multiple countries can work together on a JIT. European Union institutions such as Europol or Eurojust can participate, but it is not a requirement. The composition of JITs is determined by the participating states. Information obtained through a JIT can be accessed by all participants without the need for further requests for legal assistance.

7. Which German authorities participate in each Focal Point and Target Group?

- a) What form does the participation take?*
- b) How many "National Experts" have German authorities delegated to Europol, and to which Focal Points or Target Groups have they been assigned?*
- c) How many "Regional Support Officers" have German authorities delegated to Europol, and what are their tasks?*
- d) How many "Europol Liaison Officers" have German authorities delegated to Europol, and to which Focal Points or Target Groups have they been assigned?*

Reply to questions 7. and a)

With the exception of the FP concerning firearms-related crime / arms trafficking, Germany is associated with all Focal Points as a participant. Under Section 1 of the Europol Act, the Federal Criminal Police Office acts as the national unit, making it the transmitter/receiver of information to/from Europol.

In its role as central office, the Federal Criminal Police Office assumes responsibility for managing this information domestically.

b)

The function of the "National Experts" within the AWF concept is described in Section 5.1.2. of the AWF concept. These are staff members of the national law enforcement authorities. They are not delegated to Europol. Unlike the "National FP Coordinator" (see reply to question 3b), staff members of German law enforcement authorities that are not a part of the national unit (Federal Criminal Police Office) can be nominated as "National Experts" (for example, employees of the *Land*-level police departments or customs office).

c)

The Regional Support Officer is a staff member of Europol. The Federal Government does not have any information on the number of staff members who are German nationals.

d)

The German liaison office currently comprises ten staff members of the German law enforcement authorities. These, however, are not delegated to Europol and remain under the administrative and technical supervision of the German authorities. They are not assigned to any FP or TG.

8. To the knowledge of the Federal Government, how are the groups of persons "suspects", "potential criminals", "contacts" and "associates" defined within the Analysis Work Files and Focal Points or Target Groups?

Reply to question 8.

The status of the mentioned group of persons is defined under Section 1.3 of the AWF concept.

9. To the knowledge of the Federal Government, how many data records are stored within each of the Focal Points and Target Groups?

a) Who has access in each case, and how is access regulated?

b) With respect to access, what differences exist between an "Analysis Group" and the Focal Points and Target Groups?

Reply to question 9.

The Federal Government does not have a listing of the number of data records stored per FP or TG. Data query statistics are not kept by the German units. Transmission of analysis results is governed by Article 14(4) to (7), Article 14(8) in conjunction with Article 22(1), Article 23(1), Article 17 and Article 19 of the Europol Council Decision (cf. Bundestag printed paper 17/3143, question 1. e).

"Analysis Group" is to be understood as meaning all participants of an FP (or the TG within this FP).

10. To the knowledge of the Federal Government, how are Focal Point and Target Group data records divided into data on persons and data on objects?

- a) What is the relationship among data on "suspects" or "convicted persons", "potential criminals", "contacts" and "associates", "witnesses", "victims" and "informants"?*
- b) To the extent the Federal Government does not have a breakdown, what approximate information can it provide concerning this point?*

Reply to question 10.

With reference to the reply to question 9, the Federal Government does not have any statistics on the current populations of the mentioned data objects. A statement – even an approximate one – on the relationship among the stored data (person status) cannot be made.

11. To the knowledge of the Federal Government, how many messages did authorities from Germany transmit in 2012 and 2013 to which Focal Points or Target Groups at Europol or its "Operational Centre"?

Reply to question 11.

The Federal Government does not have any statistics on the number of messages transmitted by German authorities in 2012/2013 to the various FPs and TGs or Europol Operational Centre.

12. How many personal data records were communicated and queried by German authorities in 2013, and how does this number compare to 2012 and 2011?

- a) What percentage of data at Europol originates from German authorities?*
- b) What percentage of all searches at Europol were initiated from Germany?*
- c) How many data records concerned German nationals or non-German nationals?*

Reply to question 12.

The Federal Government does not have any corresponding statistics on the data population or queries.

13. To the knowledge of the Federal Government, to what extent has Europol put into concrete terms the Federal Government's considerations with regard to automatic cross-checking of data in Europol's various databases (Bundestag printed paper 17/3143), and how does the Federal Government view the notification and practice?

Reply to question 13.

Automatic cross-checking at Europol is performed in accordance with Article 5(1)(a) to (c) ECD. As described in the reply to question 2a, the IT structure of the analysis files at Europol was changed in 2012. It is now possible to carry out automatic (global) searches and cross-checks within the SOC and CT Analysis Work Files. The Federal Government views this function favourably.

The computer-assisted cross-checking and analysis processes are designed and developed by Europol itself, taking into account the needs of EU Member States. In the case of all technical modifications, the data protection requirements under Article 27 ff. of the ECD remain unchanged.

14. To the knowledge of the Federal Government, is it possible to perform a global search or find "cross-matches" within the Analysis Work Files or the Europol Information System?

Reply to question 14.

Global searches are possible within the AWFs as well as the Europol Information System.

15. *To the knowledge of the Federal Government, what is meant when Europol says "(t)he newest version of the EIS, deployed in 2013, can also store and automatically cross-check biometrics (DNA) and cybercrime related data"*

(https://www.europol.europa.eu/sites/default/files/publications/eis_leaflet_2013.pdf)?

Reply to question 15.

The current EIS version contains data fields for DNA and cybercrime, which can be filled out by Member States. The EIS is generally capable of cross-checking all available data. Thus, if a Member State inserts DNA data into the EIS, the cross-checking functionality would encompass these data. Germany does not insert any DNA data into the EIS.

16. *What more recent knowledge does the Federal Government have regarding the question to what extent applications for "data mining" or "knowledge management" are being employed at Europol (Bundestag printed paper 17/3143) and what functions the respective software or hardware has?*

- a) *To what extent can the Federal Government now take a position on the view of EU Commissioner for Home Affairs Cecilia Malmström according to which the tools and processes described in Commission document E-000171/2012 are used for "data mining" by EU police agency Europol (Bundestag printed paper 17/11582)?*
- b) *Which other computer-assisted analytical techniques does Europol now have "to deploy mathematical algorithms to map and measure complex and/or large data sets and quickly identify key players, groups of target suspects and other hidden patterns that would otherwise remain unnoticed" (Bundestag printed paper 17/3143)?*
- c) *Is software for predictive analytics also employed?*
- d) *How does "social network analysis" (SNA) work, and which data collections can it access?*
- e) *To what extent have German authorities been involved in developing and carrying out computer-assisted analyses at Europol?*

Reply to questions 16. and a)

Data mining is a method for extracting knowledge from databases and is used at Europol as an analytical aid. Knowledge management is a fundamental aspect in the design of organisational and IT structures at Europol. The Federal Government does not have any more recent knowledge in this regard.

Regarding an assessment of the Commission document, reference is made to the Federal Government's reply to question 1 of the minor interpellation by the Left Party parliamentary group in Bundestag printed paper 17/11582 of 22 November 2012.

b)

Europol also makes use of the possibilities of information technology to cross-check data records automatically. For the rest, please see the reply to question 13.

c)

The Federal Government does not have any information concerning this point.

d)

To the knowledge of the Federal Government, an analytical tool called SNA has been used at Europol over the past years to analyse data on objects and persons for purposes of preventing threats and prosecuting crimes. The Federal Government does not have any information with details on SNA.

e)

No German authorities have been involved in developing and carrying out computer-assisted analyses. Europol put together the tools and designed the analysis processes on its own.

17. *What is meant by the Federal Government's statement that Feen i2 and Themis software or the "freeware tool (Pajek)" was used by Europol "within the context of analysis workflows" (Bundestag printed paper 17/3143)?*

- a) On which occasions have German representatives at Europol made use of the software?*
- b) To the knowledge of the Federal Government, which processes for automated analysis of data on persons or objects does EU border management agency Frontex use to "analyse open sources and media reports on the Internet" or for other analytical products?*
- c) What does the Federal Government know about recent considerations or decisions according to which Frontex intends to utilise "applications for automated data analysis" for the Common Pre-Frontier Intelligence Picture (CPIP) as a part of the EUROSUR European border surveillance system?*
- d) To what extent is work being done on an "operational application"?*
- e) During 2013, to what extent did the authorities of the Federal Ministry of the Interior test "predictive software" or software for "data mining", receive test reports, carry out "market monitoring exercises" or participate in demonstrations?*

Reply to question 17.

These tools support the analysis process and the analysts at Europol, automating analytical activities and reducing the burden on analysts.

a)

The Federal Government has no information regarding the analytical tool user groups.

b)

EU agency FRONTEX uses Web-based applications "FRONTEX Media Monitor" and "FRONTEX Real-time News Event Extraction Framework" to analyse media reports, making it possible to display publicly available information and news from the world press that relate to the agency's tasks. Data on persons or objects are not automatically analysed.

c) and d)

Reference is made to the reply by the Federal Government to questions 51 to 53, 55 and 58 to 60 of the minor interpellation by the Left Party parliamentary group in Bundestag printed paper 18/254 of 7 January 2014. The Federal Government does not have any further information concerning this point.

e)

The Federal Ministry of the Interior did not test any predictive software or software for data mining during 2013.

A market monitoring exercise for data mining software is being carried out within the Federal Criminal Police Office. Members of the authority participated in demonstrations, and the authority received test reports.

18. Which of the data collections at the Federal Criminal Police Office does the Federal Government believe require a new opening order to allow for "weighting" of search criteria or searches for "unstructured information"?

- a) To what extent do authorities of the Federal Ministry of the Interior now use "tools for detailed analysis and visualization of relationships among physical attributes and all available related information" "Analyst's Notebook", "Infozoom", "Social Network Analysis", "Quick Navigator" or the "Google Earth plug-in"?*
- b) To what extent is access by Analyst's Notebook to data collections at the Federal Criminal Police Office still possible only on a case-by-case basis?*
- c) To what extent has the use of tools like "Analyst's Notebook" or "Infozoom" at Federal Police departments increased over the last five years (Bundestag printed papers 17/8089 and 17/3143)?*
- d) In which Federal law enforcement database applications is it possible to search using a combination of data fields?*
- e) Who developed the "logic" enabling searches for phonetic or incomplete data within Federal law enforcement database applications (Bundestag printed paper 17/3143)?*
- f) Which software and which additional software functions have been used so far at the Federal authorities for data profiling?*

Reply to question 18.

There are no current plans to introduce weighting of search criteria within the files of the Federal Criminal Police Office. Should such implementation be considered, it would be necessary to examine whether there is a need to amend the corresponding opening order.

a)

"Analyst's Notebook" and "Infozoom" are analytical tools used at the Federal Criminal Police Office primarily within the context of investigative and analytical processes. While "Analyst's Notebook" is used within the Federal Criminal Police Office in connection with the visualization of databases, "Infozoom" is frequently used for analysing data collected under Sections 100g and 100h of the Code of Criminal Procedure (*Strafprozessordnung - StPO*) during investigations. "Social Network Analysis", "Quick Navigator" and the "Google Earth plug-in" are not used.

b)

For the visualization of structured data – for example, for submission to public prosecutor's offices and courts – "Analyst's Notebook" is used for displaying complex organizational structures or personal connections in a clear format. The use of "Analyst's Notebook" is not standard procedure, but rather is considered on a case-by-case basis.

c)

Both tools have been used within the Federal Criminal Police Office for several years. No statistics are kept on the frequency of use.

d)

The ability to search using a combination of data fields is a standard functionality and integrated into INPOL (central system and case applications) and other areas.

e)

INPOL-Zentral and *INPOL-Fall* were developed internally by the Federal Criminal Police Office. The other case application, b-case, is based on the "rs-case" software solution by the rola company.

f)

Standard police applications are used within the Federal Criminal Police Office for data profiling. There is no special software for data profiling.

19. To the knowledge of the Federal Government, what are the process and intervals for examining data stored at Europol?

- a) Who decides on the continued storage of data?*
- b) Which process has been put into place for further utilising data of closed Focal Points or Target Groups?*

Reply to question 19.

German data transmitted to Europol are stored there until the transmitted German time limit for deletion is reached. Additionally, after three years have past, Europol reviews under Article 20(1), sentence 2, ECD whether data should continue to be stored. Europol automatically informs Member States three months in advance of the expiry of the time limits for reviewing the storage of data (Article 20(1), sentence 4, ECD). As soon as an FP is closed, its data is generally deleted. Exceptions to this rule are governed by Article 20(3) ECD. The process for continued storage of data under Article 20(3) ECD follows the general principles of information processing (cf. Articles 10 to 14, 19 as well as 4 and 5 ECD).

20. To what extent has the Federal Government had experience with the new "O9" organisational unit within the "Operations Department" which, as previously understood, was to receive data that could be useful to the law enforcement authorities of EU Member States for "the prosecution, prevention, detection and investigation of terrorism or terrorist financing" (Bundestag printed paper 17/3143)?

Reply to question 20.

The O9 organisational unit acts as the central office for EU Member States in connection with the Agreement between the EU and the USA on the Processing and Transfer of Financial Messaging Data from the EU to the USA for the Purposes of the Terrorist Finance Tracking Programme (TFTP Agreement). The Federal Criminal Police Office submits all requests under the TFTP Agreement to the U.S. Department of the Treasury exclusively through this organisational unit.

21. To the knowledge of the Federal Government, what does the Secure Platform for Accredited Cybercrime Experts (SPACE) at Europol involve and who are its members?

- a) Which subgroups ("sub-communities") exist, and who participates in each?
- b) What are the conditions to which participation of other public and private institutions in SPACE is subject, and to what extent has this already been implemented?
- c) What is the task of the "Digital Forensics & Investigations" work group, and on which projects is the group currently working?
- d) To what extent does SPACE also serve to enhance the professional reputation of participants ("enhancing your professional reputation"), as can be read in a leaflet distributed by Europol for the "first joint Europol-Interpol Cybercrime Conference" in The Hague
[\(\[https://www.europol.europa.eu/sites/default/files/publications/ec3_space_leaflet_2013.pdf\]\(https://www.europol.europa.eu/sites/default/files/publications/ec3_space_leaflet_2013.pdf\)\)?](https://www.europol.europa.eu/sites/default/files/publications/ec3_space_leaflet_2013.pdf)

Reply to question 21.

The aim and purpose of the SPACE Europol Platform for Experts (EPE) are to enable strategic and analytical sharing of information on cybercrime. Personal data are not shared. SPACE EPE is targeted toward experts from law enforcement authorities of Member States and third countries, private industry and academia (see also "EC3 SPACE leaflet" – question 21d).

"Sub-communities" can be found in the "EC3 SPACE leaflet" mentioned under question 21. d). The Federal Government does not have an overview of the participants of all sub-communities within the SPACE EPE.

Europol and Member States decide on the admission of experts from other public and private institutions. Cooperation among these institutions takes place within the context of the SPACE EPE.

c)

The Digital Forensics & Investigations EPE is not a work group, but rather a platform for information exchange among experts, allowing participants to share information on forensic cybercrime topics (best practices, tools, developments, job aids).

d)

The Federal Government does not have any information concerning this point.

22. To the knowledge of the Federal Government, how many Germans are in custody in another EU Member State due to operations coordinated by Europol in 2013?

- a) To which Focal Points or Target Groups were the operations assigned?*
- b) In which of these operations did which German authorities participate?*
- c) Where were the crimes leading to the arrest of German nationals allegedly committed?*
- d) From where does the data and information leading to the arrest of German nationals originate?*
- e) What was Europol's role precisely in the arrest of German nationals and in the international operations?*
- f) How many employees of Europol were present on site during each operation?*

Reply to question 22.

Corresponding statistics are not kept by the Federal Government.

23. To the knowledge of the Federal Government, what is meant when Europol writes that the agency may "proactively" gather and share data, and how does it view this practice?

Reply to question 23.

Europol still does not have its own investigative powers and is also not authorized to gather data in Member States on its own. We note further that the implementation of the "new AWF concept" has not changed Europol's legal basis (Council Decision).

The support of Europol in investigations of a Member State generally requires submission of a request by the Member State to Europol and is limited to the following sphere of activities:

- To aid investigations in the Member States, in particular by forwarding all relevant information to the national units (Article 5(1)(c) ECD),
- To collect, store, process, analyse and exchange information and intelligence (Article 5(1)(a) ECD) and to notify the competent authorities of the Member States without delay via the national unit (...) of information concerning them and of any connections identified between criminal offences (Article 5(1)(b) ECD),
- Europol may participate in supporting capacity in joint investigation teams and assist in all activities as well as exchange information with all members of the joint investigation team (Article 6(1) ECD).

The statement made in the AWF concept under Section 2.2., according to which "Europol can perform a (...) proactive information gathering", describes the possibility of actively soliciting data from Member States by offering Europol's products and services (see, inter alia, Article 5(2) and (3) ECD) for purposes such as generating matches from the area of Serious and Organized Crime. Europol shall not take part in the taking of coercive measures (Article 6(1), last sentence, ECD) and still does not have its own investigative powers.

24. To the knowledge of the Federal Government, where should the "Information Exchange Platform for Law Enforcement Agencies" (IXP) now be located organisationally and administratively, and what is the Federal Government's position concerning this (Bundestag printed paper 17/13441)?

- a) How were the three options proposed by Europol discussed and assessed?*
- b) What assessment can the Federal Government now make concerning this point?*
- c) If the decision is made to locate the platform at Europol or within the EU agency for large-scale IT systems, to what extent does the Federal Government believe that the corresponding opening order of the agencies would also have to be changed?*

Reply to questions 24. and a)

As of yet, no decision has been made at European level as to where information exchange among law enforcement authorities should take place. Further discussions with the participation of eu-LISA, Europol and Member States are still pending. Currently, neither eu-LISA nor Europol is setting aside resources for implementation of this platform.

b)

The Federal Government cannot make an assessment at the present time.

c)

The Federal Government cannot take a position at the present time, since the question of location and conceptual design has not been fully clarified.

25. To the knowledge of the Federal Government, to what extent are Target Groups carrying out "criminal investigations" and "criminal intelligence operations" and what is behind this?

- a) What is the Federal Government's assessment of this practice, which the questioners view as providing Europol with powers that come close to those of an intelligence service?*

Reply to question 25.

Within the context of Europol's activity, "criminal investigation" refers to a process stage in which measures are taken to establish and identify facts, suspects and circumstances concerning one or more established concrete crimes. "Criminal intelligence operation" refers to a process stage that is not yet a criminal investigation and within the context of which a law enforcement authority collects, processes and analyses findings about crime or criminal activities.

26. How does the Federal Government assess the practice at Europol of processing within the data collections also information on danger rating, "political opinions", "religious or philosophical beliefs" or "sex life"?

- a) To what extent does it agree or disagree with the statements made by Europol according to which gathering data on "racial or ethnic origin" may be "strictly necessary" – for example, to enable targeted searches for "Vietnamese/Chinese" or "Moroccan, Pakistani, Afghan, Kurds / Turkish" in cannabis cultivation investigations?*
- b) To what extent does the Federal Government share the view of the questioners that "racial" or "ethnic origin" categories must disappear from German law enforcement data collections?*
- c) To what extent will the Federal Government undertake to make the storage of data according to "racial" or "ethnic origin" within Europol's information systems impossible?*
- d) If it does not wish to take any initiative on its own concerning this point, to what extent will the Federal Government itself supply data containing information on "racial" or "ethnic origin"?*

Reply to question 26.

Since it is not clear from the question which concrete information processing systems are meant, the following is noted:

In Europol Council Decision, Chapter II, Information Processing Systems, governs which systems at Europol shall be set up. Also specified here is which particulars the data may include. This is dealt with specifically in Articles 12(2) and 14(1), paragraph 2, ECD.

For example, Article 14(1), paragraph 2, states:

"The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life shall not be permitted unless strictly necessary for the purposes of the file concerned (Analysis Work File – AWF) and unless such data supplement other personal data already input in that file. The selection of a particular group of persons solely on the basis of the abovementioned sensitive data, in breach of the aforementioned rules with regard to purpose, shall be prohibited."

While this provision generally permits Europol to process sensitive data, it does so only with considerable limitations and only if certain conditions are met. The purpose of these limitations is to preserve the basic rights and principles of the European Union. In the ECD preamble, number 24, it is noted that the Decision is consistent with the fundamental rights and principles recognised in particular by the Charter of Fundamental Rights of the European Union.

a)

Please see the reply to question 26. It is further noted that particulars regarding nationality are permitted under the ECD. The designations relating to nationalities are valid worldwide.

b) to d)

In the Fourth Report of the Federal Republic of Germany in accordance with Article 25(1) of the Council of Europe's Framework Convention for the Protection of National Minorities, the Federal Government makes the following comments on this topic:

With regard to concerns expressed by the Committee of Ministers relating to allegations of ethnic profiling by the police, the following should be noted: No population or socio-economic statistics on the basis of ethnicity have been gathered in the Federal Republic of Germany since the end of World War II. This is due inter alia to the historic experience in Germany in particular in the context of the persecution of minorities during the time of National Socialism. Moreover, the collection of ethnic data as part of the federal statistics is problematic also in legal terms.

According to Article 3 of the Framework Convention for the Protection of National Minorities, every individual shall be free to declare his or her affiliation with a national minority.

Membership of a minority is an individual personal decision and is neither registered nor reviewed nor contested by the government authorities. The compilation of statistical data on the basis of ethnic criteria is also precluded by the Bonn and Copenhagen Declarations of 1955, the Act on the Sorbs' Rights in the Free State of Saxony and the Act on the Specification of the Rights of the Sorbs (Wends) of the Land of Brandenburg.

The crime statistics of the Federal Republic of Germany compiled by the police (Police Crime Statistics) are based on the data provided by the 16 federal states; these statistics do include data on nationality, but not on other socio-cultural features, such as ethnic origin, religion or migration background. This also holds true for the Federal Police entry statistics.

Whether and if so, to what extent ethnic origin is recorded in police files is governed by the relevant orders opening a data file agreed between federal and state governments. They specify the various legal bases (e.g. Act on the Bundeskriminalamt and the Cooperation between the Federation and the Länder in Criminal Police Matters; the Code of Criminal Procedure; the Federal Police Act). The collection of data on ethnic origin is not obligatory, even if this is provided for in the order opening a data file. Instead, it is at the discretion of the processing authorities and departments in accordance with their respective powers to collect data on ethnicity if the collection of such data is necessary in an individual case, for example if membership of a particular ethnic group be relevant for the investigation of a criminal offence (e.g. in conflicts between Kurdish and Turkish nationals). Hence, the concerns expressed by the Committee of Ministers relating to allegations of ethnic profiling by the police are unsubstantiated.

27. *To the knowledge of the Federal Government, what is the present status of negotiations on a cooperation agreement between Europol and Israel (Bundestag printed paper 17/3143)?*

- a) What position has the Federal Government taken concerning this point?*
- b) Which other benefits not specified in Bundestag printed paper 17/3143 does the Federal Government hope from a possible Europol agreement with Israel?*
- c) Which information would be exchanged under the agreement?*
- d) Which data would Israeli authorities then have access to?*
- e) How long would the data be stored in Israel?*
- t) To the knowledge of the Federal Government, how are Israeli authorities and companies involved in EU projects regarding "radicalisation" as well as the computer-assisted fight against crime and terrorism?*

Reply to question 27.

The Europol's Management Board is now discussing the draft of an operational agreement between Europol and Israel that incorporates the exchange of personal data. Negotiations are still ongoing.

a)

The Federal Government welcomes the opening of negotiations on cooperation between Europol and Israel.

b)

The Federal Government does not currently see any need to add to the comments in Bundestag printed paper 17/3143 of 4 October 2010.

c) to e)

The contents of the draft agreement are currently being discussed and, therefore, are not final.

f)

The Israeli Division of Identification and Forensic Science (DIFS) is involved in the EU-funded ISEC project "Development of Analytical Methods for Sensitive Detection and Identification of Organic Gunshot Residues (OGSR) Based on Liquid Chromatography-Mass Spectrometry (LC-MS) for Routine Casework" as an associated partner (without funding through EU financial resources).