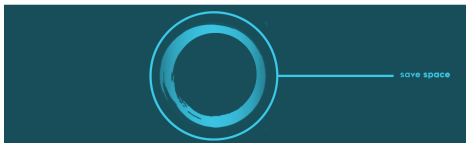

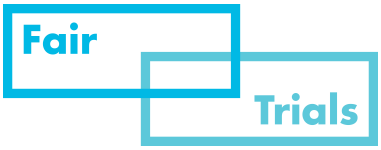

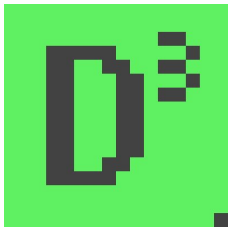

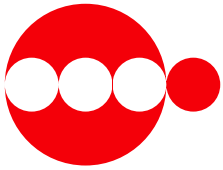

20-10-2021

Subject: Vote on LIBE draft report on the revision of Europol's mandate

Dear Member of the European Parliament,

On Thursday 21 October, you will vote on **the Civil Liberties, Justice and Home Affairs Committee's draft report on the proposal for the revision of Europol's mandate** (2020/0349(COD) and 2020/0350(COD)).

We, the undersigned civil society organisations, **urge you to vote against this report**, as we

believe it fails to adequately address the many shortcomings that the initial Commission proposal contains.

Notably, the report does little to counterbalance the exponential expansion of Europol's operational powers with sufficient democratic accountability, oversight and safeguards to guarantee the protection fundamental rights. **The draft report fails to address the risks that the proposed measures will undermine the right to a fair trial, to privacy and data protection and to non-discrimination.**

Specifically, we urge the European Parliament to support the inclusion of the following safeguards:

- **Mechanisms to ensure that Europol's powers are used in a proportionate way** (prior authorisation, threshold of crime severity and judicial oversight): such mechanisms are critical to protect all EU citizens from the risk of violations of their right o privacy, but also to prevent mass surveillance and protect the rule of law;
- **Guarantee for defence rights:** a key safeguard is the right for suspects and accused persons to obtain details about how the information was gathered, analysed and processed by Europol. This is right is not only necessary to ensure equality of arms, but also to prevent miscarriages of justice;
- **Robust oversight mechanisms:** we welcome the new entities responsible for fundamental rights protection proposed by the Rapporteur and Shadow Rapporteurs, however we fear that the lack of guarantees of independence and the limited resources and powers of the new entities will make them unable to sufficiently exert scrutiny on Europol's day-to-day work. In addition, the powers of scrutiny conferred upon the Joint Scrutiny Parliamentary Group (JSPG) remain ineffective. We urge the European Parliament to demand independent overisght over Europol's activities before considering any further expansion of their operational powers.

Furthermore, the draft report fails to recognise that the proposed mandate is **in complete contradiction with the core elements of the European Parliament's own initiative report on "Artificial Intelligence (AI) in criminal law" adopted two weeks ago, which rejected certain uses of AI-based technologies in criminal procedures and investigations.**

If adopted in the current form, the new extended mandate would give Europol new powers in the field of "research and innovation". In practice, this means that Europol would be allowed to use the vast amounts of data it stores to train algorithms and to push for the uptake of AI-based policing tools (such as big data, machine learning and virtual and augmented reality[1]).

To ensure AI in law enforcement does not exacerbate discrimination, exclusion and structural inequality or impede fair access to justice and procedural rights, Europol's reform should not be pursued until its mandate ensures procedural safeguards, defence rights and robust oversight mechanisms. It should also strictly rule out the use of AI-based technologies that the EP already declared to be unacceptable in our democratic societies.

Lastly, Europol's powers should not be expanded until the Commission's Anti-Racism Action Plan has been duly implemented, especially its section on 'countering discrimination by law enforcement authorities'. Europol's work relies mostly on data transferred by national police authorities that contain racialised stereotypical assumptions.[2] Therefore, new technologies

1 Europol already has some involvement in the development of new technologies. The agency currently participates in three EU-funded research projects (AIDA, GRACE and INFINITY), looking into the use of artificial intelligence, big data, machine learning and virtual and augmented reality for law enforcement purposes.

2 See ENAR, *Data-Driven Policing: The Hardwiring of Discriminatory Policing Practices across Europe*, November

developed by Europol on the basis of this data risk perpetuating discriminatory bias and policing.

We also wish to highlight the risk of the reform being invalidated by the Court of Justice of the EU because Europol's new operational powers go beyond the limits imposed by TFEU Article 88.

We **urge Members of the European Parliament to vote against the report** and to reinforce the safeguards against Europol's unaccountable and opaque powers.

We remain available should you have any question.

Sincerely,

Access Now, International
Asociatia pentru Technologie si Internet (ApTI), Romania
Bits of Freedom, The Netherlands
D3 - Defesa dos Direitos Digitais, Portugal
Dataskydd.net, Sweden
Digitale Gesellschaft, Germany
Državljan D, Slovenia
Equinox Initiative for Racial Justice, International
epicenter.works, Austria
European Digital Rights, International
European Network Against Racism (ENAR), International
European Roma Grassroots Organisations Network (ERGO), International
European Sex Workers Rights Alliance (ESWA), International
Fair Trials, International
GONG, Croatia
Hermes Center, Italy
Homo Digitalis, Greece
IT-Pol, Denmark
Ligue des Droits Humains (LDH), Belgium
Movement of Asylum Seekers in Ireland (MASI), Ireland
Privacy International, International
Save Space e.V., Germany
Statewatch, United Kingdom
SOS Racismo, Portugal
Vrijschrift.org, The Netherlands

2019, available at: https://www.enar-eu.org/IMG/pdf/data-driven-profiling-web-final.pdf