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From:	Presidency
To:	Delegations
Subject:	Twenty Years of Europol - what next?

Delegations will find attached a note on the "Twenty Years of Europol - what next?" discussed during the informal COSI meeting on 8-9 July 2019 in The Hague.

Twenty Years of Europol – what next?

Introduction

The idea of establishing cooperation between European police forces to tackle cross-border crime can be traced back to the very notion of European unity. The first move towards informal cooperation was taken in the 1970s, with the setting up of the Trevi group by the interior and justice ministers of the European Communities.

In 1992 the Maastricht Treaty made Justice and Home Affairs one of the three pillars of the new European Union. Article K1 enabled police cooperation between Member States and made explicit reference to a European Police Office (Europol). The first step to formalize European police cooperation was taken in 1993 with the creation of the Europol Drugs Unit (EDU). It started operating in January 1994 and was mandated to assist national police forces in criminal investigations.

In 1997 the Treaty of Amsterdam was signed. In the new Treaty the so-called Third Pillar, i.e. Justice and Home Affairs, focused on police and judicial cooperation in criminal matters. Europol became fully operational on 1 July 1999, on the first day of the first Finland's Presidency of the Council of the European Union. From that day on Europol had an expanded mandate that included child abuse, terrorism and forgery of money, as well as the authority to enter into cooperation agreements with third countries and international organisations. At the European Council that took place in Tampere later that year—Europol was further strengthened, Eurojust was set up and a European Police Chiefs Task Force was created.

In the 20 years that has followed Finland's Presidency and especially Tampere, Europol has developed into a modern JHA agency that is an agile and operationally decisive partner and supporter of the Member States in the fight against serious and organized crime and terrorism in the EU.

Future challenges

The EU law enforcement environment is currently facing a series of developments and challenges¹. They are all relevant both for the competent authorities of the Member States as well as the EU agencies, including Europol, that support them.

As announced at the JHA Council in June, the FI Presidency intends to launch a series of thematic discussions to strengthen the reflection on various strands that could orient future developments in the area of internal security. A number of the aspects of interest highlighted by Ministers would require the involvement of Europol.

Below, relevant themes that influence Europol, either directly or indirectly, are further outlined for discussion.

¹Viittaus 7.6. OSA-neuvoston aiheesta käymään keskusteluun.

1. Technological developments

The current security landscape evolves dynamically and is characterized by rapid technological development. This puts law enforcement authorities in a new position. Relevant authorities may lack a clear knowledge of what is required to act effectively in a changing situation, as well as resources and technical equipment. Practically all competent authorities battle with resource cuts or insufficient budgets. At the same time, digital transformation offers significant new opportunities for research and innovation uptake and for creating new and more efficient ways to work. On the other hand, the development also entails significant risks of exploitation and thus new challenges for law enforcement. The future of EU law enforcement is thus closely linked with the developments and newly emerging threats that are the source of both challenges and opportunities.

Europol supports Member States in their fight against terrorism, cybercrime and other forms of serious and organised crime. As such, Europol could play an important role in the overall EU security research and innovation process, from providing input regarding needs and requirements via monitoring, testing and validation facilities (data and infrastructure) to research uptake.

In its 2020+ strategy², Europol defines its priorities as well as highlights certain key themes. Technological developments are in a central role in each priority. Confirming Europol as the EU criminal information hub necessitates, among others, the development of an improved and modern information management architecture. Europol should be able to provide agile operational support to Member States including a test platform, a pool of training data, digital tools, which would require expanding the Europol technical capabilities with regard the development of an EU law enforcement toolbox. Acting as the main platform for providing European policing solutions means enhanced support to investigations that, for example, deal with big data analysis, exploit decryption techniques, follow and analyse cryptocurrency transactions and answer technical and operational questions relating to the aspects of 5G relevant for law enforcement. A place at the forefront of recent innovation equals developing novel approaches to modern law enforcement work such as the use of AI in everyday law enforcement work, including facial recognition and data extraction tools.

Technological development influences the criminal environment, our responses to it and the way we organise law enforcement work. The availability of Big Data requires that certain tasks should become as automated as possible, whilst the use of human intervention should be increasingly concentrated on the most demanding areas of analysis and qualitative parts of the analytical cycle that machines cannot (yet) cover.

² Europol Strategy 2020+, endorsed by MB at Vienna on 13 December 2018

A more strategic and proactive approach to technological development is needed, including in the area of internal security. The current situation, where the internal security actors are slowly reacting to changes by means of having only a splintered overview of relevant developments and their implications, increases the probability for rash and unplanned reactions and a general sense of lack of control. Europol could assist in countering such risks. For example, an innovation lab established at Europol, or an innovation lab network that consists of Europol's and the Member States' resources, could constantly evaluate the risks and opportunities presented by new technologies, give support to research efforts, innovations and developments and serve as a source of training data as well as a test platform. It could also provide information for the Member States and their authorities by pooling resources and expertise to support a more proactive and information-based decision-making and preparation. The capabilities of the European Cyber Crime Centre (EC3) should be used to the fullest extent and be strengthened further in areas such as analysis, forensics, innovation and cyber crisis management. In particular, Europol's possible role in coordinating cyber investigations that are cross-border per definition should be considered e.g. with regard to cyberattacks.

2. Operational support to Member States

In 2018, Europol developed a High Value Targets (HVTs) and Operational Task Forces (OTFs) concept, which is already operational and is being applied, including throughout the Operational Action Plans. The aim is to tackle the most important organized crime groups by selecting top criminals through risk-based analysis. The selection of the HVTs results from a joint effort by Member States and Europol through a procedure that can be initiated by a Member State or by Europol. Once a target is identified, operational resources are allocated both from Member States and Europol to pursue these targets. This approach takes the form of Operational Task Forces (OTFs) funded by Europol. The OTFs meet regularly to jointly decide and implement a common strategy, in line with the EU crime priorities.

Europol is best placed to form an overall criminal intelligence picture based on the wealth of information it receives from the Member States, its other cooperation partners and its analytical resources. This knowledge should be effectively used to target the top criminals in those organized crime groups that have been prioritized, especially in the context of the EU Policy Cycle. The concept of HVTs should be further developed and supported to continue refocusing operational efforts in fighting those organised crime groups that constitute the highest threat to the internal security of the EU. In this context it should be ensured that financial investigations and asset recovery are integrated to this function in the future, also making use of the future European Financial and Economic Crime Centre (EFECC) at Europol.

3. Legal basis and cooperation with private parties

One of the main challenges for Europol is its interaction with private parties. Its current legal framework largely prohibits Europol from exchanging personal data directly with private parties – such transfers should only occur indirectly via a Member State, third country or international organisation. If Europol receives personal data directly from a private party, it may only process that personal data in order to identify the national authority via which an indirect transfer should take place. There are very limited exceptions to these general rules.

Cooperation with the private sector especially in the fight against cybercrime is essential: electronic evidence of criminal activities taking place online are stored on networks and digital infrastructure spread around the world are mostly owned by private entities; and private companies are at the source of technological innovations that are often misused by criminals online. Private entities have often the expertise and knowledge that is required to identify, investigate and prosecute online criminal activities.

Cooperation with the private sector is also important in the investigation of terrorism and terrorist financing, as private entities hold a lot of information of potential value. The Europol Financial Intelligence Public Private Partnership (EFIPPP) is currently limited in its scope by Europol's inability to exchange personal data with private entities.

Against this background, it is important to re-assess Europol's ability to cooperate effectively with private parties, in particular how well and to what extent the legal framework allows Europol to do so, including exchanging personal data where strictly necessary. This assessment should naturally also cover relevant aspects of the EU's legal framework on data protection as applicable to private parties, as well as other fundamental rights. It would be important to identify, whether there are specific needs in the Member States where further support by Europol would be necessary and what would be required to make this possible in this context.

In the context of access to WHOIS domain name registration data for criminal investigations, for example, Europol currently is limited in the extent to which it can facilitate the cooperation between EU law enforcement authorities and the Internet Cooperation for Assigning Names and Numbers (ICANN), domain name registries and registrars. Such a role for Europol could facilitate the cooperation between these entities, e.g. on the basis of a common European web-platform to obtain access to non-public WHOIS databases. However, such a role would currently be very difficult to align with the legal basis that only allows for Europol to process personal data for the facilitation of the exchange of information between Member States, Europol, other Union bodies, third countries and international organisations, but not with private parties. ICANN, domain name registries and registrars that administer WHOIS records, are considered a private party under the form of a corporation and are thus not covered.

The role of Europol and its Internet Referral Unit (EU IRU) could also be stepped up in relation to Internet referrals and a more proactive cooperation with the relevant service providers. There is an operational interest to allow for systematic provision of personal data to Europol based on a referral or a proactive takedown of terrorist content. Investigators should have at their disposal a one-stop shop to create, send and receive the results from their requests.

The Finnish Presidency will pursue a discussion on the legal basis of Europol from the point of view of cooperation with private parties at the Law Enforcement Working Party.

4. From data collection to data connection and analysis

Law enforcement authorities are faced with a “tsunami” of information, in all formats and sources. On the other hand, each piece of information could be even better exploited, integrated and analysed and the outcome of the analysis addressed.

At the same time, law enforcement access to information has become more complex: recent changes in data protection are widely welcomed and have made the EU the forerunner in protection of personal data. However, this development has also had consequences for law enforcement. For instance, the conditions under which data may be retained and accessed for the purposes of law enforcement has become more intricate and challenging. At the same time the the case law of the European Court of Justice continues to develop. This is a challenge to the competent authorities of the Member States as well as to JHA agencies such as Europol.

Criminal analysis remains at the core of Europol’s business. Recent assessments carried out by Europol, including in conjunction with the Member States (for example Member States Working Group on Analysis³), have identified the need to strengthen analysis coordination. This could be achieved through enhanced attention to quality output and control, standardisation, training, specialised analysis and a more efficient and flexible reassignment of resources. A more streamlined approach to analysis at Europol is required. Member States could work together with Europol to enhance the standardisation and provide complementarity of analysis.

In line with this, Europol’s Management Board has agreed with the development of a concept for an Analysis and Strategy Coordination Unit at Europol. In close cooperation with the already existing Member States Working Group on Analysis, the preparatory work will focus on addressing the most urgent challenges related to Europol’s analytical output and on enhancing the related services and products delivered to Member States. It is important to continue this work consistently.

³ 9481/19

5. Pooling of resources

As described above, digital transformation, not only of our societies but also of the law enforcement environment, is a fact. As was confirmed during the June JHA Council discussions⁴, the future of EU law enforcement lies in investing in innovation and technology and harnessing its full potential, while centralizing and maximizing, when possible, the use of available technical capabilities, resources and expertise. This would allow for common EU policing solutions tailored to the concrete needs of the competent authorities of the Member States.

An efficient pooling and sharing of resources, especially ones that are very expensive or difficult to procure and that are not necessarily needed for daily use, should be ensured to avoid duplication of effort and to create further synergies and opportunities. Any such efforts must nevertheless respect Member States' national competences, including the allocation of resources. Pooling efforts should be concentrated on areas where Member States require further support. Establishing a Europol pool of guest experts could be an example of pooling necessary expertise. Another example is the development of a decryption platform: this complicated and costly technical tool will serve all Member States and will thus be in constant use, whereas individual, parallel developments at Member State level would incur higher total costs and lead to less powerful, more splintered and less efficient facilities, and their constant use could not be guaranteed. Having a capability at Europol would also ensure access to Member States for whom spending funds on setting up and maintaining such a tool may not be an immediate priority.

6. Integrated approach to security

An effective approach to fighting serious and organized crime and terrorism in our current setting requires an integrated approach to internal security. This should be based on an enhanced multidisciplinary cooperation between relevant actors, following a *whole-of-the-society* approach. This is a dual task: on the one hand it requires even closer cooperation between law enforcement authorities that already, to an extent, cooperate with each other for a common objective. On the other hand, it also calls for an expansion of thinking regarding other non-LE actors that could play a role in safeguarding internal security. In order to be successful, this needs to take place both at the national and at the EU level.

An integrated approach should be further strengthened also in the context of the EU Policy Cycle by nurturing a truly multidisciplinary cooperation and multi-agency approach and by creating stronger complementarity and synergies for concrete operational action. This includes a better integration of key third countries in operational action and its planning by further increasing or strengthening their participation possibilities. In that context, particular attention should also be devoted to advancements in the negotiations of operational agreements with eight key third countries⁵ for which negotiation mandates were adopted in 2018.

⁴ 9027/19

⁵ Turkey, Israel, Tunisia, Morocco, Algeria, Jordan, Egypt, Lebanon

The EU JHA agencies including Europol play a significant role in this development. Europol can act as an operational cooperation platform, including through its extensive multidisciplinary liaison office network that also encompasses many third country representatives. It also has a role to play as a mediator and collector of best practices when it comes to national experiences in multi-agency approach and cooperation with key non-LE partners. It should be discussed whether the role of Europol could be further strengthened in this respect. Better cooperation with regional actors such as Afripol, Aseanapol, Ameripol and especially Interpol with its global reach needs to be ensured to avoid overlaps in relation to resources but first and foremost to guarantee that all relevant information is available to the relevant authorities of Member States. Also in this regard it is time to take steps from a need-to-know to a need-to-share approach.

Member States, Europol and EBCGA have also participated in the further reinforcement of the nexus between internal and external security. Experiences from the cooperation have already been gained among others through the operation of the crime information cell (CIC) created for the military crisis management Operation Sophia. Opportunities for deepening the cooperation should be further explored in the context of EU military operations. This approach should also be extended to civilian crisis management, including by means of implementing the civilian crisis management compacts, where Europol, along with other actors, could have an important role to play.

7. Balancing tasks and resources

In line with the discussions in the June JHA Council⁶, free movement within a common area without internal frontiers needs to be balanced off with a sustainable level of security of and within this common area. Ensuring the security of the external borders is a central objective of the Union and since 2017 the responsibility for the integrated border management is shared between the Member States and EBCGA. However, the efforts made and resources allocated for this purpose need to be in proportion with ones dedicated to the internal security of the Union, including for the functioning of Europol.

A more extensive discussion on the key tasks of Europol should also address resource needs. The areas in which Member States need the most support including specific material or other resources should be identified. Europol as well as other JHA agencies are constantly receiving new tasks, projects and roles, both from the political and the operational level. Currently the discussions concerning tasks and resources often take place in different silos. The nearly impossible equation of limited resources combined with an ever-growing task list should be further addressed. Both COSI and the Europol Management Board should have a clearly defined role in preserving the correct balance between the tasks allocated and resources available.

⁶ 9027/19

If the necessary financial support for Europol to perform all its tasks, both existing and new ones, cannot be guaranteed, a discussion on the prioritisation of tasks from this angle should be started. Since a continuous accumulation of new tasks on top of already existing ones cannot go on forever, attention should be paid to forming a criteria based on which a transparent and balanced prioritisation of tasks can be performed. Besides the necessity to prioritise tasks, it should also be assessed if certain existing tasks or responsibilities could be terminated, merged, consolidated or allocated to other actors.

Questions:

- How do the delegations see the most relevant future challenges and opportunities of Europol?
- What are the key areas Europol should concentrate on?
- How can Europol better support the Member States – and how can the Member States support Europol better?