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TECHNICAL
REPORT

Evaluation of the implementation of the Europol Council Decision and of Europol's activities

Emma Disley, Barrie Irving, William Hughes, Bhanu Patruni

Prepared for the Europol Management Board

RAND EUROPE

The research described in this report was prepared for Europol Management Board.

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Preface

This document is the final report of an evaluation of the implementation of the Europol Council Decision (ECD) and Europol's activities. It has been commissioned by the Europol Management Board (MB) according to Article 37(11) of the ECD.

The objective of this evaluation, as defined by the MB, is to conduct an independent and external assessment of the way in which Europol has implemented the ECD and of the impact of the ECD and the legislative framework in which Europol operates on the programmes and activities carried out by Europol. The evaluation may inform decision making about the content of a future Europol Regulation.

This evaluation is based primarily upon three data sources: interviews with individuals working within Europol and in stakeholder organisations; focus groups with heads of the Europol National Units (ENUs); and a web-based survey whose respondents included law enforcement practitioners in Member States and countries outside of the European Union (EU; third States). These data sources were subject to corroboration and validation through a document review. Finally, an Expert Advisory Group, convened for the evaluation, supported the research team in assessing the evidence collected and also supported the drafting of conclusions and recommendations.

The evaluation is conducted at a time of change in Justice and Home Affairs (JHA) within the EU. A number of initiatives and developments relating to European law enforcement cooperation are in progress, and a new legal basis for Europol (contained in a future Regulation), is anticipated.

This report is written for the Europol MB, but may be of interest to EU and national level policymakers and practitioners operating in the field of international law enforcement cooperation, as well as researchers and scholars in this field.

This evaluation has been conducted by RAND Europe in partnership with BlueLight Global Solutions.

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List of abbreviations

AWF	Analysis Work File
CEPOL	The European Police College
COSI	Standing Committee on Operational Cooperation on Internal Security
CSDP	Common Security and Defence Policy
DPO	Data Protection Officer
EC3	European Cyber Crime Centre
ECD	Europol Council Decision
EEAS	European External Action Service
EIS	Europol Information System
ENU	Europol National Unit
EPE	European Platform for Experts
EU	European Union
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
HENU	Head of Europol National Unit
IAF	Internal Audit Function
IAS	Internal Audit Service
JHA	Justice and Home Affairs
JSB	Joint Supervisory Body
JIT	Joint Investigation Team
MAOC-N	Maritime Analysis and Operation Centre
MB	Management Board
MBS	Management Board Secretariat
OCTA	Organised Crime Threat Assessment

SIENA	Secure Information Exchange Network Application
SOCTA	Serious and Organised Crime Threat Assessment
TEU	Treaty of the European Union
TFEU	Treaty on Functioning of the EU

Executive summary

Europol is the European Police Office – an international police organisation formed to promote and strengthen cooperation among law enforcement agencies in the European Union (EU). Europol's mandate includes terrorism and serious and organised transnational crimes affecting two or more Member States, including drug trafficking, terrorism, illegal immigration, human trafficking, cybercrime, financial crime and counterfeiting.

As a result of the Europol Council Decision (ECD), from 1 January 2010 Europol has been transformed from an intergovernmental organisation, established by a Convention,[1] to an EU entity funded from the general budget of the EU. Although the ECD is a fairly recent instrument, Europol will be given a further new legal basis within the next two years in a Europol Regulation.

This report sets out the findings from an evaluation of Europol. The objective of this evaluation was to conduct an independent and external assessment of the way in which Europol has implemented the ECD, and of the programmes and activities carried out by Europol. In addition, the evaluation assesses the impact of the ECD and the legislative framework on Europol's performance, and identifies the strengths and weaknesses of the ECD in order to inform decision making about the content of a future Europol Regulation. The evaluation looked at 40 research questions, specified by the Europol Management Board (MB). This short summary presents an overview of the evaluation and its main findings and conclusions.

Data collection and approach to the evaluation

Four data collection activities were employed in this evaluation: a document review; focus groups; interviews and a web-based survey. The research approach ensured that information was gathered from a wide range of stakeholders, strengthening the balance and breadth of perspectives, including stakeholders in Europol, other EU agencies, Member States and third States.

The limitations of the research approach stem from the scarcity of data such as statistical, financial and administrative reports, legal analysis and case histories which test, challenge and validate the expert judgements and stakeholder opinions collected through focus groups, interviews and the web-based survey. In most cases where validation was sought

[1] Europol Convention O.J 1995, C 316/2

but not obtained, it appears that such information does not exist in a readily available form and could not be generated within the scope of this research.

Another limitation stems from inviting evaluation participants to select which of the 40 questions to discuss or respond to in the time available. In part this provided an opportunity for participants to select those questions on which they were most knowledgeable. However, this approach also means that some questions were more popular than others, and more data has been collected on some issues than on others.

The evaluation team has drawn conclusions and recommendations on the basis of the data collected or otherwise available. Inevitably, therefore, some of the conclusions articulate the need for further, in-depth investigation and other conclusions are tentative or include some caveats.

The evaluation found very positive views among stakeholders: Europol is perceived to be fulfilling its mandate.

Overall, the findings of this evaluation suggest that Europol's stakeholders at Member State and EU-level increasingly see Europol as operationally relevant. The question 'To what extent has Europol fulfilled its objective under the ECD … to enhance law-enforcement cooperation at EU level?' received the most positive response among respondents to the web-based survey administered as part of this evaluation, and there was near unanimity among interviewees and focus group participants that the support provided by Europol has added value to Member State law enforcement.

Europol's network of liaison officers, the platforms that Europol provides for information exchange with and between Member States, and Europol's speciality criminal intelligence analysis, are some of the services which are perceived to add value to Member States and make the support offered by Europol unique. The ECD has not had a significant impact on these factors or the day-to-day support that Europol provides to Member States. Rather, the ECD grants Europol a new legal basis which can be amended more easily in the future, without ratification by 27 Member States, in preparation for a Europol Regulation.

Many of the issues raised in the evaluation demonstrate an underlying tension stemming from the fundamental design principle of Europol.

The tension is between, on the one hand, the desire for Europol to be more operationally supportive to Member States and improve its operational focus, but on the other hand, an insistence on the primacy of Member States. As stated in the Treaty on Functioning of the EU (TFEU), Europol's *raison d'être* is to support Member States' law enforcement authorities and it has no coercive powers. Whether Europol is effective and has an impact is determined largely by the policies and actions of Member States which provide Europol with information and decide whether to use Europol's outputs and expertise in domestic law enforcement. Although some interviewees saw the advantages of a proactive Europol with executive powers, the consensus was that the current design principles would be maintained: Europol would not be granted executive powers and would continue to operate through its relationships with Member States.

The gatekeepers to this relationship are the Europol National Units (ENUs). Given the variation between ENUs in different Member States, this report recommends taking action to increase homogeneity in the operation of ENUs through the possible inclusion in a

future Regulation of a system for reviewing the activities of ENUs and arrangements for identifying and sharing good practice in their regard.

The evaluation has identified a number of key issues for further, in-depth analysis.
As is expected from an evaluation which addressed such a large number of research questions covering such a wide range of research topics, some of the conclusions and recommendations call for further, in-depth analysis of issues which have been identified as important, but where focused work is needed to arrive at a precise definition of the problem or to understand practical and legal implications. For example:

- evaluating whether and how the requirement contained in Article 8(4) of the ECD (for Member States to share information with Europol) is implemented, and therefore identifying opportunities for enforcing the Article 8(4) call for information supply more effectively;
- understanding the scope for further involvement by Europol in Joint Investigation Teams (JITs);
- collecting information about the impact of the Staff Regulations on Europol's operations; and
- identifying any possible ways in which the current process of negotiating operational agreements could be streamlined in preparation for a new Regulation.

Opportunities, risks and challenges for Europol.
This evaluation has taken place at a time of significant changes in the area of Justice and Home Affairs (JHA), a number of which are described here:

- Reform to the legal basis for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) has been recently completed and is now in the process of implementation, and amendments to Eurojust's legal basis and competency are likely. Reforms to Frontex, Eurojust and Europol introduce risks of duplication, overlap and lack of coordination. Cooperation between the European External Action Service (EEAS) and Europol is at an early stage of development, but there are many opportunities for future partnership.
- Supervision of JHA agencies is increasingly under discussion and the role of the European Parliament in this respect is likely to be developed in the coming years. Many benefits could flow from parliamentary supervision, but at the same time there are concerns about the supervision of operational matters.
- The climate of austerity means restrictions on Europol's budget and the possibility of severe cuts to the budgets of national law enforcement agencies. However, at the same time Member States' demands for support from Europol are growing, and Europol's status as an entity of the EU has led to increased requests for analysis and other forms of support from the European Commission and Council working groups.

Given this environment, some of the conclusions of this evaluation relate to the way in which Europol monitors its environment in order to have the best possible information about the risks, opportunities and demands coming its way. For example:

- Europol should continue to monitor closely the demands placed upon it by EU and Member State stakeholders;
- the risk of overlap, duplication and even contradiction with other JHA agencies should be monitored, as should proposed changes to other agencies;
- consideration should be given to developing a strategy which anticipates future changes to how Europol is held to account, and in particular, possible changes to the role of the European Parliament.

The evaluation draws up a short list of possible changes to Europol's legal basis to facilitate information sharing and improved data management.

While the evaluation does not support the proposition, advocated by some participants in the research, of imposing information-sharing obligations on Member States, some changes are recommended. These are listed briefly below, with important limitations and caveats explained elsewhere in the report.

- Consideration should be given to removing statutory definitions of separate data processing systems in a future Europol Regulation, in order to introduce flexibility regarding the design of processing environments.
- Consideration should be given to amending the provisions in Article 25(4) of the ECD to possibly allow Europol to share personal data gathered from publicly available sources with third parties where there is no operational agreement, provided that certain safeguards and conditions are met.
- Consideration should be given to amending Article 10(3) of the ECD in order to allow new systems for processing personal data to include sensitive, personal data, with the necessary data protection safeguards.
- Consideration should be given to the possibility of permitting direct information exchange with private entities in some prescribed circumstances.

Of all the evaluation questions, issues regarding Staff Regulations at Europol received the most negative response.

There was a strong consensus that the EU Staff Regulations are not fit for purpose and that they impede the ability of Europol staff to support 24/7 operational policing in Member States. As well as a need for better quantification of the impact of the Staff Regulations, the following recommendations were made by the evaluation team relating to staffing at Europol.

- Europol should consider whether it is making best use of law enforcement officials who have worked in Europol and have now returned to their Member States – such individuals could play a role in awareness-raising.
- An analysis of the incompatibilities in career progression structures between Europol and national law enforcement authorities should be conducted to allow

Europol to work with Member States to ensure that there are incentives for the most highly skilled law enforcement officers to spend time at Europol.

The evaluation identifies some areas in which Europol's competency could be expanded. The evaluation expresses caution regarding potential extensions of Europol's mandate. Article 88 TFEU states that Europol should support Member States, and the principle of subsidiarity is important in evaluating potential changes to Europol's mandate. Further, there is a risk that any evidence collected by Europol would not comply with Member State-level procedural rules governing the admissibility of evidence, which would diminish the value of such information for operational law enforcement within Member States. With these caveats in mind, the report includes the following two recommendations:

- the future Europol Regulation should provide greater powers for Europol to support investigations and operational activities, possibly with a capability to provide funding;
- the decision to host the European Cyber Crime Centre (EC3) at Europol will create new demands upon the organisation. The European Commission should evaluate whether Europol's current legal framework enables an EC3 to fulfil its objectives and carry out planned activities.

More information about each of these recommendations and conclusions can be found in the report summary, and in each of the substantive sections of the report.

The evaluation has focused on the implementation of the ECD and the activities carried out by Europol. It has engaged with a range of stakeholders in relation to topics spanning Europol's function, legal basis and activities. This report is complemented by recent debates in the Standing Committee on Operational Cooperation on Internal Security (COSI) on the future requirements of Europol in the context of the European Internal Security Strategy. These debates seek to develop a 'visionary approach on Europol's future role and tasks'. Many of the issues identified and explored in this evaluation are articulated in those debates.

Summary of findings, conclusions and recommendations

This section of the report provides a summary of the key issues, conclusions and recommendations made in each chapter.

Chapter 3: Europol's effectiveness, legal basis and status as an entity of the EU

The establishment of Europol as an entity of the European Union is an important, symbolic change.

The Europol Council Decision (ECD) places Europol at the heart of Justice and Home Affairs (JHA) and the internal security agenda of the European Union (EU). On the basis of a strong consensus among interviewees, the evaluation concludes that this is an important symbolic change (particularly noted by interviewees outside of Europol, in the European Commission, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Eurojust and Interpol). Downsides to becoming an entity of the EU were identified. There was disagreement between interviewees within Europol and in the European Commission as to whether Europol could derogate, where necessary, from Staff Regulations which apply to EU agencies. There was also a perception among interviewees that there had been an increase in bureaucracy since becoming an entity of the EU, although this perception was not quantified or supported by external sources of evidence.

A range of stakeholders at European Union and Member State level reported positively on Europol's work and operational effectiveness.

Evidence from participants in this evaluation, supported by statistics relating to Europol's activities and presence in the media, indicate that Europol is becoming increasingly visible to law enforcement personnel across the EU, and is increasingly operationally relevant – this is a trend which pre-dates the ECD.

Europol's legal basis is more flexible, but changes introduced by the European Council Decision have not had a significant impact on Europol's ability to support Member States' law enforcement authorities.

The ECD was intended to transform Europol from an intergovernmental organisation into an entity of the EU. Europol's legal basis can now be adapted more easily to changing circumstances because it does not require ratification by all national parliaments.

However, on the basis of a consensus view among interviewees working in and with Europol, the evaluation concludes that the ECD has not had a significant impact on the support which Europol offers to Member States, even though, for example, changes to Europol's competency were welcomed.

Europol offers a range of distinctive services and capabilities which add value to Member States.

Interviewees suggested a number of ways in which Europol provides unique services. The network of liaison officers (where Europol's comprehensive coverage across the EU 27, as well as a significant number of third States, is unique), Europol's capabilities in analysis and coordination, its systems for information exchange, the provision of technical and logistical support and support for Joint Investigation Teams (JITs) were listed by interviewees.

In spite of the availability of a formal framework for determining its priorities, Europol faces challenges in aligning them with those of its stakeholders.

Participants in the evaluation identified that Europol has many stakeholders or 'addressees' of its activities, including Member States, the European Commission, other EU agencies and groups such as the Standing Committee on Operational Cooperation on Internal Security (COSI). Europol plays a central role in the EU policy cycle, providing the Organised Crime Threat Assessment (OCTA) (Serious Organised Crime Threat Assessment [SOCTA] from 2013) as a key input, thus significantly influencing the EU internal security agenda. As an entity of the EU, Europol must ensure that it is responsive to its EU stakeholders such as the European Commission and European Parliament while maintaining strong links with Member States. This will be challenging, especially as Europol's role develops and its perceived utility to stakeholders grows. The evaluation team agrees with interviewees who commented that responding to this challenge will depend upon a shared understanding of Europol's role, and where it adds value.

Europol should continue to monitor closely the demands placed upon it by European Union and Member State stakeholders.

Given the evidence of increased demands upon Europol and the risk (identified by experts within Europol) that it may be necessary to take prioritisation decisions, the evaluation team suggests that through analysis of the information and intelligence that it holds, Europol could more systematically articulate the implications of these demands for priority setting and its ability to focus on defined priorities. These should be communicated to key stakeholders and decision makers, and ultimately should be taken into account by the Management Board (MB), which is responsible for approval of the work programme and the budget. Strategies for responding to increased demand should be drafted and communicated to key stakeholders and decision makers, so that the implications of different staffing and resourcing scenarios are clear.

There is concern about the appropriate level of input by the European Commission and the European Parliament in operational matters at Europol.

Europol operates, and will always operate, within the wider institutional and political environment of the EU. However, there was broad agreement among interviewees, as well as among members of the Expert Advisory Group, that involvement of the European Parliament (and to some extent the European Commission) in operational decisions and

priority setting should be limited, albeit that strategic priorities set by the European Parliament can provide coherence across Member States.

Chapter 4: The commitment from and information sharing by Member States

Increasing information sharing by Member States with Europol remains an important objective for the organisation.

Information sharing with Europol is a responsibility of the Member States. Statistics on the use of the Secure Information Exchange Network Application (SIENA)[2] and the Europol Information System (EIS),[3] as well as interviewees' views, provide evidence of increasing information sharing with Europol. However, there was widespread agreement across participants in this evaluation that Member States should share more information in a more timely fashion. Europol's ability to show added value as an information hub is dependent upon information shared by Member States.

The ability to use the Secure Information Exchange Network Application (SIENA) to exchange information regarding crimes that fall outside Europol's mandate was greatly valued by those in operational roles.

The extent of bilateral information exchange between Member States using Europol's systems provides further evidence of the potential for greater information sharing. However, the ability to communicate bilaterally and to use SIENA to communicate regarding crimes which are not formally part of Europol's mandate (a possibility that was introduced by the ECD), was welcomed by interviewees. The evaluation found that the provision of such information exchange tools is an important way in which Europol is perceived to add value in Member States.

The evaluation identified a number of possible barriers and inhibitors to information sharing, but further work is needed to test the importance of these within Member States.

The research participants put forward a range of hypotheses as to why more information is not shared. These included: a lack of knowledge, time and awareness; a cultural reluctance to share sensitive information; and dependence upon the attitudes and sharing behaviours of individual law enforcement officials within Member States. It is beyond the scope of this evaluation to assess whether, and the extent to which, these factors play an inhibiting role in information sharing.

Europol is devoting resources to improving awareness within Member States in order to improve information sharing.

Awareness-raising events are conducted within Member States on request and attended by Europol staff. Europol publicises its operational activities and successes, and anecdotal evidence indicates that this increases trust and information sharing. The use of awareness campaigns was supported by the majority of participants in the evaluation because they were a route to demonstrate Europol's worth to Member States. In this regard, many

[2] SIENA allows the exchange of operational and strategic crime-related information amongst Member States, Europol and Europol's cooperation partners.

[3] The EIS stores personal information about those suspected or convicted of Europol crimes, and about people for whom there are serious grounds for believing they are likely to commit such crimes in the future.

realised that simply performing well was not enough; it was necessary also to market achievements effectively.

The evaluation does not support the proposition, advocated by some research participants, of imposing information-sharing obligations on Member States.

One solution to low levels of information sharing, proposed by some participants, was to impose an information-sharing obligation on Member States beyond the requirement of Article 8(4) of the ECD. Having assessed the arguments made for and against such an obligation, the evaluation team conclude that such an obligation would be difficult to enforce and would risk damaging trust relationships with Member States. However, softer measures, short of a statutory information-sharing obligation, were suggested by members of the Expert Advisory Group and could be explored – including investigating whether COSI could offer any support in improving information sharing and communicating intelligence requirements more clearly.

RECOMMENDATION 1: There is a strong case for evaluating if and how the Article 8(4) requirement is used currently with a view to enforcing its application more effectively. Europol should 'map the gaps' in strategic information needed for the SOCTA/OCTA and in operational information needed for investigations. Europol should build upon existing approaches to communicating information gaps and should identify proactively key influencers and devise professionally designed and implemented communication strategies. The possible advantages and disadvantages of communicating information needs to COSI should be specifically investigated in addition to the role played by MB members and Heads of Europol National Units (HENUs) in communicating information needs.

Some research participants advocate the imposition of stronger obligations on Member States to act upon information provided by Europol.

Mirroring the conclusions regarding information sharing, the evaluation team conclude that any additional obligation to act on information provided by Europol would not be feasible, now or in the near future. Member States' law enforcement authorities have absolute discretion about how to prioritise and deploy resources. However, the evaluation team notes the view of some interviewees that there is potential for Europol to be more proactive in stimulating collaborative relationships with Member States, and to use its current ability fully to invite Member States to start investigations.

RECOMMENDATION 2: Europol should make best use of the ability to request that Member States initiate an investigation in cases where two or more Member States are involved. Measures might include: communicating the timeframe in which an investigation is needed; requiring explanations to understand why an investigation is or is not initiated; communicating this feedback to key influencers in Member States and at EU level; using this feedback to improve its support to Member States; monitoring the impact of failures to act upon information as well as the benefits of doing so; and understanding the practical, policy and legal barriers faced within Member States.

There are calls for Europol to have greater resources to fund operational activities in Member States.

The existing abilities to fund operational meetings and to provide funding for investigations in the area of Euro counterfeiting were seen by interviewees in operational

roles (such as liaison officers and HENUs) as examples where Europol adds value. If more funding were available, this could encourage and enable Member States to act on information provided by Europol. On the grounds that there was a strong consensus on this issue among participants, the evaluation concludes that currently Europol has insufficient powers to fund investigations and operational activities in Member States, and that this is an obvious and direct way to incentivise Member States to act on information provided by Europol.

RECOMMENDATION 3: The future Europol Regulation should provide greater powers to fund investigations and operational activities, where two or more Member States are involved, either in counter-terrorism activities, serious crime or in crime affecting a common interest covered by an EU policy, as a route to encouraging Member States to act upon information provided by Europol.

Currently, Europol has adequate capacity to respond to and analyse the information shared by Member States, but careful and constant prioritisation will be needed in the future.

Interviewees from the European Commission and within Europol raised questions about the capacity of Europol to respond to future demands for information processing and analysis. So far, Europol has accommodated increased demand for data processing through prioritisation and efficiency savings. Data about trends in information sharing with Europol, reviewed as part of this evaluation, indicate that demand will increase over the next five years, with more information being shared, the involvement of Europol in more JITs and increasing requests from Member States. It is likely that this will require an increase in the number of Europol staff involved in data processing and analysis. However, the European Commission has indicated that staff costs should be reduced by 5 per cent by 2018.

A number of European Union-level initiatives offer opportunities for Europol to increase cost-effective information collection.

While not directly addressed by any of the 40 research questions, and thus not mentioned by participants in the evaluation, members of the Expert Advisory Group highlighted initiatives such as the development of the European Police Records Index System (EPRIS) and the Swedish Framework Decision (regarding information exchange for the purposes of criminal investigation and criminal intelligence operations). Members of the Expert Advisory Group note that Europol is already involved in some of these initiatives, and have suggested that they could provide a cost-effective way for Europol to access relevant information in an efficient way within the scope of data protection rules and safeguards. The Europol Data Protection Officer (DPO) should be consulted about any changes.

RECOMMENDATION 4: Where Europol is currently participating in activities such as the Swedish Framework Decision (as well as others that aim to enhance information sharing), it should consider the scope for proactively identifying additional opportunities for linking data systems, as well as the implications for its activities and relationships with Member States. The DPO should be closely involved to support Europol in order to best use these opportunities while maintaining its rigorous data protection standards.

Variation in the size, location, staffing and resources of Europol National Units impacts upon their performance and effectiveness.

Participants from a range of stakeholder groups noted Europol's reliance upon Europol National Units (ENUs) for information exchange and to ensure that actionable criminal intelligence is communicated to Member States' law enforcement authorities. Because the form and structure of ENUs is a matter for Member States, there is considerable heterogeneity among ENUs. Assessment by the Expert Advisory Group of the differences between ENUs, as well as the views of interviewees and survey respondents, leads to the conclusion that there is a need for greater harmonisation and more consistent sharing of good practice among ENUs. In particular, the experience and seniority of HENUs is too variable, as is the positioning of ENUs and their links with national law enforcement agencies.

RECOMMENDATION 5: Consideration should be given to the inclusion in a future Regulation of arrangements for identifying and sharing good practice regarding ENUs, formalising the non-binding good practice guidance currently available. The issues covered might include: the seniority and experience of the HENU; positioning of the ENU within the hierarchy of the national law enforcement authority; and representation of and links to other law enforcement agencies. This might be supplemented by moves to support HENUs in their professional development.

RECOMMENDATION 6: Consideration could be given to the inclusion in a future Regulation of a system for reviewing the activities of ENUs. The possibilities to be explored, among others, include a peer-evaluation system or a system where feedback is provided by Europol.

The extension of Europol's mandate to cover crime that is serious but not necessarily organised was welcomed, but has not had a significant impact on Europol's work.

The inclusion of offences such as murder and violence expanded the range of cases in which Europol can support Member States, but this is not reported by interviewees and focus group participants to have significantly increased the number of cases in which Europol is involved.

Calls for changes to Europol's mandate are not sufficiently supported by the available evidence.

Two specific suggestions were raised by a small number of interviewees. The first was to remove the requirement that two Member States must be affected. The second was that Europol should be permitted to conduct online investigations in relation to cybercrime, as this would enhance Europol's ability to host the European Cyber Crime Centre (EC3) effectively. Whilst only raised by a small number of participants in this evaluation these suggestions were given serious consideration by the evaluation team because they have also been discussed in COSI, having been raised for discussion by the European Commission.

A departure from the requirement that two Member States be affected and the ability to conduct online investigations would constitute significant changes to Europol's mandate. Such changes have implications for the principle of subsidiarity, and there are questions about whether they are permitted under the Treaty on Functioning of the EU (TFEU), which mentions the involvement of at least two Member States and states that Europol should support Member States (rather than conducting its own investigations).

The evaluation concludes that there is insufficient evidence of the benefit of abandoning the two-Member State rule. During the validation exercise Europol confirmed interviewees' views that this is a problem to the extent that, in early stages of an investigation, it can be difficult to tell how many Member States are affected. However, no case histories or other supporting data were provided about cases where Europol thought it should be involved in an investigation but was prevented from doing so by the two-Member State rule.

In relation to the suggestion that Europol might conduct online investigations, the evaluation team acknowledges the risk that evidence collected by Europol during an online investigation would not comply with Member States' procedural rules governing the admissibility of evidence. However, Europol is permitted already to conduct some checking of the internet in certain prescribed situations (under the Check the Web project), and the evaluation team concludes that the establishment of an EC3 at Europol warrants a detailed review of whether such an ability is necessary, as part of a broader evaluation of whether Europol's legal framework enables the work of the EC3. A practical alternative, suggested by the Expert Advisory Group, would be for Member States to post law enforcement officers to Europol to work on EC3 operations, utilising their own legal powers in an enlarged JIT.

RECOMMENDATION 7: The decision to host the EC3 at Europol will create new demands upon the organisation. The European Commission should evaluate whether the current legal framework enables the EC3 to fulfil its objectives and carry out planned activities: for example, to check the internet. In conducting this review, Article 88 TFEU should be taken into account, as should the need to comply with specific Member State procedural rules regarding the collection of evidence. If Europol's legal basis is not sufficient for the needs of an EC3, the European Commission, engaged in negotiations with the Council and the European Parliament, should evaluate the merits of including new powers in the future Regulation (with appropriate safeguards for data protection) or whether national law enforcement (and other) experts should be hosted within the EC3.

Chapter 5: Europol's competency and involvement in Joint Investigation Teams

There is insufficient evidence to support a move to a general definition of competency, rather than the prescribed list defining the specific types of crimes falling within Europol's mandate.

The evaluation did not identify any instances where Europol wanted to support a Member State but was unable to do so because the offence in question was beyond its mandate. The list of Europol crimes does not stand alone (for example, it is also related to offences over which Eurojust is competent), which amplifies the potential implications of changes to the list. While some interviewees thought that the list was not sufficiently flexible, it includes 'related offences' and Article 10(4) of the ECD permits Europol to process data for the purpose of determining whether such data are relevant to its tasks. Therefore, the evaluation team, advised by the Expert Advisory Group, does not recommend changing the approach to Europol's competency as currently defined.

Europol formally participates in a small number of Joint Investigation Teams, but there is a perception that it adds value where it does participate.

Few participants had experience of JITs. The views of participants, along with statistics showing the proportion of JITs in which Europol is involved, strongly suggest that there is scope for Europol's greater involvement in JITs. However, the evaluation did not identify case histories or other verifiable evidence as to the value which could have been added through Europol's participation in a particular JIT. Further, the evaluation gathered only limited evidence as to steps which could facilitate Europol's greater participation. Suggestions included a greater awareness among national law enforcement, as well as reducing the administration and bureaucracy involved in Europol's participation in a JIT.

It could be helpful to understand the scope for extending Europol's involvement in JITs.

In particular, it needs to be established whether there are JITs from which Europol is currently excluded but could have played a useful role. Through detailed case review the reasons for Europol's non-involvement in JITs could be identified and remedied, for example, by simplifying administrative processes and improving awareness about how and to what extent Europol can add value to JITs.

Chapter 6: Information management, data systems and analysis

Provisions in the Europol Council Decision which enabled Europol to access other data systems and to create new systems processing personal data have not been used yet.

Two possible reasons why new data systems have not been created were highlighted by participants. The first is that there has not been an operational need for a new system, as existing systems have been adequate. The second is that restrictions prohibiting the inclusion of sensitive personal data have acted as a barrier to creating new systems. Discussions with Europol during the validation stages of this evaluation indicate that there has not been a pressing need to establish new data systems – no interviewee or other participant was able to point to an instance where a new data system was needed or considered. However, there is support from experts within Europol – including from the DPO – for the proposition that the restriction on sensitive personal data might act as a barrier in the future, which could be removed while abiding by Europol's high data protection standards. Provision 14(1), which permits sensitive personal information to be included in Analysis Work Files (AWFs) when 'strictly necessary', could provide a guide.

RECOMMENDATION 8: Consideration should be given to amending Article 10(3) of the ECD in order to allow new systems for processing personal data to include sensitive, personal data, with the necessary data protection safeguards. Amendments to Article 10(3) should be based upon assessments of likely future needs for new data systems. Provision 14(1), which permits sensitive personal information to be included in AWFs when 'strictly necessary', could provide a guide.

There is a case for removing the language of 'data systems' and adopting a more flexible 'privacy by design' approach.

The ECD names specific information processing 'systems' (AWFs, EIS and Index Function) and specifies details of their design. The prescription of separate 'data systems', each with tailored, separate rules regarding content and use, was criticised by some research participants as being insufficiently flexible and inhibiting analysis. Interviewees with expert

knowledge of analysis at Europol reported difficulties in drawing information from separate systems into a single analysis product. Others argued that different rules regarding the content of each system were unnecessarily complicated.

In order to make an assessment of these views, the evaluation team sought an opinion from the Europol DPO and a member of the Joint Supervisory Body (JSB). Both argued in favour of maintaining the status quo to the extent that there should continue to be separate rules regarding the information stored in each database.

However, the DPO and the JSB thought that, provided essential protections were in place, it might be possible and desirable to move to a 'privacy by design' approach.

Therefore, the evaluation team concludes that there are sufficient grounds for further scoping work to investigate removing the language of 'data systems' and adopting a 'privacy by design' approach. The evaluation team notes that this would be a substantial design change, and that considerable further work would be necessary to articulate data protection standards. Additionally, scoping work could consider the impacts on the trust which national law enforcement officials have in Europol's data protection regime, as well as the impacts of such a change on the workload of Europol analysts.

RECOMMENDATION 9: In order to increase the flexibility of the processing environments available to Europol, consideration should be given to removing the statutory definitions of separate data processing systems or databases in a future Europol Regulation. Instead, a 'privacy by design' approach could be adopted, where procedural safeguards and strong data protection rules permit data protection standards tailored to different types of information.

This would require significant design changes and, as such, there should be a thorough risk assessment, including: ascertaining whether system integration and interoperability for analytical purposes could be achieved by current technological means while preserving the spirit of the controls invested in each of the individual databases; examining the impact (positive or negative) on information sharing by Member States; and the potential financial costs to Europol of making such a change.

Data protection provisions in the Europol Council Decision inhibit the sharing of personal data from publicly available sources with third States with which Europol does not have an operational agreement.

Article 25(4) of the ECD specifies that personal data from publicly available sources must be treated like personal data which has been collected from protected law enforcement sources, and this was seen as unnecessary by several interviewees. The DPO confirmed that it is frequently approached on this topic and advocated a change to Article 25(4).

In assessing these proposals the evaluation team takes into account the argument that merely the distribution by Europol of such information lends it a greater weight and significance. The evaluation team and Expert Advisory Group agree that by processing such information Europol could appear to validate the data and imbue it with an unintended value. There are also concerns stemming from the different substantive and procedural rules in Member States, some of which might be infringed if Europol were to distribute publicly available information about individuals. Both these arguments were cited by an interviewee from the Europol JSB, who opposed any change to Article 25(4).

However, alternative interpretations to Article 25(4) restriction were noted by the DPO. The evaluation team and the Expert Advisory Group think consideration should be given to recommendations by the DPO for amendments to Article 25(4).

RECOMMENDATION 10: Consideration should be given to amending the provisions in Article 25(4) of the ECD which might allow Europol, within the framework of Article 88 of the TFEU, to share personal data gathered from publicly available sources with third parties where there is no operational agreement, provided that certain safeguards and conditions are met: for example, that data are communicated in their original format or by referencing only, and accompanied by clear caveats around the value that should be given to it. Consideration must be given to understanding whether and to what extent data can be verified and used during investigations or criminal proceedings.

Chapter 7: Europol's data protection regime, the Data Protection Officer and the Joint Supervisory Body

The Europol Council Decision has not had an impact on the further development of a European Criminal Intelligence Model or on Europol's analysis capability.

The provisions of the ECD do not refer directly to the powers or capabilities regarding intelligence analysis, and participants in the evaluation did not identify any indirect impacts.

Europol is perceived to have a unique and robust data protection regime that is trusted by stakeholders.

The ECD did not make any changes to Europol's data protection regime. Analysis of interviews, focus groups and the web survey indicates a high level of support for Europol's specific data protection regime. The robustness of the regime is important for developing trust with Member States, as they share information with Europol.

Specific instances of strong cooperation with the Data Protection Officer were reported.

Interviewees within Europol gave examples of working collaboratively with the DPO. The development of the new AWF concept was one project in which the DPO had been extensively consulted and involved. The DPO reported that a more structured approach has been introduced recently for seeking data protection guidance, advice and best practice at an early stage.

Interviewees within Europol indicated few examples where they considered the correct balance between Europol's requirements and the interest of data protection had not been achieved.

Procedures relating to legitimate access to staff data by senior managers and the process of installing closed-circuit television (CCTV) at Europol headquarters were mentioned as examples where the balance was too far towards the protection of data subjects.

There was strong endorsement of the value of an independent Data Protection Officer, but a few interviewees expressed concerns about its functional independence.

A small number of interviewees perceive the DPO's role as located 'outside' the organisation. Consequently the DPO is seen as less able to act as adviser and consultant to the Director and the Director is less able to use the DPO as a tool to solve data protection issues internally. However, the DPO does not recognise this perception of the DPO's role.

On the basis of the available evidence, the evaluation team concludes that the current position of the DPO strikes an acceptable balance between independence in function (essential to stakeholder trust in Europol) and offering internal advice. However, noting the opposing views with regard to the functional independence of the DPO stemming from the ECD and how it is interpreted in practice, the evaluation team encourages Europol to take steps to understand further this difference of views, and to work to achieve a shared understanding across the Europol workforce and its stakeholders.

There are several layers of data protection supervision applicable to Europol, which introduces the possibility of duplication.

Europol is supervised by the DPO, JSB and the European Data Protection Supervisor. The need for clarification between these forms of supervision was called for by a small number of interviewees, including those from the DPO.

The Joint Supervisory Body is respected, merging both data protection and law enforcement expertise.

Europol has acted upon previous JSB recommendations, and research participants' reported a high degree of satisfaction with the role played by the JSB. The current situation under which the JSB is funded directly from Europol's budget is not consistent with the ways in which other similar bodies are funded. This anomaly was raised by one interviewee. In the absence of further evidence on this point, the evaluation team flag this as an issue which could be reviewed in the forthcoming Regulation.

Chapter 8: Is Europol a platform for specialist areas and does it pioneer new techniques?

The Europol Council Decision does not have a significant impact on Europol's role in providing specialist advice, equipment and training.

A review of the provisions of the ECD indicates that it did not have a significant effect (in terms of introducing new provisions or abilities) on Europol's status as a centre for specialist advice, training and techniques. There were calls for Europol to support Member States through the provision of high-tech forensic equipment. The kind of assets envisioned here are those which are extremely costly to purchase and rarely required in a Member State. However, being able to call on Europe-wide assets could add value in specific investigations conducted by Member States. The evaluation is unable to conclude how widespread the demand for such equipment is (beyond the few interviewees who raised this issue). Further, no details were provided about the precise nature of the equipment which could add value to Member States. Thus any response to this suggestion should begin with a systematic assessment of the stated needs of Member States for equipment or support, as well as seeking to identify future needs and requirements.

In order to respond to future developments, Europol must ensure that it has staff with relevant technical and specialist knowledge.

The future creation of an EC3 at Europol is an example of where Europol may need to recruit from a range of non-law enforcement backgrounds.

Chapter 9: Cooperation and partnership

Cooperation with other European Union agencies is clearly beneficial to the achievement of Europol's objectives.

Interviewees from a range of stakeholder groups spoke of the importance of cooperation with Frontex, the European Police College (CEPOL) and Eurojust. The benefits stemmed from strategic cooperation (for example, through meetings of EU agencies), operational cooperation (for example, joint operations with Frontex), and through information sharing (in the context of working agreements or to feed into analytical products).

The Europol Council Decision has had a limited effect on operational cooperation with other European Union agencies.

Europol's status as an EU entity brings it closer to its partner agencies and may enhance strategic cooperation. However, operational cooperation has not been significantly affected. Other developments, such as involvement in the policy cycle, also have enhanced strategic cooperation.

Europol and Frontex have a good level of strategic cooperation, and there is an appetite for closer operational links.

Europol shares common areas of concern with Frontex and there is evidence – for example, the existence of a staff exchange programme – that strategic cooperation with this newer agency is being put into practice. However, there is concern about overlapping functions in relation to the analysis of personal data.

Cooperation with the European Police College in matters of police training has continued as before the Europol Council Decision.

Few research participants commented upon cooperation between CEPOL and Europol. Those who did described a good relationship, guided by a shared understanding of the roles and tasks of each agency.

Europol has strategic links with Eurojust, but these are not always translated into practice.

Eurojust is a key partner for Europol, particularly in the context of JITs. However, few interviewees or web survey respondents commented in detail on partnership with Eurojust. Cultural differences between policing and prosecuting agencies and a lack of information sharing were reported to act as barriers to closer operational cooperation. However, detailed descriptions of how and to what extent these factors have damaged cooperation were not provided by research participants.

Cooperation between the European External Action Service and Europol is at an earlier stage of development, but there are many opportunities for future partnership.

Cooperation between Europol and the European External Action Service (EEAS) is warranted in the context of Europol's relationships with third States, and because threats to Europe's security stem also from countries outside the EU. Opportunities for collaboration and partnership, suggested by interviewees from the EEAS, include the development of information sharing and coordination between liaison officers from both entities.

Reform to Frontex, Eurojust and Europol create opportunities and threats, including risks of duplication, overlap and lack of coordination.

Interviewees expressed concern about Europol, Eurojust and Frontex undertaking increasingly similar and overlapping activities in the area of processing and analysis of personal data, and the Expert Advisory Group agreed, being of the view that criminal intelligence analysis should remain the preserve of Europol. Currently, these are fears about possible future overlapping functions rather than concerns stemming from existing examples of duplication. However, greater cooperation between JHA agencies is likely in the future. Unless reform and development is joined-up, there is a risk that agencies will duplicate work. This is something which requires monitoring.

The risk of overlap, duplication and even contradiction between Europol and other Justice and Home Affairs agencies could be monitored, as could proposed changes to other agencies.

The evaluation team, having taken advice from the Expert Advisory Group suggest that monitoring is a way in which Europol could respond to the threat of overlap with other agencies. Such monitoring would enable an assessment of potential impacts on cooperation and a check on the efficient and effective use of resources. The outputs of these monitoring activities should be communicated to relevant audiences such as the European Commission, Council and COSI, and should be considered in relation to the new legal basis of EU agencies in accordance with the TFEU.

Cooperation with third States was highly valued, but the time and resources necessary to conclude cooperation agreements was a concern.

Interviewees and web survey participants thought that cooperation agreements with third States are an important added value of Europol. However, it is the case that concluding such agreements can take years. This is because Europol must examine the data protection regime in countries and organisations outside of the EU before it can conclude an operational agreement. A small number of interviewees suggested that Europol should be granted more flexibility in information sharing with third States, involving a halfway position between time-consuming and labour-intensive international agreements, and the 'emergency clause' under Article 23(8) and (9) of the ECD.

How such a halfway position would satisfy data protection requirements was not elaborated by evaluation participants. Therefore, this evaluation concludes that the status quo should remain in the absence of a feasible alternative. However, given the amount of time and resources expended on the conclusion of cooperation agreements, there is a strong case for investigating whether and how a more flexible process could be developed.

RECOMMENDATION 11: Given the length of time that it takes to negotiate a cooperation agreement with a Third State, in preparation for a new Regulation analysis should be conducted, closely involving the DPO and JSB, to identify any possible ways in which the current process of negotiating operational agreements could be streamlined, in order to facilitate Europol in transmitting personal data to third States in accordance with its mandate.

In exceptional cases the Europol Council Decision creates a possibility to share information with third States without a cooperation agreement. This has been used only once.

This derogation is set out in Article 23(8) and (9) of the ECD. The derogation was not discussed in detail in any of the interviews, but was raised in a submission from the Europol DPO in later stages of the evaluation. In this submission the DPO called for a clearer articulation of the criteria to be used when the Director exercises the power under Article 23(8) and (9). This point was not raised by other evaluation participants. In the absence of other supporting evidence on this issue, and without analysis of the potential consequences of doing so, this evaluation is reluctant to recommend such a change.

Europol and Interpol have strong strategic links which are increasingly translated into joint operational action.

Heads of Interpol and Europol have strong relationships, and the number of joint activities is increasing each year. Interviewees reported instances in which there is lack of clarity within Member States about when to use Europol or Interpol. The ECD had an indirect effect on cooperation with Interpol, since as an entity of the EU, Europol is perceived to be a more powerful and relevant partner.

The Standing Committee on Operational Cooperation on Internal Security is a new policy forum of relevance to Europol.

Europol has established good links with COSI on the basis of the policy cycle, but there is scope for greater clarity of the division of roles and responsibilities between COSI, European Commission, MB and other groups. The MB has addressed the issue of its relationships with Council structures and should monitor this issue regularly.

Interviewees welcomed the ability to receive information from the private sector, but the requirement that this information should come through a Europol National Unit was considered too restrictive.

The ECD introduced scope for information sharing with the private sector. Europol cannot send information to private entities but can receive personal information from a private entity, only through the ENU in the country in which the entity is based. The vast majority of interviewees who commented on this issue welcomed the ability to receive information from the private sector. Only one interviewee voiced concerns about working with the private sector. However, interviewees thought that the requirement that information should come through an ENU was too restrictive, and called for an ability to receive information from the private sector directly.

In assessing these views, the evaluation team bears in mind that Europol's role is to support Member States (Article 88 TFEU). If Europol were to be able to receive information directly from private entities, it could be considered a departure both from this principle and from the principle of subsidiarity. The evaluation team also notes that the ENU's position as the point of contact with Europol is an important principle in Europol's current framework. This being so, any departure from the status quo would need to be based on good evidence. The current rules are also intended to protect Europol from inadvertently breaching procedural rules governing the collection and processing of evidence in particular Member States. If Europol is to gather information directly from private entities that innovation would have to be carefully managed with this in mind.

However, both the Europol DPO and an interviewee from the JSB offered cautious support for introducing flexibility for Europol to receive information directly from private entities in certain specific circumstances as an exception to the general rule (for example, at the request of Member States). Therefore, the evaluation concludes that there is enough support to warrant further, careful consideration of the proposal in the context of a future Europol Regulation. However, we add a caveat to this conclusion in the form of some suggested safeguards which might accompany such a new capability.

RECOMMENDATION 12: Consideration should be given to the possibility of permitting direct information exchange with private entities, keeping in mind the role of Europol in Article 88 TFEU and the need for compliance with procedural laws in Member States. Direct exchange would be permitted in certain prescribed situations and Member States should be kept informed. The evaluation team supplements the views of interviewees and the DPO by suggesting the following safeguards for consideration:

- JSB approval and supervision;
- formal memoranda of understanding as the basis for exchange;
- transparency as to the information exchanged;
- Member States would need to be informed;
- restrictions related to whether the data were lawfully collected;
- purpose limitation (information collected for commercial purposes); and
- checks on accuracy.

Collaboration with researchers and academic institutions is not fully developed at Europol, but could add value to the organisation.

A small number of interviewees raised the issue of cooperation with academics and researchers. At present it appears that there is no effective means for Europol to engage with academic and other research bodies, or to compose and drive its own research and development agenda.

Chapter 10: Human and financial resources

Concerns were expressed about the new financial regime: there is a widespread view that Europol devotes more resources to administration after the Europol Council Decision.

While the new financial systems have eased the workload of a minority of interviewees, the majority who spoke on this issue considered the financial regulations to be more complicated and less responsive to operational needs than the pre-ECD regime. However, interviewees from the European Commission stressed the importance of harmonising internal regulation and a common approach to EU-funded agencies. Overall, there is a perception that Europol is becoming a more bureaucratic organisation and devotes more of its staff resources to administration after the ECD. No accounting data or other analysis were available to support or disprove this.

As an entity of the European Union, Europol must draw up its budget more than a year in advance of its implementation, which makes it difficult to arrive at accurate estimates of likely expenditure.

There is a perception among MB members that the MB has less time to approve and discuss the budget. No tangible implications of this were highlighted to the evaluation team. However, members of the Expert Advisory Group agreed that a planning cycle initiated long before its implementation is less likely to result in a budget and work programme that are suited to the needs of Member States at the date of implementation.

Staff Regulations relating to overtime are not fit for purpose.

While Europol can operate largely within the existing Staff Regulations, the inability to deploy staff, except on a voluntary basis, outside of core hours prescribed by the Regulations remains an important operational barrier. When Europol staff do work out of hours voluntarily to support operational colleagues in Member States, they cannot be compensated for that work. This might diminish trust in Europol and perceptions of Europol's added value. To this extent, the ECD does not allow Europol to manage its human resources effectively.

Europol should collect information about the impact of the Staff Regulations on its operations, which could evidence the case for derogation from some of their elements.

There are mixed views on the rotation principle: while it ensures a close connection with Member States and brings in new ideas, it also means that Europol loses institutional knowledge.

The rotation principle is central to Europol's staffing model. The case for exceptions to the rotation principle is stronger in relation to posts requiring specialist technical skills, which law enforcement officials from Member States might not be able to offer.

One result of the rotation principle is that staff who have been based at Europol return to their home countries. One interviewee questioned what use, if any, is made of these individuals, who could have a role in awareness-raising in their home country. While this suggestion was made by only one interviewee, the idea warrants further consideration since it could provide a cost-effective mode of spreading the Europol 'brand'.

RECOMMENDATION 13: Europol should consider whether it is making best use of law enforcement officials who have worked in Europol and have now returned to their Member State. These individuals could have a role in awareness-raising, and an 'alumni' network could be a useful resource and link to Member States. Rotation at senior levels is a very efficient way of growing trust relations with Member State competent authorities.

National rules regarding employment at Europol are inconsistent, can act as a disincentive to national law enforcement officials working at Europol, and might inhibit Europol's ability to attract the best-qualified staff.

Some Europol staff must step down from their national posts to join Europol, thus interrupting their career in national law enforcement and being prejudicial to their pensions and other benefits. In some cases this also means that they become ineligible to apply for other posts at Europol whilst they are working at Europol, because they are no longer employed by a national law enforcement authority. This can act as a disincentive to apply for Europol posts. As far as possible, career progression at Europol should be compatible with career progression in Member States.

RECOMMENDATION 14: An analysis of the incompatibilities in career progression structures between Europol and national law enforcement authorities should be conducted, accompanied by sensible suggestions for mitigation by the harmonisation and removal of obvious anomalies.

Chapter 11: Governance and accountability

The Management Board continues to strive for consensus, despite the possibility of making decisions on a qualified majority basis.

Qualified majority voting, introduced by the ECD, was an improvement to Europol's governance since it can protect against slow decision making and provides an incentive for MB members to reach agreement. However, decisions taken on a majority basis may indicate a lack of buy-in from Member States, which is not in Europol's long-term interests.

The introduction of the Europol Council Decision, alongside other developments such as creation of the Standing Committee on Operational Cooperation on Internal Security, has implications for the role of the Management Board.

It was mentioned frequently by interviewees in the European Commission and within Europol (including MB members) that the MB needed to clarify and assert its role in the ECD era. An MB Working Group has addressed these points and made proposals for responding to, and managing the demands placed upon, Europol by Council working structures, which the MB endorsed and implemented. The effect of these changes should be regularly reviewed.

Research participants called for the Management Board to shift to a more strategic focus, but concerns of an overly operational or tactical focus have not been fully evidenced.

Some interviewees – including members of the Directorate and MB – wanted the Europol MB to occupy a more strategic role, and to step back from tactical or operational details. Some instances were provided to support this, but there is insufficient evidence on which to draw firm conclusions about the extent to which the MB is acting at a sufficiently strategic level. Importantly, an MB Working Group has considered these issues and set out proposals to create the circumstances which would allow the MB to focus on its core role in determining Europol's strategic direction.

Supervision by the European Parliament is welcomed and has symbolic importance, but there are concerns about future changes to the role of Parliament.

The European Parliament's role in supervising Europol and other agencies in the area of JHA was described by interviewees (from the European Parliament and other stakeholder groups) as being in development in accordance with the process of implementing the Lisbon Treaty. While there is now greater opportunity for engagement and helpful scrutiny, this also gives rise to concerns about the extent to which the European Parliament will be involved in supervising Europol's operational activities. There is an opportunity for Europol to be proactive in providing information about its role and functions to the European Parliament, in order to make the most of parliamentary scrutiny of non-operational issues.

Consideration should be given to developing a strategy which anticipates future changes to how Europol is held to account, and in particular, possible changes to the role of the

European Parliament. This should include the possibility of extended scrutiny by the European Parliament. The potential added value of additional Parliamentary scrutiny should be considered, along with how to maximise it. Additionally, resource implications for Europol (through providing information to the Parliament and increased attendance at hearings) should be considered.

The Internal Audit Function is used consultatively within Europol and is adding value. However, there is a double layer of internal audit.

Potential duplication of internal audit functions, between the European Commission Internal Audit Service (IAS) and the Europol Internal Audit Function (IAF), was mentioned by interviewees who thought it could lead to redundancy and inefficiency. In addition, Europol is subject to external audit from the European Court of Auditors. While it is not uncommon for EU agencies to have an internal and external audit function, Europol has, in effect, two internal auditors.

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PART 1: BACKGROUND AND RESEARCH APPROACH

CHAPTER 1 Introduction and background

Europol is the European Police Office – an international police organisation formed to promote and strengthen cooperation among law enforcement agencies in the European Union (EU). Europol's mandate includes terrorism and serious and organised transnational crimes affecting two or more Member States, including drug trafficking, terrorism, illegal immigration, human trafficking, cybercrime, financial crime and counterfeiting.

Europol has no executive operational authority; all arrests and policing functions are carried out by competent law enforcement agencies within Member States and third States. Instead, Europol acts as a support centre for law enforcement operations, primarily though analysing information to act as an intelligence hub and a centre for law enforcement expertise (Europol, 2009b). Europol has 777 staff[4] based in its headquarters in The Hague.

1.1 Europol's evolving legal basis

The establishment of Europol was agreed in Article K1(9) of the Maastricht Treaty of 1992 on the EU, which provided the first legal basis for police cooperation in Europe.[5] Europol first operated in 1994 as the Europol Drugs Unit, but took on its full activities on 1 July 1999. In 1995 a Convention establishing Europol under Article K3 of the Maastricht Treaty was agreed.[6] The Europol Convention was ratified by Member States in 1998 and made Europol an intergovernmental agency[7] founded as an international organisation with its own legal *acquis*, funded directly by contributions from the EU Member States (Europol, 2009c, p. 55). Europol's legal status and organisation were laid out in Title V of the Convention. This established Europol's system of governance and accountability, ensuring that the Member States had an equal say in how the organisation is run and the strategies that it pursues. During the life of the Europol Convention, three amendments were made (De Moor and Vermeulen, 2010):

[4] Figure reported at September 2011. Includes staff with employment contracts with Europol, liaison officers from Member States and Third States and organisations, seconded national experts, trainees and contractors: https://www.europol.europa.eu/content/page/staff-statistics-159, retrieved 15 June 2012.

[5] For a full description of the history of Europol see Europol (2009c).

[6] See EU Decision 2009/371/JHA; Celex No. 309D0371.

[7] Europol Convention; Article K3 Maastricht Treaty: OJ C316, 27.11.1995, p.1.

- 2000 – the Money Laundering Protocol extended Europol's competence to include money laundering;
- 2002 – the Joint Investigation Team (JIT) Protocol allowed Europol to ask the competent authorities of Member States to conduct and coordinate investigations in specific cases and to participate in JITs;
- 2003 – the Danish Protocol expanded the crimes over which Europol was competent, gave Europol wider access to personal data, and facilitated the transfer of data to third States. It also required Europol to establish and maintain close cooperation with Eurojust.

In late 2006 the European Commission submitted a Proposal for a Europol Council Decision (ECD) (European Commission, 2006) and on 4–5 December 2006 the Justice and Home Affairs (JHA) Council agreed in principle that the Europol Convention should be replaced by a Council Decision. The result of these changes included the following.

- Europol would be financed from the Community budget and subject to the EC Financial and Staff Regulations, thus aligning Europol with other bodies and agencies in the JHA Pillar of the EU, such as Eurojust and the European Police College (CEPOL) (Europol, 2009c, p. 55).
- Decision-making would be improved within and about Europol, thus allowing Europol to adapt more easily to changing circumstances. Under the Convention, amendments to Europol's legal basis had to be ratified by all Member States, which could take several years, require a 'lengthy process of negotiation' and meant that it was difficult to 'adjust Europol's objectives and activities to changing circumstances" (UK House of Commons Select Committee on European Scrutiny, 2011). Under the ECD, amendments could be made more easily by means of a future Council Decision without a ratification process (Europol, 2009c, p. 65).

The JHA Council adopted the ECD, establishing the European Police Office in April 2009, which entered into force on 1 January 2010.

Europol's development since 1999 has occurred against the backdrop of ongoing Treaty revisions. The Treaty of Amsterdam in 1997 started the transfer of asylum, migration and judicial cooperation in civil matters from the Third to the First Pillar, and renamed Title VI of the Treaty of the European Union (TEU) 'provision on police and cooperation in criminal matters'. It provided for 'closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office' (Article 29(2) of the ECD), and mentioned Europol's role in data collection, storage and analysis.

The Lisbon Treaty further amended the TEU by abolishing the pillar structure of the EU and enhancing the EU's ability to act in the field of policing cooperation and home affairs.

1.2 The Europol Council Decision

From 1 January 2010, the ECD established Europol as an EU entity funded from the general budget of the EU. In the words of the ECD, the transformation of Europol's status was intended to result in:

- 'Simplification and improvement of Europol's legal framework';
- enhancement of 'the role of the European Parliament in the control of Europol'; and
- 'Making Europol subject to the general rules and procedures applicable to similar Union entities'.

As well as amending Europol's legal basis, the ECD introduces some new elements. The main changes introduced by the ECD are set out in Box 1.1.

Box 1.1: Main changes introduced by the Europol Council Decision

Extension of Europol's competence to include all forms of serious crime when two or more EU Member States are affected, regardless of whether there is evidence of organised criminal activity.

Allowing Europol to support Member States in relation to major international events (Article 5(1)(e).

Provides (formally) that information can be exchanged bilaterally between Member States, even if it relates to crimes outside Europol's competency (Article 9(3)).

Europol National Units (ENUs) can now access the Europol Information System (EIS) to search for information relating to persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences within Europol's competence. Previously, this information was only accessible via liaison officers (Article 13(1)).

The ECD introduced the possibility for ENUs to access the Index Function (although this has not yet been implemented) (Article 15(2)).

Europol can establish new systems for processing personal data in addition to its existing systems (Article 10(2)).

Provides a legal basis for Europol to receive data from private bodies (Article 25) if it is sent by ENUs.

Introduces qualified majority voting in the Management Board (MB) (Article 37(8)).

Provides a more prominent place for the Heads of Europol National Units (HENUs), including stressing their role in encouraging commitment from Member States and providing support in establishing JITs (Article 8(7)).

Creates a new internal form of supervision for data protection by introducing a Data Protection Officer (DPO) who is a member of Europol staff, but acts independently (Article 28).

1.3 A future Europol Regulation

Europol will be given a new legal basis within the next three years. Article 88 of the Treaty of Lisbon provides that the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. In response, the European Commission has stated that a Proposal for a Regulation on Europol will be put forward in 2012 (European Commission, 2011, p. 4).

In addition to the possibility of a new Regulation, there are other developments in progress which might have an impact on Europol and its activities, and whose compatibility with the ECD could be reviewed. For example, there are proposals for a Directive on a

European Investigation Order, and a Directive on the right to information in criminal proceedings (Council of the EU, 2011a; European Commission, 2010b).

1.4 The European policy context

There are a number of recent and current developments which form the context in which this evaluation is conducted, and the environment in which Europol operates.

1.4.1 The European Union Internal Security Strategy

The EU Internal Security Strategy adopted in 2010 maps out the different aspects of Europe's internal security policy and lists strategic guidelines for action. On the basis of the Strategy, the European Commission adopted a Communication to propose actions for implementing the strategy during the period 2011–14 (European Commission, 2010a). This Communication contains five actions, two of which fall within Europol's mandate: the disruption of criminal networks and the prevention of terrorism and security of cyberspace.

1.4.2 European Union policy cycle for organised and serious international crime

The EU JHA ministers have agreed on a policy cycle that will have four steps.

- Policy development on the basis of the Serious and Organised Crime Threat Assessment (SOCTA).
- Policy setting and decision making through identification by the Council of a limited number of priorities, both regional and pan-European.
- Implementation and monitoring of annual Operational Action Plans.
- At the end of the policy cycle a thorough evaluation needs to be conducted and will serve as an input for the next policy cycle.

Europol has a central role in this by:

- drafting an EU SOCTA (which will replace the Organised Crime Threat Assessment [OCTA] from 2013), which should form the basis for multi-annual political priorities;
- assisting the European Commission and Member States in preparing Multi-Annual Strategic Plans to address those priorities;
- supporting and actively contributing to the preparation of Operational Action Plans for EU law enforcement;
- coordinating operational action in the EU via the European Multidisciplinary Platform Against Criminal Threats (EMPACT)[8] and other operational initiatives;
- hosting the EMPACT Support Unit at Europol and supporting EMPACT projects via the EMPACT Project Support Managers;

[8] Previously Comprehensive Operational Strategic Planning for the Police (COSPOL).

- developing and supporting Member States in establishing best practice (Council of the EU, 2012c).

The first two-year policy cycle serves as a pilot, with the full four-year policy cycle commencing in 2013.

1.4.3 Debate on future possible user requirements for Europol

In preparation for a new Europol Regulation, and as suggested by the Danish presidency, the European Commission asked the Standing Committee on Operational Cooperation on Internal Security (COSI) to hold a discussion on the future requirements of Europol in the context of the European Internal Security Strategy (Council of the EU, 2012a) The aim of the discussion was to develop a 'visionary approach on Europol's future role and tasks'.

The COSI discussion is separate from, but complementary to, this evaluation of Europol. While the remit of this evaluation focuses on implementation of the ECD and Europol's activities, the COSI discussion has a more creative and visionary objective.

The European Commission asked that the debate in COSI covered three main areas: Europol's scope, tasks and cooperation activities. The first debate took place on 17 February 2012. Table 1.1 summarises the discussion. A full account of the debate can be found in the note of the discussion (Council of the EU, 2012a).

This issue was discussed again at the COSI meeting on 11 April 2012, when there was a discussion of policy options. The European Commission raised seven points for discussion. A brief outline of these, along with other points discussed, is set out in Box 1.2. Elements of this debate are referenced elsewhere in this report.

Table 1.1: Summary of issues debated on 17 February 2012 in COSI on future requirements of Europol

Issue	Issues arising in debate
Scope	Europol's competence should not be widened, but could be deepened
	Some flexibility might be useful to ensure that Europol can respond to new challenges
Tasks	Delegations did not see a need to introduce a mandatory provision to share information with Europol
	Attention was drawn to the Swedish Framework Decision, which also might encourage information exchange
	There was a need to explore how Europol can contribute further to ensure a better use of existing Europol products at national level
	It should be considered whether Europol could be granted access to the European Records Index System (EPRIS)
	Powers relating to surveillance of the internet might be necessary as Europol assumes the tasks of the European Cyber Crime Centre (EC3)
Cooperation	Creation of the Agency for management of large-scale information technology (IT) projects might lead Europol, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and Eurojust to reconsider how their IT systems are organised
	Improved information exchange between national units for Europol, Frontex and Eurojust was discussed

Source: Council of the EU (2012a)

Box 1.2: Summary of COSI meeting on 11 April 2012, agenda item 4: possible future user requirements for Europol – discussion of policy options

At the COSI meeting on 11 April the European Commission presented a paper and underlined the importance of improving Europol's efficiency, effectiveness and accountability. The European Commission raised the following issues for discussion.

1. **Provision of information by Member States: often the existing requirement in the ECD is not followed.**
- Several Member States opposed obligations to share information, and had concerns about the budgetary and staff implications of any obligations to share information.
- There was support for the provision of incentives for information sharing, and some support for peer evaluation in relation to information sharing.

2. **Different views in Member States as to the role of the ENU.**
- Discussion as to whether Europol could be granted 'hit/no hit' access to national databases – with Member State permission.
- Support for continuing the central role of the ENU.

3. **The role of private sector, also in view of the EC3.**
- Some Member States supported greater cooperation with the private sector, while others were more reluctant, especially regarding sharing personal information.
- Requests for clarity about the kind of information which could be shared and the framework to govern this, including checks on quality of information.

4. **How to ensure follow-up of Europol's analysis?**
- Discussion about ability to request an investigation, whether Eurojust should be informed of such a request, and whether there should be a deadline for Member States to respond to such a request.

5. **Obstacles posed by the current data management concept to improving the intelligence picture.**
- Some support for a more flexible approach.

6. **A balanced solution needs to be found to improve the cumbersome procedure to conclude cooperation agreements.**
- Some support for a more flexible approach.
- The European Commission concluded that not everything Europol does with third partners needs full international agreement.
- The European Commission is obliged to negotiate agreements under the Lisbon Treaty.

7. **The Joint Supervisory Body**
- In general, delegations considered the current data protection system as well-functioning.

Source: Council of the EU (2012d)

1.4.4 Other relevant debates and developments

Other developments are referenced throughout this report where relevant to provide context for the findings. These include the following, which are explained elsewhere in this report:

- developments in inter-agency cooperation;
- future reform to Eurojust, possibly to include the initiation of criminal investigation (Article 85 of the Treaty on Functioning of the EU [TFEU]);
- development of a European Police Records Index System (EPRIS); and
- the Swedish Framework Decision relating to law enforcement information exchange.

1.5 Objective of this evaluation

The ECD requires that:

> Within four years of the date of the application of this Decision and every four years thereafter, the MB shall commission an independent external evaluation of the implementation of this Decision and the activities carried out by Europol. (Article 37(11))

This requirement is specified further and complemented by the Financial Regulation (budgetary accountability protocol) that applies to Europol as an entity of the EU, which states:

> In order to improve decision-making, Europol shall regularly carry out ex-ante and ex post evaluations of programmes or activities. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be sent to the MB. (Article 25(4), FR-Europol)

In December 2010 the MB decided to carry out a single evaluation in order to comply with Article 37(11) of the ECD, and support the impact assessment that the European Commission would conduct with a view to elaborating its proposal for the future draft Regulation on Europol.

The objective of this evaluation is to conduct an independent and external assessment of:

- the way in which Europol has implemented the ECD;
- the impact of the ECD and the legislative framework in which Europol operates on the programmes and activities carried out by Europol.

The evaluation seeks to identify the ECD's strengths and weaknesses in order to inform decision making about the content of a future Europol Regulation. A further aim of the evaluation is to make recommendations for either remedying weaknesses or reinforcing and developing strengths in the future.

1.6 Research questions

The MB posed 40 questions to be directly addressed by this evaluation, which are as follows.

1.6.1 Questions about the implementation of the Europol Council Decision

1. To what extent has Europol fulfilled its objective under the ECD (namely, to enhance law enforcement cooperation at EU level)?
2. Extent of ECD implementation: has any outstanding, non-transitional issue adversely affected the functioning of Europol since 1 January 2010?
3. Simplification and improvement of Europol's legal framework: to what extent has the establishment of Europol as an EU entity simplified and improved its legal framework? How does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities?
4. Simplification of Europol's administration: to what extent has implementation of the general rules and procedures applicable to EU agencies simplified Europol's administration, allowing the organisation to devote more resources to its core tasks?

5. Simplification and improvement of Europol's functioning: to what extent has Europol's functioning been simplified and improved through measures aimed at widening its possibilities to assist and support the competent Member States' law enforcement authorities?
6. Establishment of a DPO at Europol: to what extent did establishment of the DPO ensure, in an independent manner, the intended level of data protection in Europol (at least that which results from observation of the principles of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, signed in Strasbourg on 28 January 1981)?
7. To what extent has Europol's legal framework contributed to the effectiveness and efficiency of its operations?
8. To what extent has the establishment of a two-thirds majority rule improved Europol's governance?
9. To what extent has enhanced control over Europol by the European Parliament ensured that Europol remains a fully accountable and transparent organisation (due account being taken of the need to safeguard the confidentiality of operational information)?
10. To what extent has the widening of Europol competences contributed to the effectiveness and efficiency of its operations?
11. To what extent has the new financial regime improved Europol's functioning?
12. To what extent has the establishment of the Internal Audit Function (IAF), through independent and objective assurance and consulting services, added value and improved Europol's operations?

1.6.2 **Questions about Europol's activities**

Evaluation of implementation of the activities stemming from the Europol Council Decision

13. To what extent has the participation of Europol staff in a support capacity (without benefiting from the application of immunities) benefited JITs?
14. To what extent has direct access of ENUs to all data in the EIS taken place?
15. To what extent has the establishment of Europol's specific data protection regime benefited the fulfilment of Europol's activities, while ensuring adequate protection of personal data processed in the framework of police and judicial cooperation in criminal matters during its transfer by Member States to Europol?
16. To what extent has the JSB contributed to ensuring that the rights of the individual are not violated by the storage, processing and use of the data held by Europol, and that the permissibility of the transmission of data originating from Europol is adequately monitored?
17. To what extent were the possibilities for the creation and management of information processing systems at Europol widened? (a) To what extent has Europol's access to data from other information systems (Article 21 of the

ECD) assisted the organisation in its objectives? (b)Which elements have impaired the establishment of new systems processing personal data?

18. To what extent has cooperation with EU institutions, bodies, offices and agencies (e.g. Eurojust), particularly in the context of agreements or working arrangements, been beneficial to the achievement of Europol's objectives?
19. To what extent has the establishment of provisions for cooperation with third parties and organisations benefited Europol in the achievement of its objectives?
20. What is the extent of Member States' commitment to share information with Europol?

Evaluation of the ECD in the context of the Europol Strategy 2010–2014

To what extent does the ECD allow Europol to do the following.

21. Add value to the operational requirements of Member States, thereby enhancing the organisation's impact?
22. Ensure the effective delivery of a unique set of operational support services?
23. Enhance the coordination of operational action in the EU?
24. Develop more effective cooperation with external partners?
25. Lead the further development of a European Criminal Intelligence Model?
26. Improve its analysis capability?
27. Strengthen its information management capabilities?
28. Pioneer new techniques to prevent and combat international serious crime and terrorism?
29. Strengthen its position as a platform for specialist areas?
30. Provide expertise and quality training in key law enforcement techniques?
31. Strengthen its accountability arrangements?
32. Strengthen its information and communication technology (ICT) and business alignment?
33. Improve the management of its human and financial resources?
34. Build a strong Europol culture and a positive external image?
35. How could any obstacle impairing the above objectives be overcome?
36. To what extent have Europol's organisational set-up and governance structures contributed to the effectiveness and efficiency of its operations?

1.6.3 Other evaluation topics based on the European Commission's evaluation standards

37. To what extent are Europol's objectives in line with the needs of the addressees of its activities, and of the issues that Europol is meant to address?

38. To what extent has Europol achieved better and more structured law enforcement cooperation at Union level at a reasonable cost in terms of the financial and human resources deployed?
39. To what extent have the activities of Europol resulted in unintended or unplanned results and impacts (both desirable and undesirable)?
40. To what extent are the activities of Europol unique and distinctive, not duplicating those of other EU entities?

1.7 Evaluation Steering Committee

The MB appointed an Evaluation Steering Committee, consisting of MB members, to oversee the evaluation. The director of Europol was associated to the work of the Evaluation Steering Committee. Issues arising during the course of the evaluation – regarding data collection and the structure and content of the evaluation report – were agreed between the Evaluation Steering Committee and the evaluation team.

1.8 Structure of this report

This report is divided into three parts, as follows.

Part 1 includes this introduction and Chapter 2 which outlines the research approach.

Part 2 presents findings in relation to evaluation questions which have an operational focus. Part 3 presents findings in relation to evaluation questions which have an administrative focus, the conclusions and recommendations. This structure has been agreed with the Evaluation Steering Committee.

The chapters of this report are organised thematically: each chapter deals with a group of evaluation questions which cluster around particular themes and issues as follows.

- Chapter 3: Europol's effectiveness under the ECD, the flexibility of Europol's legal basis, and its status as an entity of the EU.
- Chapter 4: the relationship between Europol and Member States, including information sharing.
- Chapter 5: Europol's competency under the ECD, including participation in JITs.
- Chapter 6: Europol's information systems, databases for information exchange and intelligence analysis at Europol.
- Chapter 7: data protection and the DPO.
- Chapter 8: Europol as a platform for expertise and training.
- Chapter 9: cooperation and coordination with other EU agencies, third States and external partners, including the private sector.
- Chapter 10: administrative issues relating to human and financial resources.
- Chapter 11: issues relating to Europol's governance.

Because this report has an executive summary, which draws out key conclusions, and a comprehensive report summary, which highlights the main conclusions and recommendations, there is no conclusion chapter.

CHAPTER 2 Overview of research approach, its strengths and limitations

The research approach used in this evaluation acknowledged that expert and stakeholder views and judgements of Europol's activities and performance are critically important sources of evidence. For this reason, focus groups, interviews and a web-based survey of stakeholders were the foundations of data collection. Each of these data collection methods, along with their strengths and limitations, are described below.

One of the strengths of the research approach, as implemented, is that opinion, attitude and factual data was gathered from a wide range of stakeholders – in Europol, other EU agencies and Member States (see Figure 2.2 and Figure 2.3). However, there are limitations imposed by the methodology used:

- respondents have a particular perspective depending on their role, nationality, institutional affiliation, and so on;
- respondents may not feel able to express their views freely at times – this was managed to some extent by ensuring anonymity in reporting interview findings;
- respondents may lack the legal or technical expertise in order to answer questions about the ECD or to evaluate the full implications of feasibility of their responses; also, researchers are not able to assess the expertise of each respondent in order to judge the credibility or accuracy of responses;
- respondents might be misinformed about law or practice of which they have no direct experience.

Acknowledging this range of possible limitations stemming from an exclusive focus on what stakeholders reported, the research methodology sought to identify and use harder forms of data in the form of statistical, financial and administrative reports, legal analysis and academic studies, in order to test/challenge and validate expert judgement and stakeholder opinion. It did this in four ways:

- In interviews, focus groups and the web-based survey, respondents were consistently asked to cite documents, cases or analyses to support their views.
- A document and literature review was conducted.
- A workshop with the Expert Advisory Group was used to harness independent, expert interpretation of the data gathered.

- A request was made to the Management Board Secretariat (MBS) to identify any further sources of evidence relating to issues arising from analysis of the interview data and web-based survey results. This request was disseminated within Europol.

While the research team has benefitted from drawing upon external data sources, many key conclusions formed on the basis of expert and stakeholder attitude and opinion could not be validated by reference to relevant harder data sources. Respondents identified a small number of data sources to support their views. While interviewees and other research participants gave their opinions freely, they provided far fewer specific examples and narratives to support them than the evaluation team had anticipated. Of course, we do not rule out the possibility that there are supporting hard data which are too sensitive or restricted for us to see. Therefore, to this end we rely on Europol to invalidate for itself any conclusion that we unwittingly base on opinions that can be negated by harder evidence that is not available to us.

The lack of such external data points is an important limitation. The implications of this are that some conclusions draw on assessments of the data provided by the Expert Advisory Group, and some of the recommendations are designed to encourage Europol management to devise strategies to collect and analyse relevant data that will allow it to engage more readily in an evidence-based debate in the run-up to the formulation of a new Regulation.

2.1 Description of data collection methods

Figure 2.1 provides an overview of the evaluation approach. The study had two main stages. The first involved the collection of data using focus group, interviews and the web-based survey; and the second involved verifying findings from stage 1. The verification involved sharing emerging findings with the Evaluation Steering Committee, highlighting areas where further supporting data were needed, and discussing some of these areas in a teleconference with Europol. Further, the DPO and a member of the JSB were invited to respond to emerging findings relating to data protection.

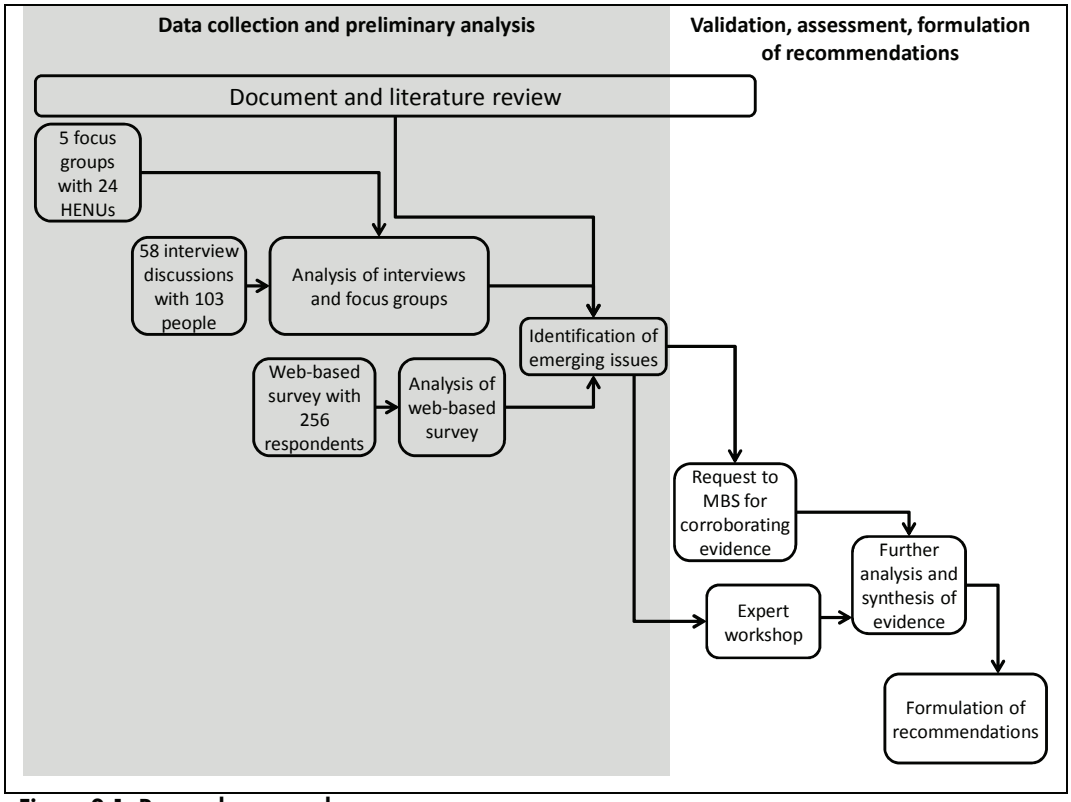


Figure 2.1: Research approach

2.1.1 Document and literature review

The purpose of the document and literature review was to understand:

- the drivers for introduction of the ECD, and the problems and challenges that the ECD aimed to address;
- the changes introduced by the ECD and the implications of these changes;
- Europol's strategies, work plans and activities.

The document review includes: internal Europol documents; academic literature on Europol and the ECD; reports on Europol and the ECD by think tanks and research institutes; EU-level documents and reports (for example, from the European Commission, Council or European Parliament). Relevant internal documents were provided by the Evaluation Steering Committee. The research team searched bibliographic databases for academic and peer-reviewed literature, and reports by other institutions.

2.1.2 Focus groups with Heads of Europol National Units

Five focus groups were conducted with HENUs on 27 October 2011 in The Hague.

Selecting participants

All HENUs were invited to participate. Each group had between three and seven participants, and 24 HENUs participated in total from 23 Member States.

The MBS coordinated the focus groups which coincided with the meeting of HENUs in The Hague. The research team made the following requests regarding the participants in each group:

- all Member States should attend at least one focus group;
- a representative from each of the five EU criminal hubs[9] should take part in each theme; and
- each focus group should contain between four and seven people.

The groups were arranged in accordance with these requests. HENUs were asked to select a group in which to participate.

Questions and issues addressed in each focus group

In order to cover all research questions in the time available, the research questions were grouped into three themes, determined by the Evaluation Steering Committee, as follows.

- Theme 1 – questions about implementation of the ECD (discussed in focus group 1).
- Theme 2 – questions addressing evaluation of implementation of the activities stemming from the ECD and questions based upon the European Commission's Evaluation Standards (discussed in focus groups 2 and 3).
- Theme 3 – questions addressing evaluation of the ECD in the context of the Europol Strategy 2010–2014 (discussed in focus groups 4 and 5).

The protocol used by the evaluation team to facilitate the focus groups is set out in Appendix A. The limitations of this approach were that not all of the HENUs had an opportunity to participate in discussions about all the research questions. However, HENUs had the opportunity to complete the web-based survey, and were invited to submit any further comments or responses to the research team via email.

The strengths of this approach were that it made the best use of available time: the research team had a window of five hours at the start of the HENUs' meeting in which to conduct the focus groups. Because HENUs could select a group in which to participate, they had an opportunity to contribute to those questions and themes that they considered to be most important. Splitting the questions into themes allowed the research team to have face-to-face contact with all of the HENUs.

Whilst all 40 questions were posed in at least one focus group, some questions and topics received a much more detailed discussion than others. Questions which were about

[9] Criminal hubs are concentrations of criminal logistics which receive illicit flows from numerous sources, and whose influence extends throughout the EU. Such concentrations facilitate not only the trafficking of illicit commodities but also the forging of new criminal markets, providing new opportunities for criminal groups. Five hubs have been identified by Europol, based on their proximity to major destination markets, commercial and transport infrastructure, prevalence of criminal groups and opportunities for criminal migration: North West(centre of gravity: The Netherlands and Belgium); North East (centre of gravity: Lithuania, Estonia, Latvia and the Kaliningrad exclave [Russian Federation]); South East (centre of gravity: Bulgaria, Romania and Greece); Southern (centre of gravity: Southern Italy); South West (centre of gravity: Spain and Portugal).

operational matters, the role of the HENUs and information sharing were the focus of discussions. Questions about governance, data protection, cooperation and partnership and staff and financial regulations were much less popular – hardly being discussed at all in any of the focus groups. This reflects the position and therefore knowledge-based of the HENUs.

Analysis and presentation of focus group data

Transcripts of the focus groups were imported into the qualitative analysis software NVivo for thematic analysis. Views expressed by focus group participants are described in relevant sections of this report – primarily those sections dealing with the topics which were discussed in detail in the focus groups.

2.1.3 Interview discussions with critical role-holders

Sixty interviews were conducted with 103 individuals (i.e. some interviews were conducted with more than one interviewee at a time) from a range of stakeholder groups, as outlined in Table 2.1 and Table 2.2.

While interviews were conducted with individuals from partner agencies, the majority of interviewees were 'insiders' to Europol, albeit in different roles and positions. This means they are well placed to offer an informed and expert view, but also that the interviewees, to some extent, share a common perspective.

Table 2.1: Interviewees within Europol

Category of interviewee	Number
Members of the MB	26
Members of the Europol Directorate	7
Heads of Unit at Europol	13
Project managers at Europol	10
Heads or representatives from Member States' liaison bureaux at Europol	26
Third States' liaison bureaux at Europol	2
Member of the JSB	1

Table 2.2: Interviewees from partner agencies

Partner institution	Number
European Commission	6
Council Secretariat	3
Eurojust	1
European Parliament	2
FRONTEX	3
Interpol	2
CEPOL	1

Selecting interviewees

A longlist of interviewees was suggested by the Evaluation Steering Committee, and the research team selected individuals to invite to interview who then were approached initially

by the MBS. The interviews were conducted face-to-face or over the telephone. With interviewees' permission, interviews were recorded and transcribed.

Group and individual interviews

Of the 60 interview meetings conducted:

- 31 were with one interviewee
- 19 were with two interviewees
- six were with three interviewees
- four were with four interviewees.

It was necessary to conduct some group interviews in order to complete the desired number of interviews within a limited timeframe. A potential limitation of group interviews is that one interviewee might dominate and others might not have the confidence to speak out. This risk was somewhat mitigated by the use of experienced interviewers who moderated the discussion. There could be advantages to group interviews when interviewees challenge each other or bring different perspectives to an issue.

Interviewees from partner agencies were individuals in senior positions, in the directorate or equivalent. Given their seniority, their responses are treated as representing the position of the agency in which they work.

Questions and issues addressed in each interview

Most interviews had to be scheduled to last not more than one hour, in which time it was not possible to address each of the 40 research questions posed by the MB. Therefore, the research team invited interviewees to select for discussion those questions which they considered most relevant to their role within Europol, or to their area of experience and expertise. This approach was agreed in advance with the Evaluation Steering Committee.

While this approach made best use of the available time, it imposes limitations. Allowing interviewees to select research questions for discussion provides an opportunity to avoid difficult or controversial topics, and it inevitably means that some questions are selected for discussion more frequently than others.

The themes and topics most commonly addressed (discussed in 30 interviews or more) were as follows:

- data protection issues
- Europol's overall effectiveness and objectives
- information sharing by Member States
- Europol's competency.

The themes and topics which were least commonly addressed (discussed in 10 interviews or fewer) were as follows:

- culture and external image
- the European Criminal Intelligence Model
- immunities relating to JITs.

The interviews were conducted on the assumption that not all interviewees would have detailed factual or technical knowledge about the content and effect of the ECD. Interviewers made every attempt to encourage interviewees to distinguish changes as a result of the ECD, and issues which pre-dated or were independent of the ECD.

In practice there was a great deal of variation in the topics on which the interviewees were able to speak. For example, HENUs and liaison officers had fewer day-to-day experiences of the DPO, IAF, Staff and Financial Regulations, but were well placed to speak about the value added by Europol at the Member State level. Project managers and heads of unit within Europol had expertise in relation to specific topics such as human resources or data protection.

Analysis and presentation of interview data

The interview data was imported into NVivo qualitative analysis software for thematic analysis. The starting point for analysis was the 40 research questions posed by the MB. However, during the interviews it was common for interviewees to raise similar (or the same) issues in response to different questions. Therefore, the research questions were clustered into themes, which are reflected in the structure of this report.

As agreed with the Evaluation Steering Committee, in presenting the findings from the interviews the evaluation team have taken into account all the comments made by interviewees – even those made by only one person. We state when a view was held by a majority or minority of interviewees who raised the topic in question, and in most instances state the number of interviews in which a particular point was made. In the report we include interview numbers in brackets in the text, in order to maintain the link between the findings presented and the data from interviewees.

2.1.4 Web-based survey

The web-based survey was conducted in order to allow a wider range of stakeholders to contribute to the evaluation.

As requested by the Evaluation Steering Committee, the web-based survey presented respondents with the 40 research questions outlined in Section 1.6.[10] The survey instrument is provided in Appendix B. The respondents were asked four things about each of the 40 research questions, as follows: first, whether they agreed with the question:

- Fully

[10] With the following amendments: Questions 22 and 40 were merged into a single question – 'To what extent are the activities of Europol distinctive – not duplicating those of other EU entities and ensuring the effective delivery of a unique set of operational support services?'

Question 3 was separated into two parts: '3(a) To what extent has the establishment of Europol as an EU entity simplified and improved its legal framework?' '3(b) To what extent does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities?'

Question 17 was divided into three parts: '17(a) To what extent were the possibilities for the creation and management of information processing systems at Europol widened by the ECD? '17(b) To what extent has Europol's access to data from other information systems (Article 21 of the ECD) assisted the organisation in its objectives?' '17(c) Article 10 of the ECD allows Europol to establish new systems for processing personal data. No new systems have yet been established. Which elements have impaired the establishment of new systems processing personal data?'

- To a considerable extent
- To some extent
- To a very limited extent
- Not at all.

They could also select 'don't know'.

Second, the respondents had an opportunity to explain their answer in their own words. Third, the respondents were asked to indicate whether their response was based on:

- External sources: findings from research or evaluation (please provide details below)
- External sources: statistics or performance monitoring data (please provide details below)
- External sources: other specific documentary sources (please provide details below)
- Expert view: expert view or judgement commonly held among those in your area of work
- Expert view: your own expert view or judgement
- None of the above
- Don't know.

Lastly, the respondents were invited to provide information about any research, statistics or documentary sources which informed their response.

The purpose of the third and fourth elements was to identify external sources of evidence where they existed.

Selecting web survey respondents

All those stakeholders who had participated in the evaluation through focus groups and interviews were invited to complete the survey. In addition, and perhaps most importantly, an invitation to complete the survey was sent to individuals working within Member States' law enforcement authorities. A request was made through the MBS to HENUs to nominate around 30 individuals working in law enforcement agencies in their country to receive an invitation to the survey. The majority of HENUs responded to this request.

A total of 460 email invitations to complete the survey were sent out, and the survey was open for a month and a half between mid-January 2012 and the end of February 2012. Three reminders were sent to encourage invitees to complete the survey.

Response rate

The overall response rate was 43 per cent, with 199 completed surveys submitted. Additionally, there were 57 surveys which were partially completed (i.e. the respondent did not click the 'submit' button). These partially completed responses have been included in the analysis since these respondents often answered a significant proportion of the questions. The evaluation team considers this to be a good response rate for an online

survey of this kind. Figure 2.2 shows that more than 50 per cent of respondents to the web-based survey were individuals working within law enforcement agencies.

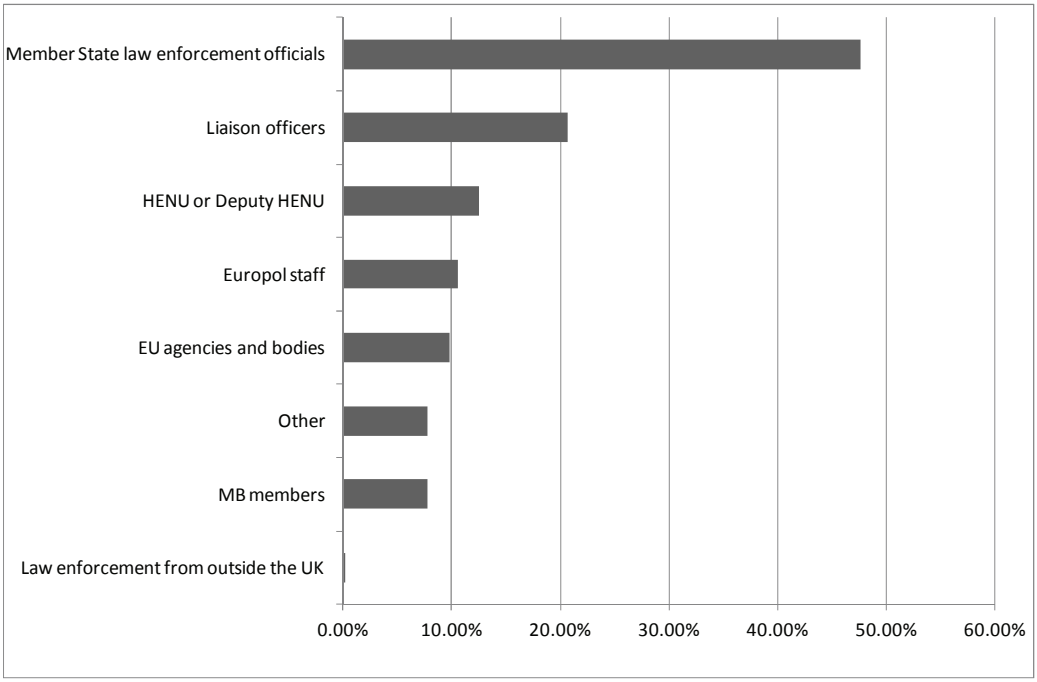
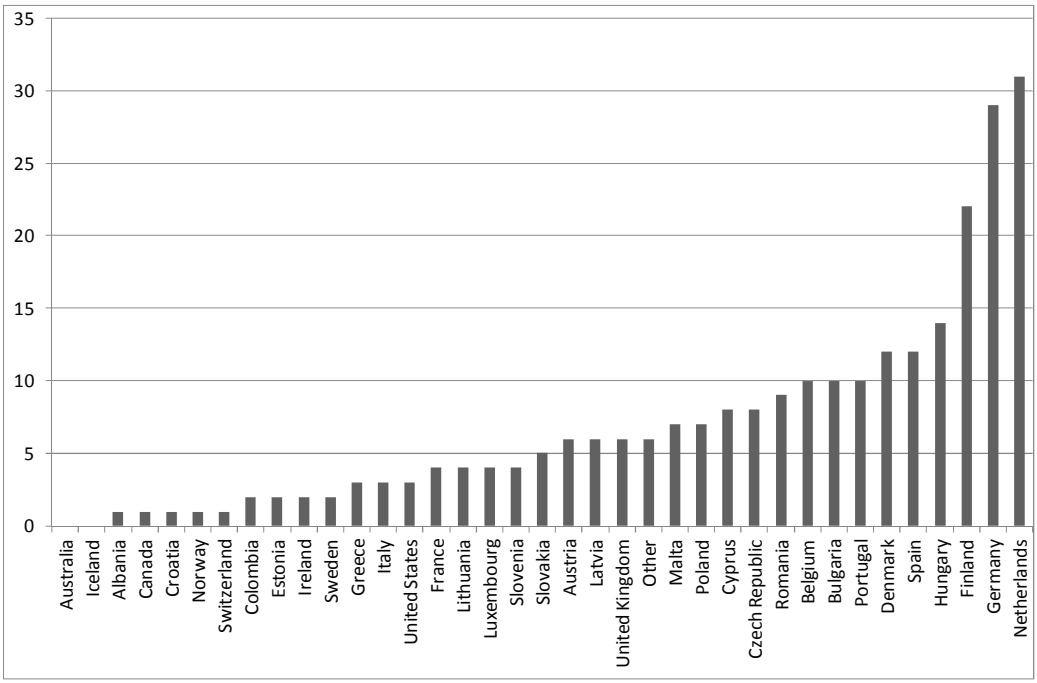


Figure 2.2: Respondents to the web-based survey – affiliation

The survey asked respondents to indicate the country in which they currently or previously worked. Figure 2.3 shows that largest single group of respondents indicated the Netherlands, with Germany and Finland being the second most common countries.



* Most Europol employees selected The Netherlands.

Figure 2.3: Respondents to the web-based survey: declared country of latest employment

However, because many respondents who were Europol staff selected the Netherlands, Figure 2.4 shows the country affiliation of respondents who said that they worked within a Member State. This shows that that the most responses were received from Luxembourg, Ireland and Estonia.

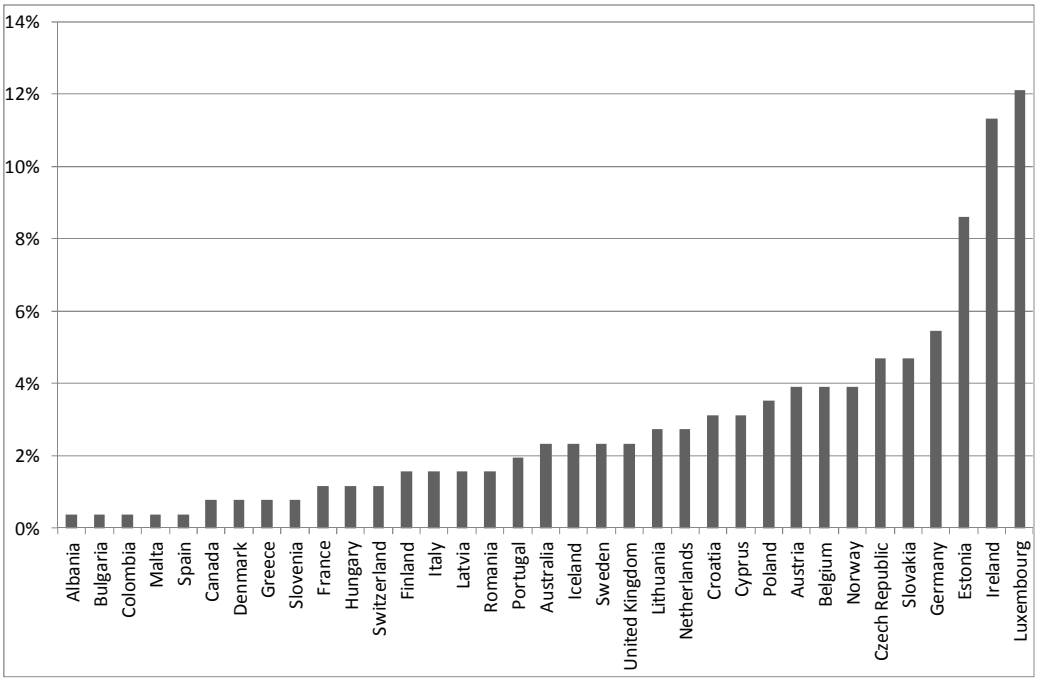


Figure 2.4: Respondents to the web-based survey – declared country of Member State-level respondents only

Level of 'don't know' responses and non-response

Despite the high overall response rate, there were a significant number of respondents who did not answer all the questions, and a significant number of respondents who selected 'don't know', as illustrated in Figure 2.5 and Figure 2.6.

The five questions which had the lowest response rate all appeared towards the end of the survey. Given the number of complex questions being addressed some degree of respondent fatigue was inevitable.

The five questions to which respondents most commonly answered 'don't know' were as follows.

- Question 5: To what extent has Europol's functioning been simplified and improved through measures aimed at widening its possibilities to assist and support the competent Member States' law enforcement authorities?
- Question 4: To what extent has implementation of the general rules and procedures applicable to EU agencies simplified Europol's administration, allowing the organisation to devote more resources to its core tasks?
- Question 3a: To what extent has the establishment of Europol as an EU entity simplified and improved its legal framework?

- Question 3: How does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities?
- Question 39: To what extent have the activities of Europol resulted in unintended or unplanned results and impacts (both desirable and undesirable)?[11]

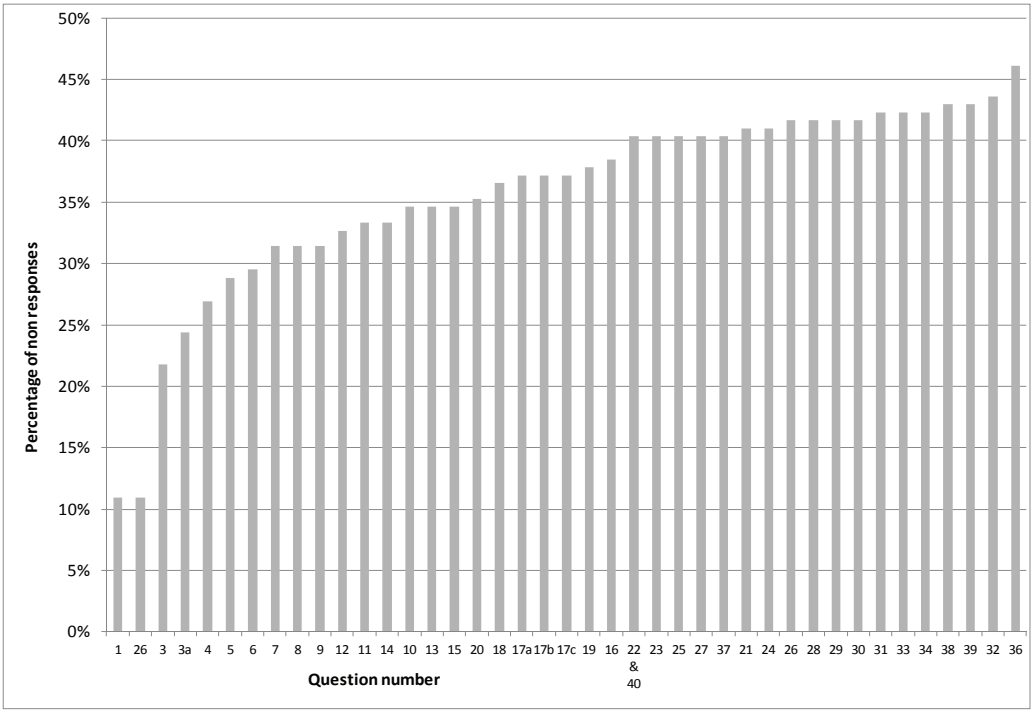


Figure 2.5: Percentage of respondents who did not answer questions in the web-based survey

[11] Standard survey research methodology would normally involve piloting of questions to remove the risk of this kind of result. However, in this instance the Evaluation Steering Committee specifically requested that the survey took the form of a consultation upon the 40 research questions. In this context a high proportion of 'don't knows' is entirely appropriate.

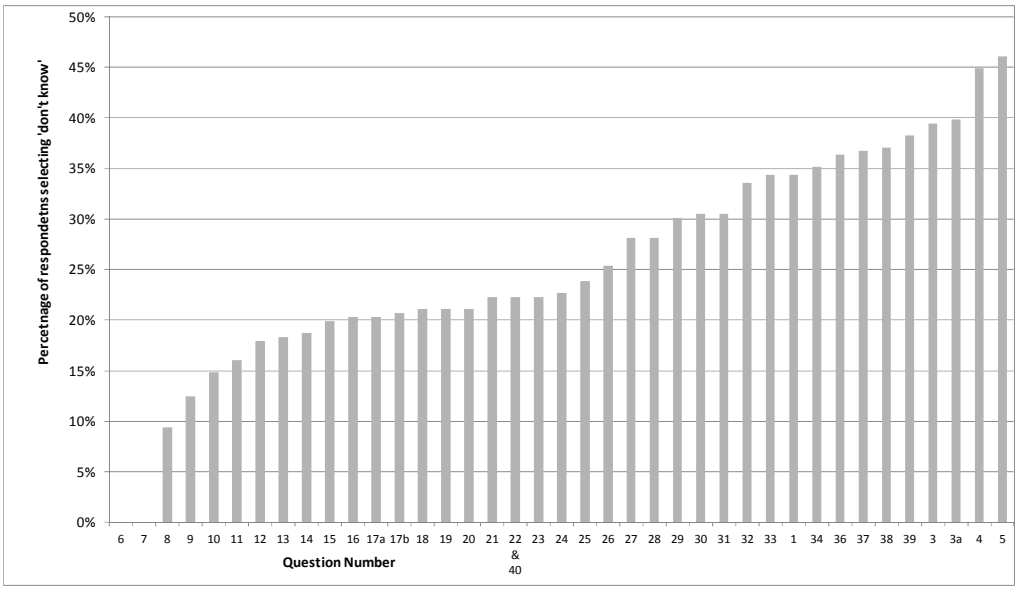


Figure 2.6: Percentage of web survey respondents answering 'don't know'

Analysis and presentation of data outputs from the web-based survey

The data from the web-based survey is a rich resource of information which the Evaluation Steering Committee and others within Europol may wish to examine in greater depth than was possible within the scope of this project.[12] Throughout this report we provide descriptive statistics, indicating the results for each question.

2.2 Expert Advisory Group

In addition to advice and guidance from the Europol Evaluation Steering Committee, the evaluation team convened an independent Expert Advisory Group to support the evaluation.[13] The use of independent expert opinion (as distinct from consulting internal experts) to analyse and draw conclusions from the data was central to the research approach. Independent expert review added a strategic perspective to the interpretation of data gathered from those closely involved with Europol at an operational level. The Expert Advisory Group was called upon to review and comment on emerging findings, making assessments of the data to support the research team to arrive at conclusions and recommendations, especially when the available data were not definitive.

[12] The data from the web-based survey has been provided to Europol.

[13] There were three core members of the expert group: William Hughes CBE QPM (former Director General of the UK National Crime Squad involved in the design and implementation of the UK Serious and Organised Crime Agency); Professor Willy Bruggeman (Chair in Police Sciences at the Benelux University Centre in The Netherlands, former Assistant Coordinator of the Europol Drugs Unit and former Deputy Director of Europol); Giuliano Zaccardelli (Director of Strategic Planning for Interpol and formerly head of the Royal Canadian Mounted Police). Additionally, Dr Alexandra De Moor joined the expert group towards the end of the evaluation.

2.2.1 Expert Advisory Group workshop

A workshop was held after data collection had been completed. In advance of the workshop, members of the Expert Advisory Group were notified of the issues emerging from analysis of interviews, focus groups and the web-based survey. They were provided with a copy of the interim evaluation report, which provided a synopsis of the evidence available.

The aim of the workshop was clearly communicated to them: to express expert judgement on issues arising from the data collected so far, and to help the research team generate conclusions and recommendations. It was explained that much of the evidence consisted of the unverified attitudes and opinions of interviewees, and that the Expert Advisory Group was called upon to make assessments of competing opinions.

The workshop was structured according to nine key discussion points. Each issue was introduced, an overview of the evidence available was provided (from focus groups, interviews, web-based survey and document review), and then a facilitated discussion took place, the outcome of which included assessments such as the following.

- Is the issue a significant problem affecting Europol's functioning?
- Does the issue arise from Europol's legal basis in the ECD, or does it arise from non-legislative rules, procedures and practice?
- What options or solutions are available under the current legal basis?
- What recommendation should the evaluation make to the MB?

After the workshop, members of the Expert Advisory Group reviewed the draft final report and had an opportunity to further refine and reconsider their assessments.

2.3 Validation discussions and submissions

In March 2012, having undertaken an initial analysis of the interview, focus group and web survey data, the evaluation team identified a number of issues that, if possible, needed clarification by validation from other data sources, or at least corroboration. These issues were sent to the MBS, which coordinated a response from Europol staff. For many of these issues the evaluation team suggested the kind of further information which would be appropriate, including requesting input from specific subject expertise sources such as the Europol DPO. As a result of this, the evaluation team received some further data, a written submission from the DPO and held a conference call with relevant experts from Europol.

In addition to this formal request for validation and corroboration, the conclusions and recommendations of the report have been formulated taking into account comments from the Evaluation Steering Committee on early drafts of the final evaluation reports. These comments related to points of factual accuracy and highlighted arguments and considerations not put forward by other participants in the evaluation.

PART 2: FINDINGS ON OPERATIONAL ISSUES

CHAPTER 3

Europol's effectiveness, legal basis and status as an entity of the EU

This chapter presents data and findings in relation to the research questions set out in Box 3.1, and is divided into three sections:

- evidence on the extent to which Europol has fulfilled its objectives, provided value added to Member States and provided unique services;
- the impact of the ECD on Europol's ability to fulfil its objectives; and
- the symbolic effect of being an entity of the EU.

Box 3.1: Questions addressed in Chapter 3

QUESTION 1: To what extent has Europol fulfilled its objective under the ECD (namely, to enhance law enforcement cooperation at EU level?) *(Group 1)* [14]

QUESTION 3(a): To what extent has the establishment of Europol as an EU entity simplified and improved its legal framework? *(Group 1)*

QUESTION 3(b): How does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities? *(Group 1)*

QUESTION 7: To what extent has Europol's legal framework contributed to the effectiveness and efficiency of its operations? *(Group 1)*

QUESTION 21: Does the ECD allow Europol to add value to the operational requirements of Member States, thereby enhancing the organisation's impact? *(Group 3)*

QUESTION 22: To what extent does the ECD allow Europol to ensure the effective delivery of a unique set of operational support services? *(Group 3)*

QUESTION 23: To what extent does the ECD allow Europol to enhance the coordination of operational action in the EU? *(Group 3)*

QUESTION 34: To what extent does the ECD allow Europol to build a strong Europol culture and a positive external image? *(Group 3)*

QUESTION 37: To what extent are Europol's objectives in line with the needs of the addressees of its activities and of the issues that Europol is meant to address? *(Group 4)*

QUESTION 40: To what extent are the activities of Europol unique and distinctive, not duplicating those of other EU entities? *(Group 4)*

[14] Numbers in brackets indicate the category of each research question. Group 1: questions about the implementation of the ECD. Group 2: Europol's activities – evaluation of implementation of the activities stemming from the ECD. Group 3: Europol's activities – evaluation of the ECD in the context of the Europol Strategy 2010–14. Group 4: Europol's activities – other evaluation topics based on the Commission's evaluation standards.

3.1 A positive report on Europol's work and effectiveness

Questions related to Europol's overall effectiveness were popular topics for discussion in interviews, and were covered in two focus groups. Among those who commented on this topic, the vast majority of interviewees from all stakeholder groups (within Europol, European Commission, Council Secretariat as well as from partner agencies) expressed positive views of the work of Europol. For example:

> My assessment about Europol's work ... is very positive ... substantially in its field of action [Europol is] doing ... very good things. (Interview 53, European Commission)

In focus groups, a similarly positive message was given, as this quotation illustrates:

> For us Europol … is a supportive tool… in this respect I believe Europol is successful, I mean day-by-day they become bigger, they become better, they become more effective in their processes, in their procedures, so in this respect I do believe they have fulfilled their objective. (Focus group 1, HENU)

In the web-based survey, the most popular answer to question 1 was that Europol was fulfilling its objective 'to a considerable extent' (45 per cent). Across all respondents to the web survey, the vast majority said that their response was based on their expert judgement. Of the minority of respondents who cited sources of evidence to support their view, the most commonly-cited sources were the OCTA (n = 3), Europol activity reports (n = 3) and the Europol Strategy Implementation Report (n = 8).

3.1.1 Europol has become more visible to national law enforcement personnel

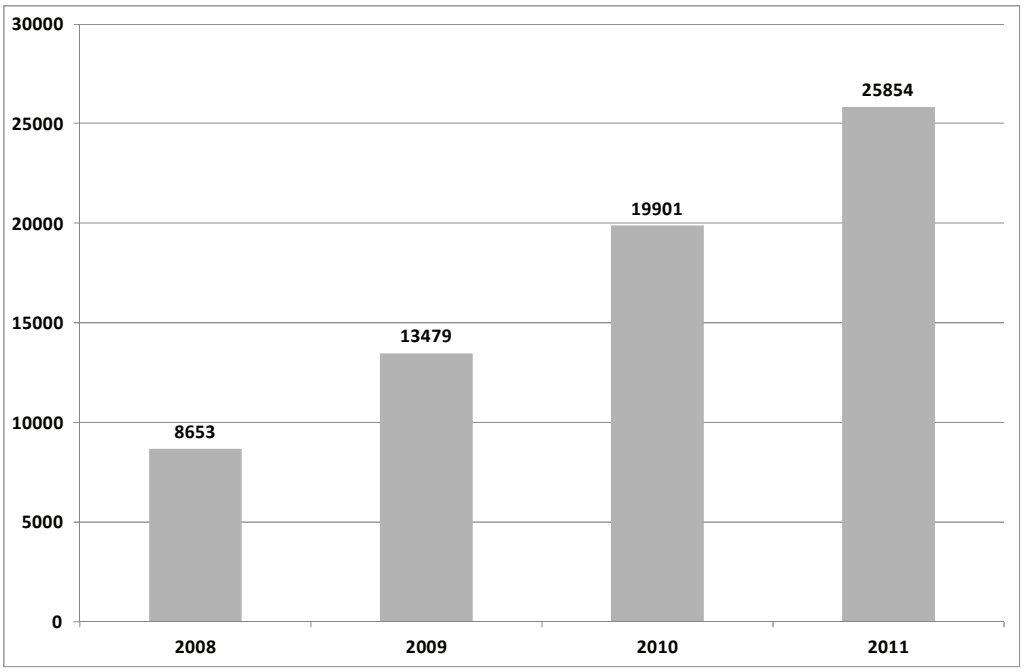
A common remark by interviewees within Europol and by an interviewee from Frontex was that in recent years Europol had become more visible.[15] These quotations exemplify this view:

> [In the last] two to three years ... we already began to make a difference. Where it [Europol] was once ... some remote organisation nobody knew, this has changed now. You can see this in the public relation point of view, but we can also see this from the law enforcement point of view. There's more interest in Europol ... I would even say in the last three years we have skyrocketed compared to before. (Interview 04, head of unit)

> I do not know exactly what the key reason is ... the Decision or ... the new management of the agency but ... I have witnessed during the last couple of years that Europol has really become a more visible player and there seems to be a good momentum now in developing the agency. It has a good reputation. (Interview 48, Frontex)

During the validation stages of the evaluation, Europol provided statistics on the number of media reports about Europol. These data (Figure 3.1) show significant increases in media reports year-on-year, which is another form of increased visibility of Europol.

[15] There was some overlap with answers to question 34, which asks about Europol's external image.



Source: Europol Corporate Communications Unit

Figure 3.1: Media reports mentioning Europol, worldwide

3.1.2 Europol has become more operational

Analysis of the interviews indicates that a majority of liaison officers reported that Europol is playing an increasingly operational role, as this quotation demonstrates:

> All the time … Europol comes closer to the people that work in the field … I think back at home they trust Europol, they trust the brand. (Interview 19, liaison officer)

Another liaison officer reported that in his view, Europol had become less 'faraway, bureaucratic, strategic', and was now having more of an operational role (although he did not give specific examples). He continued:

> I don't know if it's because ... of the ECD but [there is] a change within the Europol organisation itself … to more operational involvement … this helped … an awful lot because [of]… every action we undertake … and that makes the awareness on the operational side better. (Interview 08, liaison officer)

Two liaison officers commented that awareness of Europol within Member States was improving as law enforcement agencies 'started to do more analysis' (19) and 'learned … how to work together with Europol' (6).

In the web-based survey, 66 per cent of respondents said that the ECD allowed Europol to cooperate operational action 'to a considerable extent' or 'to some extent'. Twenty-three per cent answered 'don't know'.

Supporting evidence for the view that Europol has become more operational can be found in the 2010 Annual Activity Report, which states:

> There is an increasing demand for all Europol services, particularly operational analysis, forensic/technical support, financial support and coordination. In all areas very large increases in the delivery of these services were recorded in 2010 compared with the

> previous year. This indicates a general trend inspired by the Europol Strategy towards a greater concentration on operational activity and impact. (Europol, 2011a, p. 2)

The data provided to support this statement are reproduced in Table 3.1. The Annual Report states that improvements in reporting procedures may account for some of the increase, thus the research team is unable to comment on the reliability of these data. However, taken at face value, they support the assertion of an increase in support to Member States.

Table 3.1: Operational support provided by Europol to Member States – comparison between 2009 and 2010

Type of operational support (no. of times provided)	Total 2010	Total 2009
Forensic/technical support	543	457
Operational analysis	78	42
Financial support to operational meetings	60	–
Financial support to investigations (Euro counterfeiting)	35	24
Operational meetings hosted	33	7
Mobile office (on the spot analysis)	31	26
Coordination	23	9

Source: Europol (2011a)

The Activity Report also states that 6,988 new cases were initiated by Member States, Europol and third parties compared to 4,654 for the same period of 2009 (Europol, 2010d).

In order to interpret these data further, evidence may be taken from two sources of user satisfaction data: the annual Europol User Survey, and a smaller survey of participants in operations in which Europol has been involved. These are described in detail as they provide useful, detailed findings related to user satisfaction.

Europol User Survey 2010

The Europol User Survey was commissioned by Europol and undertaken by an external provider: 1,305 people completed an online survey, representing a 45 per cent response rate. The survey scores Europol on a number of dimensions: a score of below 60 is low; between 60 and 75 is average; and between 75 and 100 is high. Table 3.2 summarises the scores, taken from the Survey Report. It shows that overall satisfaction in Europol has increased, as has the loyalty of those using Europol's facilities. There was also a positive increase in the perception of Europol's image, which includes professionalism and reliability. A less positive score was achieved in terms of expectations, which did not change significantly from previous years and remains low. Satisfaction with Europol's products had increased slightly since 2008, but service quality declined.

Table 3.2: Summary statistics from Europol User Survey 2008 and 2010

Measure	2008	2010
Customer satisfaction – overall measure How satisfied with Europol's work? To what extent were all expectations for Europol met? How close or far away from 'ideal' Europol	63.1	65.2
Image Perception in society – how people in general perceive Europol	67.8	72.0
Expectations What do respondents look for from Europol?	73.4	74.0
Perceived product quality	73.2	74.5
Perceived service quality	73.0	72.4
Loyalty	77.9	81.0

Source: EPSI Rating, 2011

Survey of nine operations

A survey was undertaken by Europol between April 2010 and 30 June 2010. This survey focused upon nine operations where Europol offered support, and asked the law enforcement practitioners involved about their satisfaction with Europol's support. The research team does not have detailed information about the methodology and approach used in this survey; neither do we have access to detailed findings. However, the findings of the survey as reported by Europol indicate high levels of overall user satisfaction. The timing of Europol reports and advice is described as 'satisfactory'. Services reported to have high levels of satisfaction included assistance in dismantling illicit laboratories and print shops and technical or forensic analysis. Less satisfaction was reported with the technical implementation of the mobile office. The provision of financial support to Euro counterfeiting investigations and for operational meetings was seen by respondents too slow and bureaucratic (Europol, 2010d).

3.1.3 Examples of adding value to Member States and providing unique and distinctive services

The answers to questions 21 and 40 had considerable overlap and were combined into a single question in the web-based survey ('To what extent are the activities of Europol distinctive - not duplicating those of other EU entities and ensuring the effective delivery of a unique set of operational support services?'). Responses to this question were as follows: 68 per cent of respondents answered 'to a considerable extent' or 'to some extent'. Only 20 per cent answered 'don't know' and only 11 per cent answered 'to a limited extent' or 'not at all'.

To understand *how* Europol adds value and supports Member States we can turn to the interviews and comments made by web-survey respondents. Of the survey respondents who provided an explanation for their answer, 32 listed at least one example of how Europol was unique. From analysis of interviews and web survey responses, the evaluation team has identified five ways in which participants perceived Europe to offer unique services emerge.

The liaison officer network

This network was mentioned in seven interviews (01, 12, 13, 26, 24, 40, 46) and by three survey respondents. Face-to-face access to law enforcement personnel from across the EU and third States was considered unique and highly valuable:

> This … environment that Europol provides with the liaison officers, it's unique in the world. I think it's the only organisation that allows … more or less 130 liaison officers … from the Member States … also third parties … Interpol and so on, so provides a lot of good cooperation environment – and that's unique in the world because there is no organisation … that has this system in place. (Interview 26, liaison officer)

Describing a particular case relating to human trafficking, a respondent said that:

> This case was solved within two to three hours … no other channel could have helped … it has to move so fast …the speed of the liaison officers' network … that's definitely unique. No other organisation could provide this support. (Interview 12, liaison officer)

Analysis and intelligence

Europol's analytical work and intelligence products were mentioned in nine interviews (10, 12, 15, 24, 28, 36, 41, 45, 50) and by eight web survey respondents. This was also mentioned by HENUs in focus group 4. Analysis conducted by Europol was useful to Member States and was the basis for the EU policy cycle, as this interviewee from the Council Secretariat commented:

> The annual report on organised crime … is the basis for the Council to define priorities, and these priorities are translated into operational action plans … Without input from Europol the Council would not be in a position to take common priorities in the implementation phase. (Interview 50, Council Secretariat)

Data bases and systems

Five interviewees (15, 28, 33, 42, 31) and ten web survey respondents mentioned the provision of secure information exchange platforms, such as SIENA; three interviewees (13, 28, 36) and four web survey respondents mentioned AWFs (also mentioned in focus group 4). Among respondents to the web-based survey, the most commonly mentioned way in which Europol adds value was through its data systems, especially SIENA.

Expertise and technical support

Europol's expertise in areas such as cybercrime, counterfeiting of the Euro and the provision of the mobile office was mentioned in focus group 4, in six interviews (06, 12, 13, 18, 28, 31) and by three respondents to the web survey.

Funding operational meetings

Europol's ability to pay for operational meetings was mentioned as unique in two interviews (13, 33) and in focus group 4, and was described as valuable in a further ten interviews (8, 19 20, 23, 24, 28, 31, 41, 44, 53), especially in the current financial climate where law enforcement agencies were facing reduced budgets. However, Europol's satisfaction survey, described above, found that users often found the process of gaining funding to be bureaucratic. This was not mentioned in interviews, but could warrant further investigation.

3.1.4 Concerns about increases in bureaucracy

A theme that emerged from the interview analysis is a concern that there is a greater administrative burden on Europol after the ECD which has required more staff 'devoted to bureaucracy' (03, 04, 07, 10, 14, 16, 31) than before. There was concern about the relative number of Europol staff who were 'operational' and who were 'administrative' (09, 12, 20, 35). The risk is that this damages the trust which Member States have in Europol:

> I think with Europol Council Decision there is a danger that Europol becomes a more bureaucratic organisation and an agency without any flexibility. (Interview 37, MB member)

3.2 The Europol Council Decision brings Europol closer to the European Union

In explaining their responses to question 1, and answering question 7, the majority of interviewees who discussed the effect of the ECD doubted whether Europol's current effectiveness was *due to* the ECD. The ECD makes Europol more effective simply through making Europol an entity of the EU and bringing policing cooperation closer to the EU. In this sense, the new legal basis was a significant and positive enhancement of Europol's effectiveness. However, there was a consensus amongst interviewees that the changes generated by the ECD were not the *key drivers* of effectiveness – a view exemplified in this quotation:

> Europol has tried to support the Member States and help them coordinate before the ECD. They continue to do so after the ECD … There are improvements in the sense that the mandate has been broadened so there are a number of fields where now they can support us and before they couldn't – which is, of course, beneficial to the cooperation and so on. But in my view the ECD hasn't made any difference. (Interview 6, liaison officer)

Instead, the drivers for change were cumulative, as this interviewee explained:

> The ECD and the whole discussion around it, the setting up of the programme, strategic planning, a new focus on operational support, the new director … new building … it has been a professional development within the last two years. (Interview 11, project manager)

Results from the web-based survey in response to question 7 ('To what extent has Europol's legal framework contributed to the effectiveness and efficiency of its operations?'), were as follows: 61 per cent said 'to a considerable extent' or 'to some extent', with only 26 per cent of respondents selecting 'don't know'.

Around 70 respondents provided an explanation of their answer. Table 3.3 sets out an analysis of those explanations, grouping them into four categories. This analysis shows that while some of the changes introduced by the ECD were welcomed and improved Europol's effectiveness, respondents cited aspects which in fact were not affected by the ECD. These responses strengthen the arguments made in Section 3.1 as to Europol's increasing visibility and operational relevance, but highlight that the ECD did not make significant operational changes (as discussed below in Section 3.3). This point is reinforced further through an analysis of the external sources of evidence cited by a minority of respondents. These included Europol activity reports, the Europol Customer Satisfaction

Survey, statistics on the use of SIENA and information exchange and reports on operational activities – all things which were not subject to formal change in the ECD.

Table 3.3: Analysis of qualitative responses to question 7 of the web-based survey

Analytical category of responses	Issues mentioned by respondents
Responses which referred to things that actually had been amended as a result of the ECD	The extension to Europol's competency was the most commonly mentioned reason (18 respondents) Links with the European Commission, the EU and the policy cycle (5 respondents) The ability to exchange information on issues outside of Europol's mandate through Europol systems (4 respondents) The ability to fund operational meetings (4 respondents)
Responses which referred to matters where the ECD made no change	Satisfaction with the support and services that Europol provides (8 respondents) Europol's systems for information exchange and amendments to the AWF concept (8 respondents)
Those who felt that the ECD had not made significant changes to effectiveness	Respondents did not think that the ECD had had a significant impact on effectiveness (10 respondents)
Those who thought that the ECD constrained effectiveness	The legal basis hindered effectiveness, citing an increase in bureaucracy, a lack of executive power and lack of obligation on Member States to share information (3 respondents)

3.3 The Europol Council Decision enables changes to Europol's legal basis to be made more easily in the future

The majority of interviewees who raised this issue were of the opinion that it was not the ECD's intention to introduce significant changes to Europol's power and mandate. This point was made also by HENUs in focus groups. One interviewee from the Council Secretariat reported that there was a conscious decision not to amend Europol's operational powers in the ECD. Rather, as noted by all interviewees from the Council Secretariat, within Europol and from the MB, the ECD was intended to ensure that any future changes to Europol's legal basis could be made more easily. Future changes will not need to be ratified by Member States (50, 51, 52, focus group 1, 5), as was the situation under the Europol Convention. To this extent, in response to question 3(a) the ECD can be said to have simplified the process through which the legal basis can be amended. This quotation illustrates the majority view:

> The ECD is not operational ... it had another purpose – to replace the old convention – based on intergovernmental principles and bring Europol into the fold of EU-funded agencies. (Interview 44, European Commission)

In response to question 3a ('To what extent has the establishment of Europol as an EU entity simplified and improved its legal framework?') the majority of web-survey respondents answered 'to some extent' (40 per cent) or 'to a considerable extent' (18 per cent). Nineteen per cent answered 'to a very limited extent' or 'not at all' and 23 per cent of respondents across all stakeholder groups answered 'don't know'. Five external sources were cited by respondents, but these provided a broad context rather than detailed evidence to support responses (the sources were the ECD itself, MB reports and working documents of the JHA Council).

3.4 The symbolic value of being an entity of the European Union

In response to question 3(a) discussion in interviews tended to focus on the effect of Europol becoming an entity of the EU[16] – fewer commented on the issue of simplification. An interviewee from the European Commission (53) explained that in his view, the rationale for creating any EU agency or body was in part to:

- ensure that specific policy areas were dealt with by individuals who had a high level of relevant technical expertise;
- ensure a great deal of involvement by Member States in a policy area.

Becoming an entity of the EU brings Europol 'into the fold' of EU agencies, putting the organisation on an equal footing with other agencies (44), making Europol a 'known animal' (13, 29) and solidifying Europol's position in Europe (01). As an entity of the EU, Europol has a key role in JHA strategy (13) and policy (14).

An interviewee from the European Commission stressed that there will be no 'profound' change to the fact that Europol is an organisation which is operationalised at Member State level: even given its status as an EU entity, Europol retained a close relationship with Member States and would continue to do so into the future (53). However the 'added value' of Europol's new status was to bring action in the field of policing closer to the EU. This view was echoed both by an interviewee within Europol – who described the organisation as being 'much more effective for Europe' as a entity of the EU (14) – and interviewees from Frontex (55), who spoke favourably about the commonalities with Europol now that it is an EU entity in terms of administration, human resources, strategic partners and the shared policy cycle. After the ECD Europol was in a better position to deliver its intelligence into the policy cycle, as these quotations explain:

> [The ECD positions Europol] close to the European Commission. We can, with the support of the European Commission, have better focus. In the past, without this close link … we were – I will not say too much dependent on the Member States, but requests from the Member States were coming from one side and another ... so it was difficult to have a focus. (Interviewee 13, Europol Directorate)

> Previously, when we wrote the OCTA, there would just be OCTA Council conclusions … now with the policy cycle we write the OCTA, then they get turned into strategic priorities, then they become operational action plans, and because we're part of that chain where we provide information … in a sense we're much more effective because we're an EU agency. We have a much more central, endorsed role … we get a certain political legitimacy. (Interview 21, project manager)

[16] Europol is an *entity* of the EU (recital n. 3 ECD). Recitals n. 4 and 5 also refer to Eurojust and CEPOL as entities of the EU. Frontex is an *agency* of the EU (recital n 3 of the Council Regulation establishing Frontex, EC No. 2007/2004 of 26 October 2004). There is a slight difference in the status of Frontex, on the one hand, and Europol, Eurojust and CEPOL, on the other. Frontex is a *policy agency*. These are bodies governed by European public law; they are distinct from the EU Institutions (Council, Parliament, Commission, etc.) and have their own legal personality. They are set up by an act of secondary legislation in order to accomplish a very specific technical, scientific or managerial task (Europa.eu). Article 39(2) of the ECD states that Europol shall be considered as an agency for the purpose of implementing the Staff Regulation.

Interview findings are supported by the fact that Europol representatives increasingly attend relevant meetings and fora for EU agencies. For example, Europol is represented at the heads of EU agency meetings as well as thematic meetings, meetings of COSI and other coordination and governance meetings.

3.5 Is Europol an agency like other agencies?

As well as bringing advantages being an EU entity has downsides. All EU agencies and bodies must abide by rules regarding human resources, finance and other administrative matters, and these rules apply to staff and processes in the different directorate-generals of the European Commission as well as to agencies such as Frontex and Eurojust. These rules have been drafted to achieve regulatory harmonisation. However, the dominant view amongst interviewees from with Europol was that Europol was different from other EU bodies and agencies. This quotation is representative of the majority view:

> We have to avoid seeing … Europol … as an EU agency, exactly equal to other agencies, because there's been a tendency from the European Commission to establish this pattern … I can see what they are aiming at … they want rules to apply to all agencies … but Europol is a specific agency, it deals in a specific product which is law enforcement, and law enforcement depends very much on Member States, of course. So Europol must have its unique features to comply with its mission … so some of the core business of Europol has to be in the hands of the Member States … Europol should not be treated as an agency like all the other ones. (Interview 39, MB member)

We return to the theme of whether Europol's operational role means that it should be treated differently to other EU agencies in Chapter 10.

3.6 Alignment between Europol's priorities and those of its stakeholders

Question 3(b) asked: 'To what extent does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities?' Question 37 asked 'To what extent are Europol's objectives in line with the needs of the addressees of its activities and of the issues that Europol is meant to address?' There was overlap in the issues raised in response to these questions during the interviews, so they are discussed together here.

These questions led to two lines of discussion in interviews. One line related to the mechanisms through which Europol can define and adapt its priorities: for example, links with the European Commission, COSI and the European Parliament. The other related to questions about the extent to which Europol's objectives should be defined by the policy priorities and concerns of the European Commission or European Parliament.

Europol has many 'addressees' of its activities, including Member States, other EU agencies and groups such as COSI. These different parties have very different objectives and perspectives, and thus each has different priorities. Therefore, it is not a straightforward matter for Europol's objectives to be in line with those of all its stakeholders:

> The Member States' objectives and the European Commission's objectives are not the same. But we are tasked by both. (Interview 10, project manager)

In response to the web-based survey around 26 per cent of respondents to question 37 ('To what extent are Europol's objectives in line with the needs of the addressees of its activities and of the issues that Europol is meant to address?') selected 'don't know'. Around 46 per cent responded that Europol's objectives were in line with the needs of the addressees 'to a considerable extent' or 'to some extent'. Among the small number of external sources listed by respondents to verify their answers were MB reports and working documents of the JHA Council. While these provide background information, they do not provide further evidence.

Sixty respondents to the web-based survey provided some explanation of their answer, and three key reasons emerge from analysis of these explanations:

Thirteen of those 60 respondents mentioned the ability to change the legal basis in the future, without ratification by all Member States. This was discussed in Section 3.3, above.
Twelve of the 60 respondents referred to Europol's involvement with the European Commission and the policy cycle (through the OCTA) or Europol's new status as an EU entity – these were mechanisms through which Europol could be involved in defining priorities and raising new threats and issues.
Seven of the 60 respondents mentioned the involvement of the European Parliament in Europol's oversight as forming a link to priority-setting.

3.6.1 Alignment with the European Commission and the policy cycle

An interviewee from the European Commission (53) commented that greater strategic coordination and 'interlinking' with Europol, as well as with other agencies would be welcomed. This might ensure that external communications from the European Commission and Europol are aligned and consistent. Interviewees from the European Commission were of the view that such cooperation was in Europol's interest, since the European Commission links Europol's work and products with policy activity, and thus increases the use made of Europol's outputs.

Conversely, some interviewees from Europol and focus group participants were wary of what was perceived as the European Commission's increasing influence on Europol (30). However, they thought there was scope for 'closer dialogue' to ensure, for example, better coordination between Europol's work and European Commission projects and spending – which currently is not always in line with Europol's work (29). A specific example of how European Commission influence could affect Europol was provided as follows:

> Very quickly after the transition … we were receiving more and more direct tasking from the Commission for pieces of work that probably DG Home should have done … reworking bits of the OCTA so that they could go into a report to be produced by the Commission, and essentially doing the same work over and over again, you know, in a very kind of laborious way … The political tasking has sky-rocketed since that transition, which of course reduces your capability to do the stuff that's intelligence-led and is a law enforcement priority. (Interviewee 21, project manager)

This view received support from another project manager (09), who noted that Europol now receives many requests from the European Commission:

> We have a large mandate but really we should have a strict and a clear focus and scope – where do we want to go with Europol in the future. Otherwise … we will be a normal EU

> agency fulfilling tasks for the Commission … on an *ad hoc* basis. (Interview 10, project manager)

A HENU (focus group 3) thought that since the ECD Europol was 'shifting towards the EU and Brussels'. Another HENU made a similar point:

> I feel that Europol has to fulfil more and more tasks mandated by political stakeholders. (Focus group 1, HENU)

It was noted that there was a balance to be struck, because greater use of Europol products by the European Commission could be seen as a good thing:

> We are writing a lot of … strategic reports, assessments for the political bodies. There's absolutely nothing wrong [with that] because they're using us as a resource, which is good, instead of making up their own mind based on … the media. (Interview 10, project manager)

A respondent to the web survey made a similar point in response to question 35:

> The fact that Europol became an EU agency … supports the idea that Europol is no longer an organisation exclusively created by and for the Member States … the needs in relation to internal security should be covered by an EU-approach and Europol has a role to play in it. On the other hand, one of my concerns is the increased impact of the European Commission on Europol. If Europol will maintain its privileged position as the EU centre supporting law enforcement operations, a good balance must be found between the operational customer requirements of the Member States and the guidance given by the EU. (Web survey respondent)

Another example of how the European Commission's influence could affect Europol related to the list of third States with which Europol would conclude operational agreements (see further discussion in Section 9.7.1). The interviewee thought that in the past this list of countries had been defined only by operational need. However, the interviewee stated that:

> Now you already see that the European Commission has instructed Europol to follow the same list of countries which are on the political list of European Commission … the operational needs are no longer [the prime consideration] … we will … have agreements with countries which are much less relevant for operational … cooperation. (Interview 06, liaison officer)

Europol's involvement in the policy cycle was mentioned frequently among interviewees in other EU agencies and those in Europol. Europol's involvement in the policy cycle is recognised as a potential opportunity in Europol's 2012 Work Programme (Council of the EU, 2012c). Interviewees from the Council Secretariat (50, 51) noted that Europol is already taking a very central and important role in EU security policy through the OCTA and participation in COSI:

> The EU could not coordinate itself in the field of internal security without the support of Europol. I think it is clear that Europol is a main actor, a main information provider at a strategic level. The COSI, if Europol would not take part in it, I think it would stop working, and I think if we develop operational action plans to tackle some crime phenomena, Europol always plays a major role … definitely Europol has its place in the shaping of EU policies and also in the implementation of these policies. (Interview 50, Council Secretariat)

3.7 Europol's culture

The Europol Strategy 2010–2014 mentions the importance of internal communications and professional behaviour (Europol, 2009b). Overall, the question about Europol's culture was raised infrequently in interviews and the focus groups.

Two interviewees – one a MB member and the other working within Europol – made a direct link between the ECD and development of a Europol culture. This was on the basis that Europol's identity might be boosted by the ECD, as it places Europol clearly as an entity of the EU (13). A different response to this question was that culture stemmed more from those leading the organisation and by a shared objective, as this quotation illustrates:

> I think that the Council Decision enforced … culture at Europol, but it also depends on the personality of … the director … and the Europol Strategy to create this culture … … this is a multicultural organisation [involving] many mentalities, but … all … are aware that they are working in one organisation and they have one aim. (Interview 38, MB member)

Another interviewee (31) said that the ECD made no contribution to the development of a Europol culture. While a culture was developing, this stemmed from the underlying legal framework which had not changed since the Europol Convention.

Only two points of concern were raised regarding the development of a Europol culture. The first was that a number of liaison officers noted concerns about the extent to which they were involved and consulted within Europol. The second related to the rotation principle (14, 26) and the fact that operational staff at Europol are within the organisation for (now) a maximum of nine years, which might make it difficult to develop a culture. The extension of the maximum term to nine years (previously it was six) was seen as potentially helping Europol to develop a culture because it:

> Brings a bit more continuity and I think also identification with this organisation. (Interview 29, heads of unit)

However, another interviewee (04) noted that Europol employees necessarily had to maintain strong ties with their home country and look out for other possible employment opportunities, since employment at Europol was limited.

In the web-based survey, question 34 ('To what extent does the ECD allow Europol to build a strong Europol culture and a positive external image'), 60 per cent of respondents answered 'to a considerable extent' or 'to some extent' and around 30 per cent responded 'don't know'. From a review of respondents' explanations it appears that this high endorsement is actually for Europol's 'external image', which was also part of question 34. This would be consistent with findings set out in Section 3.1.

3.8 Chapter conclusions and recommendations

The establishment of Europol as an entity of the European Union is an important, symbolic change.

The ECD places Europol at the heart of JHA and the internal security agenda of the EU. On the basis of a strong consensus among interviewees, the evaluation concludes that this is an important symbolic change (particularly noted by interviewees outside of Europol, in

the European Commission, Frontex, Eurojust and Interpol). Downsides to becoming an entity of the EU were identified. There was disagreement between interviewees within Europol and in the European Commission as to whether Europol could derogate, where necessary, from Staff Regulations which apply to EU agencies. There was also a perception among interviewees that there had been an increase in bureaucracy since becoming an entity of the EU, although this perception was not quantified or supported by external sources of evidence.

A range of stakeholders at European Union and Member State level reported positively on Europol's work and operational effectiveness.

Evidence from participants in this evaluation, supported by statistics relating to Europol's activities and presence in the media, indicate that Europol is becoming increasingly visible to law enforcement personnel across the EU, and is increasingly operationally relevant – this is a trend which pre-dates the ECD.

Europol's legal basis is more flexible, but changes introduced by the European Council Decision have not had a significant impact on Europol's ability to support Member States' law enforcement authorities.

The ECD was intended to transform Europol from an intergovernmental organisation into an entity of the EU. Europol's legal basis can now be adapted more easily to changing circumstances because it does not require ratification by all national parliaments.

However, on the basis of a consensus view among interviewees working in and with Europol, the evaluation concludes that the ECD has not had a significant impact on the support which Europol offers to Member States, even though, for example, changes to Europol's competency were welcomed.

Europol offers a range of distinctive services and capabilities which add value to Member States.

Interviewees suggested a number of ways in which Europol provides unique services. The network of liaison officers (where Europol's comprehensive coverage across the EU 27, as well as a significant number of third States, is unique), Europol's capabilities in analysis and coordination, its systems for information exchange, the provision of technical and logistical support and support for JITs were listed by interviewees.

In spite of the availability of a formal framework for determining its priorities, Europol faces challenges in aligning its priorities with those of its stakeholders.

Participants in the evaluation identified that Europol has many stakeholders or 'addressees' of its activities, including Member States, the European Commission, other EU agencies and groups such as the COSI. Europol plays a central role in the EU policy cycle, providing the OCTA (SOCTA from 2013) as a key input, thus significantly influencing the EU internal security agenda. As an entity of the EU, Europol must ensure that it is responsive to its EU stakeholders such as the European Commission and European Parliament while maintaining strong links with Member States. This will be challenging, especially as Europol's role develops and its perceived utility to stakeholders grows. The evaluation team agrees with interviewees who commented that responding to this challenge will depend upon a shared understanding of Europol's role, and where it adds value.

Europol should continue to monitor closely the demands placed upon it by European Union and Member State stakeholders.

Given the evidence of increased demands upon Europol and the risk (identified by experts within Europol) that it may be necessary to take prioritisation decisions, the evaluation team suggests that through analysis of the information and intelligence that it holds, Europol could more systematically articulate the implications of these demands for priority setting and its ability to focus on defined priorities. These should be communicated to key stakeholders and decision makers, and ultimately should be taken into account by the MB, which is responsible for approval of the work programme and the budget. Strategies for responding to increased demand should be drafted and communicated to key stakeholders and decision makers, so that the implications of different staffing and resourcing scenarios are clear.

There is concern about the appropriate level of input by the European Commission and the European Parliament in operational matters at Europol.

Europol operates, and will always operate, within the wider institutional and political environment of the EU. However, there was broad agreement among interviewees, as well as among members of the Expert Advisory Group, that involvement of the European Parliament (and to some extent the European Commission) in operational decisions and priority setting should be limited, albeit that strategic priorities set by the European Parliament can provide coherence across Member States.

CHAPTER 4 Member States' commitment to and information sharing with Europol

This chapter presents data and findings in relation to the two questions in Box 4.1.

Box 4.1: Questions addressed in Chapter 4

QUESTION 2: On the extent of the ECD implementation: has any outstanding, non-transitional issue adversely affected the functioning of Europol since 1 January 2010? *(Group 1)*

QUESTION 20: What is the extent of Member States' commitment to share information with Europol? *(Group 2)*

> I would say that one of the weaknesses of Europol is the commitment of the Member States, due to the fact that there is no obligation to provide information to Europol, and this leads sometimes to intelligence gaps and, of course, makes the work of Europol more difficult than it could be. So really, in many aspects one way to make Europol function better is not only a question of new legislation, new Regulation, it's also a question of using the mandate that we already have. (Interview 39, MB member)

In response to question 1 (discussed in Chapter 3) and question 2, a majority of interviewees from within Europol, the European Commission and other EU agencies (01, 02, 30, 31, 44, 45, 48, 53) felt that there was room for improvement in the current levels of commitment from and information sharing by Member States. This was reflected also in findings from the web-based survey responses to question 20 (asking directly about information sharing by Member States), which was in the medium endorsement category.

4.1 Concern about the extent of information sharing with Europol, although information sharing is increasing

There was a consensus among interviewees across all stakeholder groups (including liaison officers and HENUs) that there was scope to improve information sharing by Member States.

> Which is the biggest restraint for Europol to be successful? I think that is on the national level, because Europol depends on us, Member States, feeding the information system with information. (Interview 39, MB members)

> If we want to be more operational, we need to put in all the operational intelligence, and there's still a long way to go before we can say that we are doing this. (HENU, focus group 4)

Commitment from and information sharing by Member States was the most commonly mentioned 'outstanding, non-transitional issue adversely affecting the functioning of Europol' (question 2), mentioned by 18 respondents (out of 75 who provided an explanation for their answer).

On occasions, Member States do not share information with Europol in a timely way. Information sharing in the field of terrorism is particularly low. The lack of information sharing by Member States was identified as a risk in the Europol Work Programmes 2010 and 2012 (Council of the EU, 2012c; Europol, 2011a), and has been noted by academics and commentators (De Moor and Vermeulen, 2010, p. 1099; Fägersten, 2010; Wills *et al.*, 2011, p. 47). A HENU pointed out that different levels of information sharing between Member States can lead to a distorted view of the crime picture in the EU (focus group 4).

Compared to other questions in the web-based survey, a very small proportion of respondents answered 'don't know' (11 per cent) to question 20 ('What is the extent of Member State's commitment to share information with Europol?). The most common responses were 'to a very limited extent' (34 per cent) or 'to some extent' (33 per cent).

Although this was mentioned only by a small number of interviewees, the evaluation team also highlights the importance of information quality as well as quantity.

In order to understand better and further verify concerns about information sharing by Member States, Table 4.1 shows two of the multi-annual key performance indicators (KPIs) used to monitor implementation of the Europol Strategy (Europol, 2010b). This shows that in 2010, targets were met for increasing the number of objects in the EIS, but the target for searches by Member States was not reached. However,

Table 4.2 shows the year-on-year increase in the number of cases initiated on SIENA.

Table 4.1: Key performance indicators (KPIs) relating to information exchange

Multi-annual KPIs set out in 'Implementing the Europol Strategy'	Baseline (2009)	Target for 2010	2010 data	Was target met?
Number of objects in the EIS	135,489 objects	169,361 (increase of 25%)	174,459 objects	✓ Increase of 28%
EIS searches by Member States	131,576 searches	164,470 (increase of 25%)	121,774 searches	✗ Decrease of approximately 7%

Source: Europol (2010b, 2010d)

Table 4.2: Cases initiated on SIENA between 2005 and 2011

Year	2005	2006	2007	2008	2009	2010	2011
Number of cases initiated	6,762	7,246	7,618	8,377	10,487	11,736	13,697
% increase from previous year		7.2%	5.1%	10.0%	25.2%	11.9%	16.7%

Source: Europol (2010c, 2011g)

4.2 Extent of bilateral information exchange

The majority of information sharing using Europol's systems is bilateral, between Member States.

Article 10(4) of the ECD allows bilateral information exchanges between Member States in relation to offences *outside* of Europol's competency: an ability that was welcomed by HENUs (focus groups 2 and 5), as well as in relation to offences over which Europol does have competency.

When information is shared bilaterally it is not available to feed into Europol's analysis of wider trends. In addition, this can mean that a Member State receives several requests for the same information (02). A liaison officer (19) confirmed that most of their information exchange was bilateral or multilateral. They frequently cross-checked information against data in Europol's systems, but did not opt to have it stored there.

However, statistics on the use of SIENA show improvements in the amount of information shared with Europol. During 2011, the total proportion of answers, requests and 'for information' messages sent by Member States addressing at least one Europol Unit or AWF either in "To" or "Cc" was 53 per cent, which is up from 49 per cent in 2010. In turn, the 2010 figure is an increase of 12 per cent from 2009 (Europol, 2011a).

4.3 Europol's capacity to deal with increased information sharing

One interviewee (45) from the European Commission thought that while information sharing should be increased, there was a danger that Europol could be swamped with information. Therefore, any increase in information sharing should be focused on clearly defined priorities.

In an interview with liaison officers (19), participants were of the opinion that Member States' expectations of Europol's analysis were growing. A liaison officer reported an example where Europol analysts had been too busy to deal with his request. For example, demands for analysis come from the creation of JITs as well as other sources, and it is part of Europol's strategic goals that the amount of JITs supported by Europol should increase. Another interviewee (21) who had detailed knowledge of analysis at Europol noted that requests are increasingly made of Europol analysts by the EU presidencies and the European Commission. The interviewee argued that this might risk taking analysts away from work on agreed priorities. This view is underlined by its inclusion in the Work Programme 2012:

> Europol is approached by various key stakeholders, including the political level, to implement ad hoc requests. Performing the resulting tasks reduces the resources available for the achievement of the objectives in the agreed Work Programme for 2012 and the Europol Strategy 2010–2014. (Council of the EU, 2012c)

In order to understand whether there was genuinely a capacity issue, the evaluation team requested further information from Europol and discussed this issue with relevant Europol experts during the validation stage.

Table 4.2 shows the year-on-year increase in the number of cases initiated on SIENA. In addition, there has been an increase in exchanges on SIENA. The number of analysts at Europol has remained at 98 since 2012. There is no planned increase in the number of analysts in the current staff establishment plan, which lasts until 2014. The evaluation team were informed that, so far, this increase has been accommodated through:

- making efficiency savings;
- making strategic and operational decisions about prioritisation and de-prioritisation when necessary (see Box 4.1); and
- implementing a minimum standard as to the assessment that will be conducted on each piece of information received, and the reply to be sent.

Currently, Europol is not under capacity in terms of its ability to analyse the information submitted. However, this could be a future risk, as the amount of information submitted is expected to increase. We were informed that capacity issues are something that are closely monitored, and of which the Directorate is aware.

Box 4.1: Analysis relating to the Arab Spring – an example of prioritisation of limited analytical resources

Europol received demands for analysis from the European Commission and Member States in response to the Arab Spring in order to assess the impacts on security and possible impacts of changes in migration flows. It was necessary for Europol to take a decision to prioritise this work above existing commitments and projects, refocusing analysis resources to fulfil demands related to this emerging issue to respond in a timely manner.

The question of Member State-level resources was mentioned by two HENUs (focus group 4), who noted that increased information exchange also placed demands upon Member States, not only in terms of time to read and respond to messages sent via SIENA, but also a need for law enforcement officials with language skills for training in how to use the systems.

4.4 Understanding why more information is not shared

The discussion above indicates that poor information sharing is already on Europol's radar as a concern. This section summarises reasons given as to the causes of poor information sharing in interview discussions.

- The most commonly mentioned reason was lack of knowledge, time and awareness. One interviewee summed this up by saying that lack of information sharing was 'not a conspiracy' (45). Rather, law enforcement officials do not know about the need to share information.
- Internationally, policing culture encourages law enforcement officers to be cautious about information sharing, which inhibits sharing with Europol. Law enforcement officials within Member States may believe that any information they share will be shared indiscriminately with 27 Member States (01). Bilateral agreements between Member States may take preference because they are easier to control. There are also different cultural attitudes towards information sharing across the EU.

- In spite of these sociological factors, information sharing is still highly dependent upon individual officers. Part of this variation may stem from the extent of centralisation of national police forces – it is easier to coordinate and share information in a centralised system (06).
- National law enforcement officials already have a large number of domestic databases in which to enter data. Law enforcement officials under time pressure tend to use familiar, national-level systems, and might see entering data into Europol systems as too burdensome or time-consuming (19). Thirteen Member States have automatic loading functions to populate EIS; however, even when these are in place there are a large number of databases within Member States from which information could be extracted. One liaison officer reported that SIENA was very 'user friendly' and that this helps in 'selling' information sharing in his own country (06).

4.5 How do Member States respond to information provided by Europol?

Europol has no operational powers, so without Member State-level follow-up, Europol's work cannot be translated into action and results, as this interviewee explained:

> Europol is getting better at producing ... actionable intelligence and ... the only place we can put it is into the ENU and hope that somebody in there does something with it. (Interview 30, head of unit)

In eight interviews (involving Europol staff and representatives from the European Commission) interviewees commented that Member States failed to act upon information provided by Europol, and that this was 'suboptimal for our organisation and suboptimal for the organisation's mandate' (31).

During validation stages the evaluation team asked Europol for further evidence to support or disprove the claim that Member States do not act on information provided by Europol, and of the impact of this. Europol identified two cases (see Box 4.2). The first, involving the dismantling of an illegal print shop, shows how Europol can use its current powers to encourage a Member State to act on information. The second highlights the legal reasons why a Member State might not act upon information.

Box 4.2: Member States' reaction to information provided by Europol

Illegal print shop
Europol passed information about a counterfeit print shop to a Member State. Responding to this was not a priority for that Member State, and resources were not assigned to acting on this information. Europol used the power to request the initiation of an investigation. The Member State responded to this, and the print shop was dismantled.

Information about child online exploitation
Europol passed information about the exploitation of children to a number of Member States and third States with which Europol had an operational agreement. The majority of countries acted upon the information, arrests were made and children were rescued. A small number of countries did not act on the information for legal reasons (an example of which was that some types images found by Europol could not be used as evidence in that country).

Further, discussions with Europol during the validation stage suggested that it is more common for a Member State to react slowly to information, missing the crucial timing for an investigation, than it is for a failure to act upon information at all. We were told by

Europol that on occasions delays can be caused by the ENU, where staff may not know where to pass the information, may not know how to use it or may have limited capacity to do so.

One way in which Europol might increase the extent to which Member States act on the information that it provides is to allow Europol to have direct contact with investigators and ENUs, rather than relying on ENUs to pass on the information.

4.6 Reliance on the Europol National Unit

The ECD specifies that all contact between Europol and a Member State is through the ENU. In eight interviews it was argued by interviewees that this was insufficiently flexible (01, 02, 11, 25, 30, 31, 36, 39), as this quotation demonstrates:

> The problem is that we are still bound to ... the Member States, the national units ... Basically, this is still the same principle of how the organisation is governed [as when] Europol was established. (Interview 02, heads of unit)[17]

As might be expected, this view tended to be expressed more by interviewees from the EU agencies and interviewees within Europol than by HENUs or liaison officers. However, there were HENUs and liaison officers who noted scope for improvement. Two HENUs noted that there should be more training available for HENUs about Europol's working in order to 'increase faith in the capabilities of the organisation'.

It was said that some ENUs lack influence within their Member State:

> If we meet with the HENUs and we agree that based on this prior assessment we need to do something about [for example,] trafficking in women in this case, and they say yes and they go back, they have no power to implement. (Interviewee 07, Europol Directorate)

> In a majority of countries they do not perform the tasks to the level that one would expect. There are a number of reasons for this: often they are under-resourced, very often they do not work in an influential part of the administration of the national police … they are headed by a junior officer, staffed by inexperienced officials, and that's a shame because we rely on them as our primary enablers in the Member States … Often, through no fault of their own, they find that they're powerless to convince police units to share information with Europol or to participate in joint investigations. (Interviewee 31, Europol Directorate)

Of fourteen respondents to the web-survey who explained their answers to question 39 (which asked about unintended consequences), two respondents commented that reliance on ENUs leads to unintended consequences:

> In several occasions, due to unjustified delay in forwarding/receiving … information by the ENU … unsatisfactory results have been obtained in some operations. This is why the ENU, as information channel, is a distortion element that may produce negative effects in the planned results within the international cooperation field. (Web survey respondent)

[17] The research team notes that Article 88(3) TFEU preserves the total reliance of Europol on Member States, and that this could not be changed in a future Europol Regulation.

4.6.1 Good practice regarding Europol National Units is available and discussed by Heads of Europol National Units

Since 2004 Europol has produced model guidance for the ENUs. This is not mandatory, and implementing its recommendations would have resource implications in Member States. The HENUs meet regularly, and in this forum best practice is shared and discussed. As might be expected, we were told by Europol that views vary across Member States as to how ENUs should be set up.

While there is ongoing discussion among HENUs about best practice Member States select a wide variety of officials to serve as HENUs. Table 4.3 sets out information about the position of the ENUs. There is considerable diversity across the ENUs in terms of the seniority of HENUs, levels of staffing, co-location with other international cooperation contact points (for example, for Frontex, Schengen and so on) and links to other law enforcement authorities within a Member State. This means that a common relationship between HENUs and Member State competent authorities cannot be assumed; some may be in a stronger position to drive domestic reform than others.

4.6.2 Dissemination of information about Member States' contributions

During the validation phase of the evaluation, Europol told us that the director regularly provides key decision makers, who have influence at Member State level, with information about the strengths and weaknesses of the relationship between Europol and particular countries.

Table 4.3: Location of Europol National Units

EU Member State	ENU is located at HQ of:	HQ is part of:
Estonia	Central Criminal Police (National Police)	Ministry of Interior
Bulgaria	Directorate of International Operational Cooperation	Ministry of Interior
Austria	Federal Judicial Police	Ministry of Interior
Germany	Federal Judicial Police	Ministry of Interior
Belgium	Federal Police	Ministry of Interior
Italy	General Directorate for Criminal Police	Ministry of Interior
Romania	International Police Cooperation Centre (National Police)	Ministry of Administration and Interior
Luxembourg	Judicial Police	Ministry of Interior and Justice
Finland	National Bureau of Investigation (National Police)	Ministry of Interior
Sweden	National Criminal Investigation Department (National Police)	Ministry of Justice
France	National Judicial Police (National Police)	Ministry of Interior
Portugal	National Judicial Police (National Police)	Ministry of Justice
The Netherlands	National Police	Ministry for Security and Justice
Greece	National Police	Ministry of Citizen Protection
Czech Republic	National Police	Ministry of Interior
Hungary	National Police	Ministry of Interior
Lithuania	National Police	Ministry of Interior
Poland	National Police	Ministry of Interior
Slovakia	National Police	Ministry of Interior
Slovenia	National Police	Ministry of Interior
Spain	National Police	Ministry of Interior
Cyprus	National Police	Ministry of Justice
Denmark	National Police	Ministry of Justice
Ireland	National Police	Ministry of Justice
Malta	Police HQ	Ministry for Home Affairs
United Kingdom	Serious Organised Crime Agency (SOCA)	Home Office
Latvia	State Police	Ministry of Interior

Source: Europol

4.7 How to achieve greater cooperation from Member States

During the interviews, several ideas were suggested by interviewees about how Member States might be encouraged to take a stronger role. Some suggestions relied on providing incentives; others favoured a top-down approach based on an increase in Europol's powers to compel Member States. The suggestions are set out below.

4.7.1 Europol must demonstrate its added value

There was a majority view among interviewees (06, 08, 44, 50, 49, 52, 53) and focus group participants (focus groups 2 and 5) who raised issues about Member State information sharing that, in part, Member States' commitment to Europol could be enhanced if Europol 'proves' itself with tangible examples of success, and by providing better, more accurate and actionable information:

> Well I think that the better … Europol is equipped to be a competitive actor on the market in terms of added value … the smaller this risk would be. (Interview 53, European Commission)

> Part of the incentive is the provision of good quality, timely services by Europol to Member States, and the concrete results Europol can deliver. (Interview 44, European Commission)

Examples of success and added value then needed to be publicised (01) in order to build trust (28). While the exact words were not used in this context, it is clear that what these respondents had in mind was developing further a marketing strategy for Europol with Member States and third parties that eventually would create and enhance a Europol brand image. The evaluation team note that this is a highly specialised undertaking in this context and it should not be assumed that it can be undertaken without appropriate resources.

Possibilities for demonstrating awareness and thus providing incentives for information might be provided in the future. For example, the possibility (raised at the COSI meeting on 11 April 2012) that Europol could be granted 'hit/no hit' access to national databases would provide a route through which Europol could highlight relevant information and possibilities for support.

4.7.2 Europol must raise awareness

Four respondents to the web-based survey raised lack of awareness about Europol in Member States as an obstacle that needed to be overcome. This was reflected in the interviews, for example:

> On the central level there is knowledge of Europol, what it does, etc., but on [the] local level nobody knows it and nobody knows the value that can be obtained from … Interpol [and] Europol's intervention. (Interview 39, MB member)

This interviewee from the Council Secretariat made a similar point:

> [There should be] marketing in the Member States [so] … investigators are convinced that Europol can bring added value … that analysis … done at Europol is … professional … and if they transmit information to Europol … there is a return to them. (Interview 50, Council Secretariat)

Roadshows and awareness-raising activities

Europol is undertaking awareness-raising activities. Aside from using mainstream media, Europol runs roadshows and awareness seminars in Member States.

One interviewee from Europol claimed that roadshows are associated with an increase in information sharing and operations (04), and this view was supported by HENUs (focus group 3) and at least three liaison officers, who confirmed that a roadshow in their

Member State led to increased demand on Europol (19) and greater knowledge and requests to Europol (12), as this quotation explains:

> We started two years ago with our Awareness Programme: we handled about 7,000 messages on a yearly basis and we are now somewhere between 18,000 and 19,000, so that means that if people know how to find you and they know how to use the product of Europol, they come back to you. (Interview 8, liaison officer)

That there was an increase in information sharing following a roadshow was confirmed by Europol during the validation stages of the evaluation.

Reach and attendance at awareness-raising events

A MB member said that awareness work must reach different audiences within Member States: he gave the example of investigators in his Member State among whom there was a low level of awareness of what added value Europol could give them:

> I asked 120 investigators which added value Europol could give concerning the operational support, and I think I got three or four answers from people that were really aware. So I think that's concerning. (Interview 37, MB member)

Additionally, in the validation stages of the evaluation, Europol stressed that awareness raising needs commitment from Member States (to ensure attendance from a wide audience of law enforcement officers) as well as Europol.

4.7.3 Greater powers for Europol to collect information

It was acknowledged by interviewees both from Europol (01) and the European Commission that Member States are not politically ready for more powers to be granted to Europol (45), and that law enforcement activities will remain predominantly the competency of Member States. However, interviewees from the European Commission (53) and Europol (02, 07) thought that in the future, Europol might gain some ability to collect information independently of Member States.

Some interviewees thought that in some instances, Europol should be able to collect information through channels other than ENUs. Analysis of interviewees' comments suggests that the case for greater powers in this respect can be made more easily in some areas than others: cybercrime was mentioned several times (07, 48, 53), and counterfeiting was mentioned once (51) as fields where there was a strong case for Europol to be able to collect relevant information. It was suggested that Europol should be able to make arrangements with large companies to act as a one-stop shop for information exchange (45) in relation to cybercrime.

Interviewees were clear that this expanded power should relate only to collecting information, and did not extend to acting upon it.

4.7.4 Should an obligation to share information be imposed?

Article 8(4) of the ECD states that ENUs shall share information with Europol, thus there is already some requirement on Member States to share information.

Although it was not a wide spread view, a small number of interviewees (from the Council Secretariat [50], within Europol [07, 31], in the MB [35]) raised the possibility of some obligation being imposed upon Member States to share information with Europol in some circumstances. These quotations illustrate such views:

> Today, Member States are more or less free to transmit information they consider appropriate for Europol; perhaps in the future we could also consider if, for some types of information related to some types of crimes, there should not be a … rule that information must be transmitted with, for example, sanctions if it is not done … an obligation for Member States to send information in, for example, for terrorism. (Interview 50, Council Secretariat)

> I think that the new Regulation must include mandatory non-circumventable obligations through SIENA on priority areas … we must have the raw materials to feed back to the Member State. (Interview 07, Europol Directorate)

An applicable example, raised by an interviewee from Frontex (51), was the obligation on Member States to share information with Eurojust in some circumstances.[18]

This possibility was raised also by the European Commission during discussion at the COSI meeting on 11 April 2012. In that meeting there was limited support from delegations regarding the imposition of an obligation (Council of the EU, 2012d), and similarly, a number of the liaison officers and some MB members interviewed for this evaluation (06, 12, 33) were against this idea. Two interviewees thought that any obligation would actually inhibit information sharing by Member States, conveying the message that they were not trusted. The current evolution of slowly gaining more trust should be continued. One MB member agreed that some pressure should be put on Member States to submit information, but did not approve of an 'obligation'. His suggestion was as follows, but it is not clear how this would differ from the current requirement under Article 8(4) of the ECD:

> [In the new Regulation] maybe … put something about the need, not an obligation, but a recommendation for national units to file and put a date to the EIS. Because the database itself is more valuable … [if] the data is better quality or there is more data there. (Interview 33, MB member)

4.7.5 Europol should be able to fund more investigations

The funding of operational meetings was identified as one way in which Europol adds value. The ability of Europol to fund attendance at operational meetings was seen as very positive – by liaison officers, HENUs (focus group 1, 3, 4 and 5) and interviewees from Europol.

A number of interviewees drew parallels with Frontex, which has a budget to support law enforcement operations within Member States. It was suggested that Europol might have access to a similar budget to fund 'umbrella' operations (20, 29, 31, 45, 48, 33, 80), and that this might act as an incentive to share information with Europol.

It was noted that Europol can offer small amounts of financial assistance already in the field of Euro counterfeiting. It was an important way in which Europol could add value to Member States and encourage cooperation (12).

> In the past the national drug headquarters [in a Member State] was not a good partner for us [the liaison bureau] because they kept the information for themselves … they started to somehow address the liaison bureau, and we showed them it's no problem … to set up an

[18] However, in Council debate about future requirements of Europol, this was rejected (Council of the EU, 2012a).

> operational meeting … Within one week the operational meeting was held … and we were really surprised, and since then the cooperation is completely different. (Interview 12, liaison officer)
>
> Another example of … financial support for operational activities is the counterfeiting of the Euro … Member States have a really good experience … when Europol can provide not only expertise but also money, which is … really needed and not available in the Member States … to cover the expenses of our participation in operational meetings … More support can be useful. (Interview 33, MB member)

It was suggested that this ability to fund some operational activities could be usefully applied to Europol's entire mandate (31).

An interviewee from the European Commission (44) thought that there may be some sympathy with the idea of allowing Europol a budget to fund operations. However, an interviewee from the Council Secretariat (50) was more hesitant, first noting the differences between Frontex and Europol (Europol does not have an operational role), and then linking the question to a wider issue about the funding for coordinated law enforcement between Member States, whether coordinated by Europol or not. During the debate in COSI on 11 April 2012 the idea of introducing incentives into investigations in crime areas other than Euro counterfeiting was welcomed by delegations, although there were requests for further clarification (Council of the EU, 2012d).

4.7.6 Powers to coordinate and direct Member States to conduct investigations

Europol can 'ask the competent authorities of the Member States concerned to initiate, conduct or coordinate investigations' and can 'suggest' that Member States set up a JIT (Article 5(1)(d) of the ECD). A majority of interviewees who addressed this topic felt that this power should be strengthened (01, 13, 20, 30, 31): for example, through obligating Member States to give reasons for refusing to open an investigation. Interviewees thought that there was a stronger case for such an obligation in areas where Europol has particular expertise, such as counterfeiting of the Euro (01) or cybercrime, but also that this could be extended to areas such as drug trafficking (20). However, there was a minority view that Europol should use its existing powers better by communicating information more strongly to Member States (41).

Reflecting on these views, the evaluation team notes that proposals to strengthen Europol's powers to request investigations represent a change to the principle that Europol is there to support Member States. There is also a question about the practicalities or feasibility of such changes: how a request to investigate could be enforced or monitored, for example. Moreover, there could be problems in countries where initiating an investigation is a judicial rather than a police matter (this point was raised in the debate in COSI on 11 April 2012).

Regarding an obligation to follow up on information, the evaluation team notes that such a suggestion requires considerable further detailed elaboration and formulation. Some questions about this suggestion, highlighted by the Evaluation Steering Committee, include the following.

Would a Member State be obliged to follow up information collected by Europol through means that would not be legal under national legislation?

Would the obligation to follow up information apply in instances where the information related to issues that were not national policy priorities?

Would there be an obligation in case the information provided by Europol did not form a sufficient basis under national law to initiate an investigation?

4.7.7 Role of the Management Board

One interviewee (44) from the European Commission suggested that MB members could take a more prominent role in encouraging participation by Member States, highlighting the obligations of national law enforcement, promoting Europol's role and both demonstrating and advertising the advantages of information sharing.

One interviewee from the MB explained how, since he had been in post, contributions to the AWFs by his Member State had increased significantly: as a result, he claimed, of his effort to vouch for Europol and to increase trust in the system (36). Other MB members said that they were already 'selling' international cooperation at every opportunity, but that greater ministerial-level involvement was necessary to lend further weight.

4.7.8 Harmonisation of Europol National Units

In Section 4.6 some limitations of ENUs were noted. Currently, the process through which ENUs might be improved is in the hands of HENUs, who may lack the time and influence to drive substantial change programmes.

It was suggested by interviewees from the European Commission (45) and within Europol (07, 31) that more could be done to ensure that the individuals appointed as HENUs were senior and well-known individuals who have influence within their Member State:

> The national unit … is an obligatory gateway for Europol, which is good – but it should be strengthened. So it would be more helpful for Europol if the role of the national unit at national level would be stronger, so that they can fulfil their role better back home. (Interview 11, project manager)

> The role of the ENUs, and the differences between Member States, was raised by the European Commission at the COSI meeting on 11 April 2012.

4.7.9 Monitoring and reporting on Europol National Units

The Europol Strategy 2010–2014 states the aim of promoting the capacities of ENUs and the liaison bureau network (Europol, 2009b). These interviewees suggested that Europol could benefit from the ability to 'evaluate' or report on an ENU's performance:

> We need to have a relationship with our national units where we can ... say, 'This is not working'. At the moment ... the obligation on Member States is to set up a national unit ... full stop ... that's it ... how the unit works ... What they have to do... [is not specified]. (Interview 30, head of unit)

> I wonder … whether … there needs to be some mechanisms to monitor, assess and to report on the correct functioning of national units … this could be peer evaluation rather than … just a Europol inspection team … There [is] a lot of scrutiny … on this organisation from the Member States and none … directed at the Member States themselves. (Interview 31, Europol Directorate)

It was noted above (see Section 4.6) that there are some informal ways in which information about ENUs' performance can be fed back to decision makers. However, a more formal or structured system could be considered for inclusion in a future Regulation.

Such a system could build upon and compile information that is generated currently regarding ENUs (such as EIS usage, contributions to AWFs and activity reports).

The possibility of periodic, peer evaluation of ENUs was discussed at the COSI meeting on 11 April 2012. Some COSI delegations supported this in principle yet asked for clarification, while others opposed the suggestion and questioned whether it would improve the provision of information to Europol (Council of the EU, 2012d).

Additionally, it was suggested by some delegations (and opposed by others) that Europol should have access on a 'hit/no-hit' basis to Member States' national law enforcement databases. The evaluation team notes that this possibility would reduce reliance on ENUs and could provide an opportunity for Europol to demonstrate its added value by proactively identifying investigations where Europol might hold relevant information.

4.7.10 Interaction through routes other than the Europol National Unit

It was suggested that Europol might be granted the flexibility to interact with others at the national level, aside from ENUs (02, 39, 45). This possibility is discussed further in Section 9.9, relating to information sharing with the private sector. A web survey response demonstrates the view:

> The main point is to move Europol closer to investigators, not to the HENUs only; investigators need to feel a concrete and direct benefit from it. (Web survey respondent)

In opposition to this, one downside suggested by an interviewee is that a single point of contact can help law enforcement officials select the right channel (Europol, Interpol or bilateral coordination between Member States [40]).

4.7.11 Can Europol use information sources other than Member States?

The Expert Advisory Group suggested that one way in which Europol might improve the quantity of information received from Member States is to tap into any or all of a number of ongoing initiatives which relate to information and data sharing. This suggestion was not raised by interviewees or other research participants.

For example, Swedish Framework Decision (Box 4.3) requests can be sent by Member States via SIENA (in 2011, 177 Swedish Framework Decision requests were sent and 211 were received via SIENA; Europol, 2011g). If Member States increasingly include Europol in their message, this may increase the information available to Europol. This point was noted in the discussion in COSI on 11 April 2012 (Council of the EU, 2012d).

EPRIS aims to create a system which can give Member States' law enforcement authorities a quick overview of whether, and possibly where, relevant police information on a certain person can be found (Council of the EU, 2009). With the agreement of Member States, there might be opportunities for Europol to tap into information shared bilaterally.

Box 4.3: The Swedish Framework Decision

Council Framework Decision 20067/960/JHA, also known as the 'Swedish Initiative' was proposed by the Swedish government in 2004 in the aftermath of the Madrid terrorist attacks. Adopted in 2006, the Decision replaces the provisions of the Schengen Agreement regarding information exchange and spontaneous provision of information for the purposes of criminal investigation and criminal intelligence operations (Framework Decision Articles 39, 46).

The Decision updates the rules that govern Member State authorities' use of existing information channels (including Europol and Eurojust) and other cooperation frameworks, according to the principle of availability (Framework Decision Article 6).[19] It does so by defining minimum standards and setting common limitations to the application of intergovernmental agreements. According to the principle of equivalent access, the exchange of information between authorities of different Member States may not be subject to stricter conditions than those that apply between authorities within a state. Furthermore, the Decision sets binding time limits regarding the provision of data, including information required for European arrest warrants (Framework Decision Article 3). The implementation of the Decision's provisions is subject to national and European data protection law (Framework Decision, Preamble; 3–8).

The Decision is limited to national agencies involved in criminal justice (including police and customs, but excluding national security, for example), and thus limits the scope and application of the information obtained (Framework Decision Article 3).

Source: Nunzi (2007)

4.8 Chapter conclusions and recommendations

Increasing information sharing by Member States with Europol remains an important objective for the organisation.

Information sharing with Europol is a responsibility of the Member States. Statistics on the use of the SIENA and the EIS as well as interviewees' views, provide evidence of increasing information sharing with Europol. However, there was widespread agreement across participants in this evaluation that Member States should share more information in a more timely fashion. Europol's ability to show added value as an information hub is dependent upon information shared by Member States.

The ability to use SIENA to exchange information regarding crimes that fall outside Europol's mandate was greatly valued by those in operational roles.

The extent of bilateral information exchange between Member States using Europol's systems provides further evidence of the potential for greater information sharing. However, the ability to communicate bilaterally and to use SIENA to communicate regarding crimes which are not formally part of Europol's mandate (a possibility that was introduced by the ECD), was welcomed by interviewees. The evaluation found that the provision of such information exchange tools is an important way in which Europol is perceived to add value in Member States.

The evaluation identified a number of possible barriers and inhibitors to information sharing, but further work is needed to test the importance of these within Member States.

The research participants put forward a range of hypotheses as to why more information is not shared. These included: a lack of knowledge, time and awareness; a cultural reluctance

[19] The principle of availability is defined in the Hague Programme as follows: 'throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that State'.

to share sensitive information; and dependence upon the attitudes and sharing behaviours of individual law enforcement officials within Member States. It is beyond the scope of this evaluation to assess whether, and the extent to which, these factors play an inhibiting role in information sharing.

Europol is devoting resources to improving awareness within Member States in order to improve information sharing.

Awareness-raising events are conducted within Member States on request and attended by Europol staff. Europol publicises its operational activities and successes, and anecdotal evidence indicates that this increases trust and information sharing. The use of awareness campaigns was supported by the majority of participants in the evaluation because they were a route to demonstrate Europol's worth to Member States. In this regard, many realised that simply performing well was not enough; it was necessary also to market achievements effectively.

The evaluation does not support the proposition, advocated by some research participants, of imposing information-sharing obligations on Member States.

One solution to low levels of information sharing, proposed by some participants, was to impose an information-sharing obligation on Member States beyond the requirement of Article 8(4) of the ECD. Having assessed the arguments made for and against such an obligation, the evaluation team conclude that such an obligation would be difficult to enforce and would risk damaging trust relationships with Member States. However, softer measures, short of a statutory information-sharing obligation, were suggested by members of the Expert Advisory Group and could be explored – including investigating whether COSI could offer any support in improving information sharing and communicating intelligence requirements more clearly.

RECOMMENDATION 1: There is a strong case for evaluating if and how the Article 8(4) requirement is used currently with a view to enforcing its application more effectively. Europol should 'map the gaps' in strategic information needed for the SOCTA/OCTA and in operational information needed for investigations. Europol should build upon existing approaches to communicating information gaps and should identify proactively key influencers and devise professionally designed and implemented communication strategies. The possible advantages and disadvantages of communicating information needs to COSI should be specifically investigated in addition to the role played by MB members and HENUs in communicating information needs.

Some research participants advocate the imposition of stronger obligations on Member States to act upon information provided by Europol.

Mirroring the conclusions regarding information sharing, the evaluation team conclude that any additional obligation to act on information provided by Europol would not be feasible, now or in the near future. Member States' law enforcement authorities have absolute discretion about how to prioritise and deploy resources. However, the evaluation team notes the view of some interviewees that there is potential for Europol to be more proactive in stimulating collaborative relationships with Member States, and to use its current ability fully to invite Member States to start investigations.

RECOMMENDATION 2: Europol should make best use of the ability to request that Member States initiate an investigation in cases where two or more Member States are

involved. Measures might include: communicating the timeframe in which an investigation is needed; requiring explanations to understand why an investigation is or is not initiated; communicating this feedback to key influencers in Member States and at EU level; using this feedback to improve its support to Member States; monitoring the impact of failures to act upon information as well as the benefits of doing so; and understanding the practical, policy and legal barriers faced within Member States.

There are calls for Europol to have greater resources to fund operational activities in Member States.

The existing abilities to fund operational meetings and to provide funding for investigations in the area of Euro counterfeiting were seen by interviewees in operational roles (such as liaison officers and HENUs) as examples where Europol adds value. If more funding were available, this could encourage and enable Member States to act on information provided by Europol. On the grounds that there was a strong consensus on this issue among participants, the evaluation concludes that currently Europol has insufficient powers to fund investigations and operational activities in Member States, and that this is an obvious and direct way to incentivise Member States to act on information provided by Europol.

RECOMMENDATION 3: The future Europol Regulation should provide greater powers to fund investigations and operational activities, where two or more Member States are involved, either in counter-terrorism activities, serious crime or in crime affecting a common interest covered by an EU policy, as a route to encouraging Member States to act upon information provided by Europol.

Currently, Europol has adequate capacity to respond to and analyse the information shared by Member States, but careful and constant prioritisation will be needed in the future.

Interviewees from the European Commission and within Europol raised questions about the capacity of Europol to respond to future demands for information processing and analysis. So far, Europol has accommodated increased demand for data processing through prioritisation and efficiency savings. Data about trends in information sharing with Europol, reviewed as part of this evaluation, indicate that demand will increase over the next five years, with more information being shared, the involvement of Europol in more JITs and increasing requests from Member States. It is likely that this will require an increase in the number of Europol staff involved in data processing and analysis. However, the European Commission has indicated that staff costs should be reduced by 5 per cent by 2018.

A number of European Union-level initiatives offer opportunities for Europol to increase cost-effective information collection.

While not directly addressed by any of the 40 research questions, and thus not mentioned by participants in the evaluation, members of the Expert Advisory Group highlighted initiatives such as the development of the EPRIS and the Swedish Framework Decision (regarding information exchange for the purposes of criminal investigation and criminal intelligence operations). Members of the Expert Advisory Group note that Europol is already involved in some of these initiatives, and have suggested that they could provide a cost-effective way for Europol to access relevant information in an efficient way within the

scope of data protection rules and safeguards. The Europol DPO should be consulted about any changes.

RECOMMENDATION 4: Where Europol is currently participating in activities such as the Swedish Framework Decision (as well as others that aim to enhance information sharing), it should consider the scope for proactively identifying additional opportunities for linking data systems, as well as the implications for its activities and relationships with Member States. The DPO should be closely involved to support Europol in order to best use these opportunities while maintaining its rigorous data protection standards.

Variation in the size, location, staffing and resources of Europol National Units impacts upon their performance and effectiveness.

Participants from a range of stakeholder groups noted Europol's reliance upon ENUs for information exchange and to ensure that actionable criminal intelligence is communicated to Member States' law enforcement authorities. Because the form and structure of ENUs is a matter for Member States, there is considerable heterogeneity among ENUs. Assessment by the Expert Advisory Group of the differences between ENUs, as well as the views of interviewees and survey respondents, leads to the conclusion that there is a need for greater harmonisation and more consistent sharing of good practice among ENUs. In particular, the experience and seniority of HENUs is too variable, as is the positioning of ENUs and their links with national law enforcement agencies.

RECOMMENDATION 5: Consideration should be given to the inclusion in a future Regulation of arrangements for identifying and sharing good practice regarding ENUs, formalising the non-binding good practice guidance currently available. The issues covered might include: the seniority and experience of the HENU; positioning of the ENU within the hierarchy of the national law enforcement authority; and representation of and links to other law enforcement agencies. This might be supplemented by moves to support HENUs in their professional development.

RECOMMENDATION 6: Consideration could be given to the inclusion in a future Regulation of a system for reviewing the activities of ENUs. The possibilities to be explored, among others, include a peer-evaluation system or a system where feedback is provided by Europol.

The extension of Europol's mandate to cover crime that is serious but not necessarily organised was welcomed, but has not had a significant impact on Europol's work.

The inclusion of offences such as murder and violence expanded the range of cases in which Europol can support Member States, but this is not reported by interviewees and focus group participants to have significantly increased the number of cases in which Europol is involved.

Calls for changes to Europol's mandate are not sufficiently supported by the available evidence.

Two specific suggestions were raised by a small number of interviewees. The first was to remove the requirement that two Member States must be affected. The second was that Europol should be permitted to conduct online investigations in relation to cybercrime, as this would enhance Europol's ability to host the EC3 effectively. Whilst only raised by a small number of participants in this evaluation these suggestions were given serious

consideration by the evaluation team because they have also been discussed in COSI, having been raised for discussion by the European Commission.

A departure from the requirement that two Member States must be affected and the ability to conduct online investigations would constitute significant changes to Europol's mandate. Such changes have implications for the principle of subsidiarity, and there are questions about whether they are permitted under the TFEU, which mentions the involvement of at least two Member States and states that Europol should support Member States.

The evaluation concludes that there is insufficient evidence of the benefit of abandoning the two-Member State rule. During the validation exercise Europol confirmed interviewees' views that this is a problem to the extent that, in early stages of an investigation, it can be difficult to tell how many Member States are affected. However, no case histories or other supporting data were provided about cases where Europol thought it should be involved in an investigation but was prevented from doing so by the two-Member State rule.

In relation to the suggestion that Europol might conduct online investigations, the evaluation team acknowledges the risk that evidence collected by Europol during an online investigation would not comply with Member States' procedural rules governing the admissibility of evidence. However, Europol is permitted already to conduct some checking of the internet in certain prescribed situations (under the Check the Web project), and the evaluation team concludes that the establishment of an EC3 at Europol warrants a detailed review of whether such an ability is necessary, as part of a broader evaluation of whether Europol's legal framework enables the work of the EC3. A practical alternative, suggested by the Expert Advisory Group, would be for Member States to post law enforcement officers to Europol to work on EC3 operations, utilising their own legal powers in an enlarged JIT.

RECOMMENDATION 7: The decision to host the EC3 at Europol will create new demands upon the organisation. The European Commission should evaluate whether the current legal framework enables the EC3 to fulfil its objectives and carry out planned activities: for example, to check the internet. In conducting this review, Article 88 TFEU should be taken into account, as should the need to comply with specific Member State procedural rules regarding the collection of evidence. If Europol's legal basis is not sufficient for the needs of an EC3, the European Commission, engaged in negotiations with the Council and the European Parliament, should evaluate the merits of including new powers in the future Regulation (with appropriate safeguards for data protection) or whether national law enforcement (and other) experts should be hosted within the EC3.

CHAPTER 5 Europol's competency and involvement in Joint Investigation Teams

This chapter presents findings in relation to the research questions listed in Box 5.1 which focus upon Europol's mandate and competency after the ECD and its role in JITs.

Box 5.1: Questions addressed in Chapter 5

QUESTION 5: To what extent has Europol's functioning been simplified and improved through measures aimed at widening its possibilities to assist and support the competent Member States' law enforcement authorities? *(Group 1)*

QUESTION 10: To what extent has the widening of Europol competences contributed to the effectiveness and efficiency of its operations? *(Group 1)*

QUESTION 13: Has the participation of Europol staff in a support capacity (without benefiting from the application of immunities) benefited JITs? *(Group 2)*

The ECD extended Europol's mandate to include serious crime that is not necessarily organised (Article 4(1) of the ECD). This change brought within Europol's competency offences such as murder, grievous bodily harm, kidnapping and other offences which might be committed outside an organised crime context. In addition, Europol can now provide intelligence and analytical support to Member States in connection with major international events (Europol, 2009c, p. 65).

5.1 Changes to competency were welcomed

Issues of Europol's competency were discussed in 36 interviews. The extended competence of Europol under the ECD was welcomed by a majority of interviewees from a range of stakeholder groups, as well as HENU participants in focus groups.

There was a minority who had concerns. One liaison officer (25) expressed concerns that Europol might be losing focus. Similarly, one MB member commented:

> The core business is the prevention in the fight against organised serious crime and terrorism … other forms of crimes can belong to the national competence of the Member States, they have the possibility to exchange information and … best practice [about] how to deal with or prevent such crimes … but it is not the way for Europol … The danger is … that they are dedicated to too many things … and the core business will be endangered, there are not enough people to do really this core business of Europol … the analytical work … the support for operations … in the Member States. (Interview 38, MB member)

However, the majority view was that changes in the ECD were considered helpful and put Europol in a better position to support Member States. Others highlighted that the ability to deal with serious crimes would make Europol's work more relevant to Member States' law enforcement authorities (13). One MB member said that more information had been exchanged since the widened competency:

> I can confirm it on the basis … of statistical data I receive on a day-to-day basis from the ENU … that the amount of data which is exchanged is increasing on a daily basis, which means that the widening of the mandate of Europol is to our benefit. It resulted in more successful operations conducted in my country and it resulted in the arresting of bigger numbers of criminals. (Interview 42, MB member)

The evaluation team are able to verify that there has been an increase in information exchange on EIS and SIENA in 2011 compared to 2010 (see Chapter 4), but the reasons for this cannot be identified from this data alone.

Results from the web-based survey mirror these broadly positive interview findings: respondents to questions 5, 10 and 13 answered positively: 63 per cent, 64 per cent and 50 per cent respectively answered 'to a considerable extent' or 'to some extent'. Questions 5 and 10 had relatively low numbers of 'don't know' responses, (22 per cent and 25 per cent).

The kinds of offences now within competence

Among those who welcomed the broader competence, murder and violent assault were mentioned frequently as offences which were now clearly within the remit (19, 26).

A small number of interviewees were able to point to specific cases with which they were now dealing, which formerly would have been outside Europol's remit. One highlighted the case of a serial rapist in which Europol provided support; another highlighted work to tackle child pornography under COSPOL:[20]

> That project on child pornography did not legally qualify as organised crime because the criminals involved did not meet the definition of organised … Everybody was shocked, asking, 'How can Europol not support things like this?' … So in that sense I think it was a very necessary change to also look at serious crime. (Interview 51, Council Secretariat)

Another example was highlighted, as follows:

> In [the interviewee's Member State] we have a lot of mobile groups committing burglaries … [coming from] other countries. Well … it's not considered as the real organised crime … for Europol this was low-level, nearly petty crime, whereas … the average citizen does care about this … We could not put it on the agenda for many years, and now for the first time we've succeeded and Europol is starting to … cooperate with us and so on. (Interview 06, liaison officer)

[20] The Comprehensive Operational Strategic Planning for the Police (COSPOL) Project was set up within the European Police Chiefs Task Force with the aim of providing support in strategic planning of law enforcement activities in the fight against organised and serious crime, during the Dutch presidency in 2004.

Bilateral exchange of information outside of Europol's remit under Article 9(3) of the Europol Council Decision

Another aspect of the ECD that was welcomed by liaison officers was the ability to use Europol's systems (SIENA) to communicate with other Member States regarding crimes that were outside Europol's mandate (06, 20, 25, 37). One interviewee reported that this power had been used in cases of offences which were important domestically, but not significant enough to be dealt with by Europol.

During the validation stages, the DPO suggested that there was an expansion of this provision:

> Bilateral exchanges of information should be addressed beyond the scope of Member States' Europol liaison officers (as is currently the case in Article 9(3)(d) ECD). Such bilateral exchanges could potentially also explicitly be subject to applicable national law. Clear supervisory functions should in that case be allocated to competent national data protection entities. (Written submission to evaluation team from the DPO)

5.2 Extended competencies do not have a significant effect on Europol's functioning

While the extension to competency was welcomed, the view of the majority of interviewees was that the change had not had a big impact on Europol's day-to-day work. The changes were described as 'tinkering around the edges' (30), and interviewees stressed that the 'old principles' prevailed (02).

From interviews with liaison officers and one HENU focus group, it appears that before the ECD, at least in some cases, more effort would have been made to work out how to accommodate cases which were on the boundaries of Europol's remit; however, now this kind of process was not needed, as crimes that previously were only on the boundaries were now clearly within remit. A MB member made a similar point:

> By adding the serious crime … it removes any doubt about the applicability of Europol to the issue … it reduces the amount of time spent deciding … the appropriate channels for the information … We don't spend so much time wondering what do we do with this. (Interview 35, MB member)

5.3 Possibilities for extended mandate and competence

A small number of interviewees thought that the ECD 'did not go far enough' (15, 30). While it was widely acknowledged that Europol should not have executive powers, some further amendments and extensions to Europol's mandate were suggested by interviewees:

- removing the requirement that at least two Member States should be affected (02, 11);
- Europol should be able to run online investigations in relation to cybercrime.

Equally, some interviewees took the opposite view, explicitly stating that Europol should not have any further powers and responsibilities (34, 36); those who thought that the competency had gone too far already sounded a warning that:

> The political level … always want to give Europol more mandates … [but] … it is … necessary to make the politicians aware that Europol cannot be like a dustbin [when] … on the other hand the Commission says, 'No, you cannot get more personnel or … money'. (Interview 38, MB member)

5.3.1 Assessments of suggestions for expanded competency

During validation discussions with Europol the evaluation team were told that deciding whether two or more Member States are involved was commonly a problem and can be time-consuming. It was also anticipated that the EC3, which is to be hosted at Europol, would necessitate greater powers to collect information from the internet.

However, the evaluation team notes that both a departure from the requirement that two Member States must be affected, and the ability to conduct online investigations, would constitute significant changes to Europol's mandate. Such changes have implications for the principle of subsidiarity, and there are questions about whether they are permitted under the TFEU, which includes mention of the involvement of at least two Member States and states that Europol should support Member States (rather than conducting its own invitations):

> Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy. (Article 88(1) TFEU)

In relation to the ability to conduct online investigations, there is a risk that evidence collected by Europol would not comply with Member States' procedural rules governing the evidence that is admissible in investigations and prosecutions. The need to comply with procedural rules is one reason why the ECD does not permit Europol to collect information. In addition, extending Europol's mandate to crimes affecting one Member State could lead to a considerable increase in Europol's workload.

Therefore, the implementation of these suggestions would be a significant change. As such, the value added of such changes needs to be clearly articulated, and the evaluation team does not believe that a strong enough case has been made to support these changes on the basis of the evidence received. Europol might consider taking appropriate steps to establish whether, and the extent to which, the requirement that two Member States should be involved, as currently stipulated in ECD Article 4(1), is a barrier to the achievement of its mandate.

Given the establishment of an EC3 at Europol, planned for 2013, the evaluation team recommends a review of whether some ability to conduct online investigation is necessary, as part of a broader view of whether Europol's legal framework enables the work of the EC3.

If a strong case were made, both of these proposals would require considerable further elaboration of legal and practical details. For example, a robust set of procedural rules would be required for Europol to conduct online investigations. Currently, such rules only exist at Member State level, which raises questions about which set of rules Europol would apply, given that an investigation would be conducted across multiple Member States.

5.4 Some criticism of the 'prescriptive' approach to competency of the Europol Council Decision

The Annex to the ECD lists forms of serious crime which Europol is competent to address. Five interviewees were of the view that the ECD took an overly 'prescriptive' approach to competency (03, 15, 20, 25, 34). This meant that there was not enough flexibility to respond to new forms of criminality. These interviewees commented:

> The ECD ... often seems to us to be quite prescriptive ... on the tasks and on the areas of responsibility [of] Europol ... This prescriptiveness ... sometimes makes it difficult to fit in some initiatives and some opportunities that Europol might have to add value to the Member States ... to fight organised crime and terrorism ... I would, and perhaps the organisation would, find it easier to have ... [a] less prescriptive mandate, that would allow Europol to be engaged in activities and perform services ... that are not necessarily [in a] predetermined in a list which is fixed. (Interview 03, heads of unit)

One MB member saw the challenge as follows:

> It is a bit of conflict: how do you manage to be as precise as necessary to define what this body does, as compared to the main policymaking institute and as compared to police services? And how, at the same time, you get real flexibility that they can face new challenges. (Interview 34, MB member)

Despite these concerns, interviewees did not provide any instances where they had wanted Europol to work on a case but it had been outside of Europol's remit. During the validation stages the evaluation team asked Europol to identify any such instances, and none were advanced.

Therefore it appears that there is hypothetical concern about lack of sufficient flexibility in the future, which is not based on any current and tangible problem. We concluded that the types of crime over which Europol is competent are adequate for now. For example, during validation discussions, we were informed that offences related to counterfeiting of pharmacological products have been taken on by Europol, at the request of Member States even though this was a new area of operation not strictly foreseen in the prescribed list of crime types.

Definitional issues at Member State level

During the validation discussions we were told that the way in which offences are defined in Member States is a more frequent barrier to action by Europol than competency rules. For example, we were told that there was extensive discussion (lasting months) as to whether Europol was competent to work on the riots which surrounded the G8 and G20 meetings, due to different definitions of terrorism and extremism.

A similar, more general point has been made by De Moor and Vermeulen (2010), who note that the ECD leaves those offences listed in the Annex, which were added after the original Europol Convention, to be assessed by the competent authorities of each Member State. This can mean that Europol's mandate is interpreted in different ways in different parts of the EU.

5.5 Joint Investigation Teams

Question 13 asks what Europol brings to JITs; it did not ask interviewees about any changes to JITs introduced by the ECD. Background information about JITs is provided in Box 5.2. Questions on JITs were not commonly discussed in interviews.

5.5.1 Positive experiences in the small number of Joint Investigation Teams

JITs were described as 'forward looking' (07) and as one of the main ways in which Europol could support Member States' law enforcement authorities, and the core of their competence to coordinate (52). Liaison officers commented that JITs are especially valuable in new Member States, where law enforcement has fewer resources (08). Six respondents to the web-based survey, in explaining their answer to question 1, mentioned the value of Europol's participation in JITs.

Among the liaison officers interviewed, and among HENUs who participated in focus groups, a minority had experience of participation in a JIT. Of those involved, positive experiences were reported:

> We are currently in the process of creating a JIT … on financial crimes. There are huge amounts of bank transactions data that have to be processed and analysed. Without the support of Europol … the possibilities of having this JIT at all would be very, very weak. (Interview 23, liaison officer)

> In our case … we had a huge amount of information and Europol was gathering all this information from different countries, and analysing it and giving some kind of overview of all this information. (Interview 19, liaison officer)

> The participation of Europol staff in the support capacity is very important for my Member State. Europol supports us at first phase, before signing the agreement. They support us during signing the agreement and … during the last phase … When … operational activity took place Europol staff were on the spot, several teams with analysts and experts from Europol came to the Member States … Due to [analysis from Europol] we were able to prove that two suspects are in … the same organised crime, so from my point of view the support [of Europol] is … essential. (Focus group 2, HENU)

The following were listed as ways in which Europol adds value to JITs, and further information is provided in Box 5.3 (each of these examples was mentioned by between one and three interviewees):

- advising on the logistics of setting up a JIT (20, 35, 37);
- dedicated support from analysts – more analyst time than otherwise would be available (20, 36);
- holding coordination meetings (6, 19); and
- provision of the Mobile Office and forensic devices (6, 12, 35, focus group 3).

Box 5.2: Background to Joint Investigation Teams

A JIT is an investigation team set up on the basis of an agreement between two or more Member States and/or other parties for a specific purpose and limited duration. Eurojust and Europol can participate in JITs separately as well as jointly.

Legal basis

JITs are a form of judicial cooperation.

A JIT is made up of representatives from judicial, prosecution and police authorities of different Member States who work together over a limited period of time on the investigation of specific cases of international and cross-border crime.

JITs were first mentioned in the Amsterdam Treaty 1997, and further elaborated at the European Council in Tampere, Finland in 1999.

The 2000 EU Convention on Mutual Legal Assistance in Criminal Matters (MLA Convention) provided that 'two or more Member States may set up a JIT, the composition of which is to be set out in a joint agreement between the Member States concerned'. Neither Europol nor Eurojust are mentioned in this Treaty, which was ratified by all the Member States in 2005.

Due to slow ratification, the Council incorporated the relevant provision of the 2000 MLA Convention into a Framework Decision of the Council on JITs in 2002.[21] This did not mention Europol or Eurojust. Member States were to comply with the provisions of this Framework Decision by 1 January 2003.

Europol's role in JITs

Europol has had a mandate to participate in JITs in a 'support capacity' since 2007.

Within the limits of the law of the Member States where the JIT operates, Europol officials are allowed to assist in 'all' activities and exchange information with all the members of the JIT. At the request of one or more Member States, Europol can participate in the setting up of JITs, and support national judicial and law enforcement authorities in preliminary discussions to set up JITs.

Even as part of a JIT Europol cannot take part in any coercive measures. Europol staff do not have immunity when they participate in JITs. Europol assists Member States' law enforcement authorities when they apply coercive measures.

In 2010 Europol participated in seven JITs.

Europol liaison officers might be involved in a JIT (as a national representative, not necessarily representing Europol), or Europol might be involved through a representative from an AWF. In the former case, the liaison officer is the connection to law enforcement representatives in the Member State. In the latter, the Europol participant in the JIT can feed in information from that AWF.

Evidence of take-up of JITs by Member States

Eurojust states that Member States have been slow to take up JITs, citing lack of awareness, the costs of participation and insecurity as possible reasons.

In order to boost their use, in 2005 an informal JITs Experts' Network was established. This includes one representative from each Member State. Its aim is to promote the use of JITs by helping to facilitate setting up the teams, assisting in sharing experiences and best practice, and dealing with legal considerations.

Since 2011 the JITs Experts' Network has a secretariat to promote its activities and to support the national experts in their work. This is hosted at Eurojust.

Source: De Moor and Vermeulen (2010); Europol (2011b); Eurojust website

[21] 2002/465/JAI.

Box 5.3: Examples of operational support offered by Europol

Mobile office: Europol can send analysts and/or specialists to Member States and set up an operational centre on the spot in order to directly support an ongoing investigation.

Forensic analysis: Europol can provide distance and on-the-spot support to Member States' investigations by forensic analysis of, for example, computer systems.

Universal Forensic Extraction Device (UFED): UFED is a standalone mobile forensic device for use out in the field or in the laboratory. It extracts data from 95 per cent of all mobile telephones, including smartphones and personal digital assistant (PDA) devices. UFED supports all known cellular device interfaces including serial, USB, infrared and Bluetooth. The data extracted can be brought back to the forensic lab for review and verification using the reporting and analysis tool.

Source: Europol (2011b)

5.5.2 Europol should be involved in more Joint Investigation Teams

Two interviewees questioned the extent of Europol's practical involvement (02, 15). One thought that Europol was invited to participate in JITs 'more now than in the past' (02), but that there were more JITs where Europol could add value and in which it could be invited to take part.

We can verify this by looking at the statistics on JIT use: Europol participated in seven JITs in 2010, and thus signed JIT agreements with seven EU Member States (Europol, 2011d). In addition, Europol supported 10 JITs without a formal agreement in place (Europol, 2011h). To get a sense of the proportion of JITs in which Europol is involved we take information from the Eurojust annual report (Eurojust, 2010), which states that Eurojust national members participated in 20 JITs (under Article 9f of the Eurojust Decision), acting either on behalf of Eurojust or in their capacity as national members. Additionally, Eurojust received 11 notifications from Member States regarding the setting up of JITs in accordance with Article 13.5 of the Eurojust Decision.[22]

The lack of experience in JITs is reflected in findings from the web-based survey as well as interviews. Just over 20 per cent of web survey respondents did not answer this question at all, and of those who did, just under 30 per cent answered 'don't know'. Only four respondents said that no benefit at all stemmed from Europol's participation, and 19 respondents said that the benefit was limited (8 per cent of all respondents). Of all the respondents, 40 per cent said that there was either considerable or some benefit from Europol's participation.

[22] Article 9f and Article 13.5 of the Eurojust Decision define different levels of involvement in JITs by the national members of Eurojust. Accordingly, by virtue of Article 9f of the Eurojust Decision, national members are entitled to take part in the setting up of a JIT concerning their own Member State. Furthermore, this article allows national members to participate in a joint investigation, seeing as it involves their Member State. It is the competence of the Member State to determine whether national member participation is carried out in the quality of a national competent authority or on behalf of Eurojust. Article 13 addresses the exchange of information with Member States and between national members. Article 13.5 states that Member States shall inform the national members on the setting up of a JIT and of the outcomes of the work of that team. Therefore, under Article 9f, the national members actively participate in the setting up and subsequent works of a JIT, while with Article 13.5 the national members are merely notified by the Member States on the progress of a JIT.

Four respondents cited documents to support their answer, including Europol's Work Programme, activity reviews and statistics on the use of JITs (these have been provided above).

5.5.3 Barriers to Europol's involvement in more Joint Investigation Teams

The Europol Strategy 2010–2014 aims to stimulate greater use of JITs as a part of the goal to enhance coordination of operational action in the EU (Europol, 2009b), performance against which is measured by the number of JITs supported by Europol (Europol, 2010b). The target was five in 2010, and is set at 10 by 2014.

The following were mentioned by interviewees as possible barriers to Europol's participation in JITs.

- Lack of awareness – a MB member commented that underutilisation of Europol in JITs was the result of a lack of awareness among investigators in Member States (37).
- A liaison officer suggested that the relationships between ENUs and Eurojust points of contact in Member States could be a factor which influences whether Europol becomes a participant in a JIT (12).
- Europol cannot provide more funding to Member States involved in JITs (Eurojust can) (33).
- Administration and bureaucracy – during discussions with Europol at the validation stages, the evaluation team asked for instances where Europol had not been invited to participate in JITs. The example given related to a case of payment card fraud. Europol had provided support to the investigation prior to the decision to establish a JIT. When the decision was taken to create a JIT, Europol was not involved. The reason for this, according to Europol, was that additional forms would have had to be filled in, since Europol's involvement in a JIT requires a new contract to be formed. It was simply cheaper and quicker not to enter into a new contract.

5.6 Chapter conclusions and recommendations

There is insufficient evidence to support a move to a general definition of competency, rather than the prescribed list defining the specific types of crimes falling within Europol's mandate.

The evaluation did not identify any instances where Europol wanted to support a Member State but was unable to do so because the offence in question was beyond its mandate. The list of Europol crimes does not stand alone (for example, it is also related to offences over which Eurojust is competent), which amplifies the potential implications of changes to the list. While some interviewees thought that the list was not sufficiently flexible, it includes 'related offences' and Article 10(4) of the ECD permits Europol to process data for the purpose of determining whether such data are relevant to its tasks. Therefore, the evaluation team, advised by the Expert Advisory Group, does not recommend changing the approach to Europol's competency as currently defined.

Europol formally participates in a small number of Joint Investigation Teams, but there is a perception that it adds value where it does participate.

Few participants had experience of JITs. The views of participants, along with statistics showing the proportion of JITs in which Europol is involved, strongly suggest that there is scope for Europol's greater involvement in JITs. However, the evaluation did not identify case histories or other verifiable evidence as to the value which could have been added through Europol's participation in a particular JIT. Further, the evaluation gathered only limited evidence as to steps which could facilitate Europol's greater participation. Suggestions included a greater awareness among national law enforcement, as well as reducing the administration and bureaucracy involved in Europol's participation in a JIT.

It could be helpful to understand the scope for extending Europol's involvement in JITs.

In particular, it needs to be established whether there are JITs from which Europol is currently excluded but could have played a useful role. Through detailed case review the reasons for Europol's non-involvement in JITs could be identified and remedied, for example, by simplifying administrative processes and improving awareness about how and to what extent Europol can add value to JITs.

CHAPTER 6

Information management, data systems and analysis

This chapter sets out findings in relation to the seven questions set out in Box 6.1.

Box 6.1: Questions addressed in Chapter 6

QUESTION 14: To what extent has direct access of ENUs to all data in the EIS taken place? *(Group 2)*

QUESTION 17: To what extent were the possibilities for the creation and management of information processing systems at Europol widened? *(Group 2)*

QUESTION 17(a) To what extent has Europol's access to data from other information systems (Article 21 of the ECD) assisted the organisation in its objectives? *(Group 2)*

QUESTION 17(b) Which elements have impaired the establishment of new systems processing personal data? *(Group 2)*

QUESTION 25: Does the ECD allow Europol to lead the further development of a European Criminal Intelligence Model? *(Group 3)*

QUESTION 26: Does the ECD allow Europol to improve its analysis capability? *(Group 3)*

QUESTION 27: To what extent does the ECD allow Europol to strengthen its information management capabilities? *(Group 3)*

QUESTION 32: To what extent does the ECD allow Europol to strengthen its information and communication technology (ICT) and business alignment? *(Group 3)*

Europol has a number of systems for storing and managing information: the EIS, AWFs and the Index Function. These are described in Box 6.2. The ECD made some changes in relation to data management and data systems at Europol, including the following.

- The ECD allows Europol to set up new systems for processing personal data (Article 10(2)). It was hoped that 'this will improve its capacity to provide intelligence and analytical support to Member States' (Europol, 2009c, p. 65).
- The ECD widened access to the Index Function to include some officials in ENUs (Article 15(2)). The idea here was to reduce the burden on liaison officers.
- The ECD widens Europol's ability to access data from other information systems (Article 21).

Box 6.2: Europol's data management systems

AWFs

- An AWF is opened on a specific area of crime when at least two Member States are involved.
- It can contain information about actual and potential criminals, suspects, contacts or associates of criminals, informants, victims and witnesses. The information can relate to racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or the sex life of a person (Article 14(1) of the ECD).
- Regarding access to an AWF, Article 14(1) of the ECD states that 'if an analysis is of a general nature and of a strategic type, all Member States, through liaison officers and/or experts, shall be fully associated in the findings thereof'.
- Article 14(4) of the ECD specifies that 'if the analysis bears on specific cases not concerning all Member States and has a direct operational aim', then representatives from the following Member States shall participate in that AWF:
- Member States which were the source of the information giving rise to the decision to open the AWF;
- Member States which are directly concerned by that information;
- Member States subsequently invited by the analysis group to take part in the analysis because they also are becoming concerned.
- Further, Article 14(4)(b) of the ECD states that access also may be given to 'Member States which learn from consulting the index function … that they need to be informed and assert that need to know…'
- Europol is in the process of revising the AWF concept, moving from a system in which there are a large number of separate AWFs (as at March 2011 there were 20 AWFs), to a system where there are two AWF 'hubs'.
- The AWFs are one of the main ways in which Europol delivers operational support to Member States.

EIS

- The EIS stores personal information about those suspected or convicted of Europol crimes, and about people for whom there are serious grounds for believing that they are likely to commit such crimes in the future (Article 12(1) of the ECD).
- In addition to Europol staff, ENUs and liaison officers have the right to input data directly into the EIS, and retrieve information from it (Article 13(1) of the ECD).
- Article 13(6) of the ECD introduced a new functionality in the EIS, which is in the process of being implemented. This will allow competent authorities in each Member State to query the EIS. This will allow them to find out whether the information requested is or is not available in the EIS. They must then ask their ENUs to access the information.
- The EIS became operational in 2005 and covers all mandated crime areas.
- Europol has developed a process to allow automatic uploading of data from national criminal databases, although not all Member States are ready to use this system.
- Europol states that the EIS 'was the first move towards the establishment of a single crime information database for the whole of the EU' (Europol, 2009c, p. 46).

Index Function

- This indexes information in the AWFs (Article 15(1) of the ECD).
- It is accessible to Europol staff, liaison officers and individuals in the ENUs whom, before the application of the ECD, could access it only via their liaison officers at Europol.
- The index function allows those searching to determine whether or not there is an item of information in the AWFs, but does not provide more details (Article 13(3) of the ECD).

SIENA

- This allows the exchange of operational and strategic crime-related information among Member States, Europol and Europol's cooperation partners.
- There is a wide group of SIENA users, including Member State liaison officers, seconded national experts, Europol officials at Europol headquarters, officials in ENUs, some colleagues in other designated competent authorities and some of the third parties with which Europol has concluded cooperation agreements.
- Launched in July 2009. As at March 2011 SIENA had been used to exchange on average 25,000 messages per month.

Source: De Moor and Vermeulen (2010); Europol (2009c, 2011b); Wills *et al.* (2011)

6.1 Access by Europol National Units to data in the Europol Information System

Focus group participants addressing this question did not notice any change since the ECD (focus groups 2 and 3), but noted that EIS 'works just fine'. In the web-based survey, 20 per cent of respondents did not answer question 14 ('To what extent has direct access of ENUs to all data in the EIS taken place?') and 20 percent selected 'don't know'. Only 2 per cent (six respondents) answered 'not at all'. Of the remaining (approximately) 60 per cent, around 37 per cent answered that direct access of ENUs to all data in the EIS had taken place 'fully' or 'to a considerable extent', and around 17 per cent said 'to some extent' or 'to a limited extent'.

Question 14 was not a popular topic for discussion in interviews. It was raised in eleven interviews, but of those, several interviewees did not know enough about EIS or the change introduced by the EIS to comment. Three commented that more information should be contributed (12, 22, 26) and one said that in principle direct access to EIS by ENUs was welcomed:

> Anything that would help us in having ... direct contact, whether it's by a system or whether it's by a phone call ... I think is very welcome by Europol. (Interview 03, head of unit)

Another commented that automatic loading was useful, but it was important to convince Member States to input information and to increase awareness:

> We have implemented the development [direct access to EIS], we have given accounts … but you have to understand for my country, for our professional culture, it's so far away from our way of doing investigations. So it's really a challenge for us. (Interview 37, MB member)

Another interviewee raised the issue that it is a question of getting not only more information, but also better quality information: this view is supported by the DPO Annual Report 2010, which mentions that an audit of EIS in 2010 referred to the need to improve the quality of information in the EIS (Europol, 2011c).

6.2 The ability to access other data systems has not been used

Article 21 of the ECD allows Europol access to data from other information systems. An interviewee working in Europol said that Article 21 was an important change (27), allowing Europol to connect to the data systems of other partners. No specific instances of this provision being used were provided by interviewees, focus group participants or respondents to the web-based survey. In the web-based survey the responses to question 17(a) ('To what extent has Europol's access to data from other information systems assisted the Organisation in its objectives?') were as follows: 40 per cent answered 'to a considerable extent' or 'to some extent', 13 per cent answered 'to a very limited extent' or 'not at all', and 46 per cent answered 'don't know'.

The evaluation team notes that Europol has limited access to the Schengen Information System, but that this was initiated before the ECD.

One interviewee (44) gave an example of the kind of data system envisioned under this provision: a register of information held for the carbon trading system. This contains some personal data and there was a possibility that it could be used by Europol to investigate VAT fraud. However, Europol did not get access because this database was not originally created for a law enforcement purpose.

In focus group 3, a HENU argued that Europol should have direct access to other databases such as Eurodac,[23] so that it could search these on behalf of Member States.

6.3 The ability to create new data systems has not been used

Article 10(2) of the ECD allows Europol to set up new systems for processing personal data. No new data systems had yet been created. Question 17 asked about this provision and what, if any, barriers existed to the use of this provision.

Interviewees, along with approximately 60 respondents to the web-based survey, suggested the following reasons as to why no new data systems had been created.

6.3.1 No operational need for new data systems

The most common reason among the web-based survey (approximate 22 respondents) and interviewees was that there was no need for a new database. Information can be accommodated within one of the existing databases (13, 16, 26, 44, 03). It was preferable to amend the AWF concept and broaden or improve existing systems rather than create another new database (13, 02, 06):

> Article 10 allows flexibility and improvisation. Its success cannot be measured by the fact that improvisation was not yet necessary. (Web survey respondent)

This was particularly the case given the reform of the AWF concept and improvements to EIS. Five respondents to the web-based survey and participants in focus group 1 commented that Article 10(4) is used preferentially: this allows Europol to process data for the purpose of determining whether such data are relevant to its tasks and can be included in the EIS or AWF.

Adding new databases is costly (41), might create problems with cross-checking against existing systems (02), and could result in duplication (focus group 2), as explained by this interviewee:

> We always have a problem of cross-checking different databases ... if you have another database then you need [the ability to] ... search across those databases … Do we really need more databases, or do we rather take a look at the existing ones and broaden the profile of those? (Interview 02, head of unit)

6.3.2 Restrictions on the storage of sensitive personal information in new data systems

Three interviewees (05, 14, 47) cited restrictions on the inclusion of sensitive information (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or sex life). Data protection

[23] Eurodac is a large database of fingerprints of applicants for asylum and illegal immigrants found within the EU.

restrictions were mentioned also by five web-survey respondents and by participants in focus group 2. The following is a typical view:

> It is true that Art. 10 allows [the establishment of] new systems, but point 3 of the same article excludes the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, in other words most of the motivating triggers for terrorism. (Web survey respondent)

Interviewees and web-based respondents did not give any examples of where there was a desire to establish a new database but such an initiative was blocked for data protection reasons. However, in the validation stage of this evaluation project, these views were supported by a submission by the Europol DPO, in which it was stated that restrictions on the inclusion of sensitive personal data in any new database did inhibit the use of this provision:

> New systems as foreseen in Articles 10(2) and (3) ECD do only make limited sense in a law enforcement context if sensitive personal data cannot be processed under any circumstances. This is probably the main reason why Europol has not come up with a single proposal for a new system as foreseen in the ECD. (Written submission to evaluation team from the DPO)

The DPO made a recommendation, proposing that the following might be included in a future Europol Regulation:

> A more flexible approach along the lines of Article 14 (1) subpar. 2 EC, including the necessary data protection safeguards. (Written submission to evaluation team from the DPO)

6.4 Calls for flexibility in storing and processing information in Europol's data systems

In around nine interviews (with Europol staff, European Commission and European External Action Service, EEAS), provisions governing Europol's data management were described as insufficiently flexible.

ECD refers to and names specific information processing 'systems'[24] and sets out rules for each system regarding the information which can be stored and how it can be used and processed. One example given is that an AWF can hold the contact details of known associates, whereas this information cannot be stored in the EIS (27). This statutory definition was considered overly detailed and therefore restrictive, meaning that information is 'imprisoned' (44) within one database. The problem, as perceived by interviewees, is summed up in the following quotation:

> There is a genuine business need to apply a more flexible … legal framework … it would be much better if the ECD was an enabling piece of legislation … rather than a prescribed one. Europol [should] have the right to collect data from relevant sources, … a general sort of gateway provision to collect information from any competent authority in the Member State within the field of its mandate. (Interview 31, Europol Directorate)

[24] Chapter II of the ECD; the EIS (Articles 11, 12 and 13), the AWFs (Article 14) and the Index Function (Article 15).

The restrictions placed on Europol's operational effectiveness by the rules regarding what can be included in the EIS are mentioned in the 2010 Activity Report. The inability to store information on associates is mentioned in particular (Europol, 2011a). During the validation stages of this evaluation we asked Europol to provide examples of the problems that this causes: examples were provided and are set out in Box 6.3.

Box 6.3: Examples of problems arising from current configuration of databases

Analysts at Europol reported that the current configuration of separate databases means that connections between data in different systems are not identified. For example, analysts can cross-check databases for entities appearing on each, but further links are not possible to identify. These other links are central to analysis.

Analysts reported that they often have to ask data providers to send the same information twice. Analysts may see that a particular piece of information is in one database, but they cannot use it in a report without asking the data provider in the Member State, which wastes time.

Source: Discussions with Europol staff during validation stages

In the web-based survey, 40 per cent or respondents answered 'don't know' to question 27 ('To what extent does the ECD allow Europol to strengthen its information management capabilities?') and 53 per cent answered 'to a considerable extent' or 'to some extent'. Reviewing the explanations given by survey respondents, it appears that the endorsement for question 27 relates to the usefulness of the AWFs and EIS – which were not significantly affected by the ECD. Fifty per cent of respondents answered 'don't know' to question 31 ('To what extent does the ECD allow Europol to strengthen its ICT and business alignment?'), and 43 per cent answered 'to a considerable extent' or 'to some extent'.

The proposed solution to perceived lack of flexibility, suggested by six interviewees (03, 14, 25, 27, 29, 31), was that references to rules governing different 'systems' should be removed from the ECD, and instead general rules on data protection, data security, processing, handling and so on should be prescribed for different kinds of information. Within these constraints Europol then would have discretion to decide how to organise the systems, working with the DPO and JSB. These quotations illustrate the approach preferred by interviewees:

> In my view, it would be a ... fundamental improvement to the current situation if, instead of talking about 'systems' … the legal framework would only talk about information types ... under the concept of the 'system' you bundle the concept of processing with the [type of] information ... it becomes too restrictive and at the moment you [go] a little bit past that, you are in trouble, perhaps against the will of the legislator ... it creates rigidity. (Interview 03, head of unit)

> I think what the legal framework should mention is that Europol should be allowed to process information for the purpose of fulfilling its task, including analysis, including exchange of information, data sharing, identifying links between datasets ... Whether we use one system or the other, you can impose general conditions for the use of the data ... there is proportionality in the way it is used ... you can do that in general, not just per system, and you could impose it in general for the various processing tasks which we have. (Interview 27, head of unit)

6.4.1 Assessment of these suggestions

During the validation stages of this evaluation the Europol DPO, the Evaluation Steering Committee and a member of the JSB were invited to comment upon and respond to these suggestions.

The Evaluation Steering Committee and an interviewee from the JSB separately reported that one reason why the ECD details separate data processing systems is historical: the ECD described the situation at the time of drafting, when Europol had three separate information systems with no links between them.

The interviewee from the JSB and the Evaluation Steering Committee pointed out that substantial revision to the AWF concept had been permitted under the current situation, which suggested that it did permit some flexibility. The DPO made a similar point, noting that both SIENA and the new AWF concept already take the approach called for by interviewees (see Box 6.4). However, the Evaluation Steering Committee pointed out that the revision to the AWF concept had been a long process.

Box 6.4: Examples of current Europol systems which do not depend only on a statutory definition of 'systems'

SIENA is not explicitly regulated in the ECD. However, identified business needs have been addressed with both the DPO and the JSB in order to ensure that their implementation is subject to full observance of applicable data protection principles – with impressive results. Full traceability of all actions, dedicated data protection audit tools including at national level, a traffic light system for controlled information exchange with third parties and a tailored data retention policy are just a few features to be mentioned in this context.

The new AWF concept (which reduces the number of AWFs from currently 23 to only two in the future) demonstrates that a high level of data protection is not determined by the number of databases in operation.

Source: Written submission to evaluation team from the DPO

The evaluation team notes that the different information systems (EIS, AWFs and the Index Function) have different purposes and are accessible to different groups of people. The various rules applicable to each system are designed to ensure adherence to data protection rules and principles. The EIS can be accessed by all ENUs and liaison officers, whereas the AWFs (which contain information about known associates who may not be involved in criminal activity) can be accessed by a limited number of individuals on a 'need to know' basis. The interviewee from the JSB pointed out that the EIS is primarily the responsibility of Member States (Article 11(3)), whereas the AWF is the responsibility of Europol.

In line with this, the DPO and the interviewee from the JSB argued for the continuation of tailor-made rules. The interviewee from the JSB (103) argued that principles of purpose limitation and data minimisation, and aspects such as storage time, must be specific to different types of information. Similarly, the DPO submitted that the current approach 'demonstrates the intention of the legislator to provide tailor-made solutions taking due account of Europol's specific mandate, tasks and operational needs'.

However, taking these points into account, both the DPO and the interviewee from the JSB were receptive to the suggestion that there could be changes to the current approach. The DPO argued that a future Europol Regulation would not necessarily have to define individual systems in an exhaustive manner, as is the case in the ECD. The DPO acknowledged the weakness of this approach, that it may limit Europol's ability to 'swiftly

react on upcoming business needs requiring the establishment of innovative data processing solutions'. The suggestion made by the DPO was as follows:

> High data protection standards do not by default depend on statutory definition of separate data processing operations. They can also be achieved by means of procedural safeguards aiming at due implementation of recognised data protection principles with particular emphasis on 'privacy by design' and full transparency towards the DPO and supervisory authorities. Thus, the legal framework would not concern systems, but spell out strong data protection and data security rules that apply to any future system depending on the specific type of information. (Written submission to the evaluation team by the DPO)

The interviewee from the JSB was not opposed in principle to a privacy by design approach, and agreed that flexibility was essential. However, he cautioned that implementing such an approach was complex.

In the COSI meeting on 11 April there was some support for a more flexible approach.

6.5 Data retention

One interviewee working within Europol (27) and two liaison officers (19, 22) mentioned data retention as a potential area for improvement. Article 20 of the ECD requires that data retention is reviewed after three years. However, the interviewee suggested that if the Member State which provided the data is retaining it for a longer period of time, this also should allow Europol to do so. It was argued that for criminals and criminal organisations, three years could be just a small part of their lifespan.

> You extend it [the time information is stored] beyond three years, but then every year a request is sent … to the provider to ask whether the data should be kept in the system, and if you input a lot of data in the system then every year you get a lot of requests asking you whether you should keep this data on the system. So after those three years, managing other storage of the data either in the AWF or in the EIS, it's quite a big burden for the Member States. So maybe one suggestion would be to extend the time limit for the storage of data. (Interview 19, liaison officer)

The Europol Annual Activity Report supports these interviewees' views, suggesting that in relation to EIS:

> It would be more useful if retention times were greater in certain circumstances, e.g. in the case of convicts. (Europol, 2011a)

6.6 Open-source data

Article 25(4) of the ECD regulates the processing of personal data from publicly available sources. Europol is able to 'directly retrieve' data from such sources – it does not have to come to Europol through a ENU, as is the case for any other personal data. However, according to Article 25(4), further processing of such data must be 'in accordance with the data protection provisions of this Decision'.

This means that personal data from publicly available sources must be treated (in terms of processing, sharing and storage) like any other personal data which has been collected from

protected law enforcement sources. It also means that submission of personal data to third parties without a cooperation agreement is only possible in emergency situations, as further specified in Article 23(8) of the ECD. Under this approach:

> The data subject receives a maximum level of protection. The fact that data relating to him are … already publicly available has only minor consequences for processing operations carried out by Europol. (Written submission to evaluation team from the DPO)

During the interviews a liaison officer argued that this approach was an unnecessary restriction, and suggested that a different approach was needed. During the validation discussions with Europol, Article 25(4) was described as a 'day-by-day' problem. Analysts argued that it was important for them to reference relevant open-source information when producing reports: failure to do so would look naïve and could create uncertainty among report recipients. Examples include newspaper reports or even articles in *Jane's Intelligence*.

6.6.1 Assessment of these arguments

During the validation stages of the evaluation the DPO was asked to comment on this. The DPO confirmed that this is an issue that is brought to his attention frequently, in particular when third States or third parties are involved:

> The fact that the legislator did not provide more leeway in the handling of personal data from publicly available sources, however, causes huge frustration on the operational side. The DPO is frequently being approached on the topic, for instance when it comes to distributing a newspaper article about a known criminal to a third party with which Europol does not have an operational cooperation agreement. The average perception is that this should not constitute an issue '[…] as anyone could have come across a publicly available article'. (Written submission to evaluation team from the DPO)

The interviewee from the JSB (103) was not in favour of this proposed change, on the grounds that it would circumvent general data protection principles governing sharing information with third States.

In addition, the evaluation team identified two main arguments against such a change.

The first, raised by members of the Expert Advisory Group, the DPO and the interviewee from the JSB, is that if such data are passed on by Europol, this lends that information a greater weight and significance in the mind of the recipient:

> When Europol highlights an open source article to a third party it does not act in the same role as 'anyone' but as the European Police Office. This puts additional emphasis on the publication and indirectly creates the assumption that it was assessed and considered to be relevant and valuable by Europol. Thus, processing of open sources by Europol has implications for individuals which must be taken into account. (Written submission to evaluation team from the DPO)

The second is that some open-source information about individuals is covered by procedural rules within Member States regarding the collection and use of evidence. If Europol were able to distribute such information more easily, these procedural rules might be infringed.

However, bearing this in mind, the DPO did suggest avenues for further amendments to Article 25(4) which would respond to operational needs to share such information, yet

offer sufficient protection to data subjects. For example, permitting sharing with third States or other third parties where there is no operational cooperation agreement if the following conditions are met:

- personal data from publicly available sources remain recognisable as open source material at any time, stay in their original format and are not further evaluated or assessed (this would be easily achievable by permitting referencing to a prepared or open web archive, but not partial quoting, etc.); and
- procedural safeguards are employed, such as additional scrutiny by a competent data protection entity.

6.7 The impact of the Europol Council Decision on analysis and development of a European Criminal Intelligence Model

In line with its strategic goal to be a criminal information hub and to deliver operational support services (Europol, 2009b), operational and strategic analysis is at the core of Europol's work. Europol is in a unique position to provide 'effective strategic analysis capability', using its 'privileged position as a key information broker and criminal analysis centre to report on developments in the organised crime environment' (Europol, 2011b, p. 4). Some examples of the outputs from the analysis undertaken at Europol are set out in Box 6.5. Further, Box 6.6 provides relevant contextual information about Project Harmony, a policy to strengthen the European Criminal Intelligence Model.

However, most interviewees, when asked questions 25 and 26, could not identify any direct link between the provisions of the ECD and either the development of a European Criminal Intelligence Model (see Europol, 2009c, p. 49), or the strengthening of the analysis undertaken by Europol. A review of the provisions of the ECD confirms that there are no direct references to either of these activities, and this was confirmed by interviewees' remarks, reported in Section 3.1 above, that the purpose of the ECD was to amend Europol's legal status and not to amend the operational elements of Europol's work.

Analysis of responses to the web-based survey in relation to questions 25 and 26 indicates strong support for the quality of analysis conducted by Europol, rather than the effect of the ECD on analysis.

Discussion in the small number of interviews in which questions 25 and 26 were addressed focused around the quality and quantity of information available to feed into the analysis submitted by Member States (discussed in Chapter 4) and available from the private sector (discussed in Section 9.9). In addition, the capacity to conduct analysis was mentioned, (as discussed in Section 4.1).

Box 6.5: Examples of Europol's strategic analysis products

Threat assessments: these analyse and evaluate the character, scope and threat posed by types of organised crime. They provide decision makers and investigators with strategic intelligence which helps them to focus and direct their efforts. Examples include the SOCTA, internet facilitated OCTA – cybercrime.

Situation reports: Based on the priorities identified in threat assessments, situation reports define the common objectives in the fight against organised crime and terrorism. They answer questions such as: 'What is happening with the criminal phenomenon?' 'How do the relevant criminals work, live, communicate, do their business at this moment?' Examples include the EU Terrorism Situation and Trend Report (TE-SAT), as well as situation reports on Lithuanian organised crime groups.

Intelligence notifications: these address recent changes, trends and developments in the criminal environment (thematic or regional). As with other types of strategic reports, they may focus on specific organised crime groups, criminal markets or geographical areas. They provide a preliminary assessment of the possible effect on the relevant region and the EU and address smaller issues than threat assessments. Examples include intelligence notifications on trafficking in human beings and child sexual exploitation.

Source: Europol (2011b)

Box 6.6: Project Harmony

Project Harmony – 'A generic European Crime Intelligence Model, bringing together the existing instruments and strengthening Europol's central role' – was initiated by Belgium with the support of the European Commission's Framework Partnership Agreement 'Prevention of and fight against crime'. The project, which was led by Belgium with Europol and included the Netherlands and the United Kingdom working as partners, ran from October 2009 to December 2010. It aimed to review and strengthen the European Criminal Intelligence Model, and to develop a policy cycle for serious and organised crime. The Council agreed to put in place a policy cycle in 2010 under the Belgian presidency. The first such policy cycle, which is serving as a pilot, has been underway since March 2011, and the full four-year cycle is to commence in 2013. COSI is expected to play a major role in the policy cycle, which makes it possible to establish priorities for action based on an analysis of the criminal phenomena at the European level.

Source: Council of the EU (2010)

6.8 Chapter conclusions and recommendations

Provisions in the Europol Council Decision which enabled Europol to access other data systems and to create new systems processing personal data have not been used yet.

Two possible reasons why new data systems have not been created were highlighted by participants. The first is that there has not been an operational need for a new system, as existing systems have been adequate. The second is that restrictions prohibiting the inclusion of sensitive personal data have acted as a barrier to creating new systems. Discussions with Europol during the validation stages of this evaluation indicate that there has not been a pressing need to establish new data systems – no interviewee or other participant was able to point to an instance where a new data system was needed or considered. However, there is support from experts within Europol – including from the DPO – for the proposition that the restriction on sensitive personal data might act as a barrier in the future, which could be removed while abiding by Europol's high data protection standards. Provision 14(1), which permits sensitive personal information to be included in AWFs when 'strictly necessary', could provide a guide.

RECOMMENDATION 8: Consideration should be given to amending Article 10(3) of the ECD in order to allow new systems for processing personal data to include sensitive, personal data, with the necessary data protection safeguards. Amendments to Article 10(3) should be based upon assessments of likely future needs for new data systems. Provision 14(1), which permits sensitive personal information to be included in AWFs when 'strictly necessary', could provide a guide.

There is a case for removing the language of 'data systems' and adopting a more flexible 'privacy by design' approach.

The ECD names specific information processing 'systems' (AWFs, EIS and Index Function) and specifies details of their design. The prescription of separate 'data systems', each with tailored, separate rules regarding content and use, was criticised by some research participants as being insufficiently flexible and inhibiting analysis. Interviewees with expert knowledge of analysis at Europol reported difficulties in drawing information from separate systems into a single analysis product. Others argued that different rules regarding the content of each system were unnecessarily complicated.

In order to make an assessment of these views, the evaluation team sought an opinion from the Europol DPO and a member of the JSB. Both argued in favour of maintaining the status quo to the extent that there should continue to be separate rules regarding the information stored in each database.

However, the DPO and the JSB thought that, provided essential protections were in place, it might be possible and desirable to move to a 'privacy by design' approach.

Therefore, the evaluation team concludes that there are sufficient grounds for further scoping work to investigate removing the language of 'data systems' and adopting a 'privacy by design' approach. The evaluation team notes that this would be a substantial design change, and that considerable further work would be necessary to articulate data protection standards. Additionally, scoping work could consider the impacts on the trust which national law enforcement officials have in Europol's data protection regime, as well as the impacts of such a change on the workload of Europol analysts.

RECOMMENDATION 9: In order to increase the flexibility of the processing environments available to Europol, consideration should be given to removing the statutory definitions of separate data processing systems or databases in a future Europol Regulation. Instead, a 'privacy by design' approach could be adopted, where procedural safeguards and strong data protection rules permit data protection standards tailored to different types of information.

This would require significant design changes and, as such, there should be a thorough risk assessment, including: ascertaining whether system integration and interoperability for analytical purposes could be achieved by current technological means while preserving the spirit of the controls invested in each of the individual databases; examining the impact (positive or negative) on information sharing by Member States; and the potential financial costs to Europol of making such a change.

Data protection provisions in the Europol Council Decision inhibit the sharing of personal data from publicly available sources with third States with which Europol does not have an operational agreement.

Article 25(4) of the ECD specifies that personal data from publicly available sources must be treated like personal data which has been collected from protected law enforcement sources, and this was seen as unnecessary by several interviewees. The DPO confirmed that it is frequently approached on this topic and advocated a change to Article 25(4).

In assessing these proposals the evaluation team takes into account the argument that merely the distribution by Europol of such information lends it a greater weight and significance. The evaluation team and the Expert Advisory Group agree that by processing such information Europol could appear to validate the data and imbue it with an unintended value. There are also concerns stemming from the different substantive and procedural rules in Member States, some of which might be infringed if Europol were to distribute publicly available information about individuals. Both these arguments were cited by an interviewee from the Europol JSB, who opposed any change to Article 25(4).

However, alternative interpretations to the Article 25(4) restriction were noted by the DPO. The evaluation team and the Expert Advisory Group think consideration should be given to recommendations by the DPO for amendments to Article 25(4).

RECOMMENDATION 10: Consideration should be given to amending the provisions in Article 25(4) of the ECD which might allow Europol, within the framework of Article 88 of the TFEU, to share personal data gathered from publicly available sources with third parties where there is no operational agreement, provided that certain safeguards and conditions are met: for example, that data are communicated in their original format or by referencing only, and accompanied by clear caveats around the value that should be given to it. Consideration must be given to understanding whether and to what extent data can be verified and used during investigations or criminal proceedings.

CHAPTER 7 Europol's data protection regime, the Data Protection Officer and the Joint Supervisory Body

This chapter presents findings from interviewees' responses regarding Europol's data protection regime. It analyses responses to the three questions set out in Box 7.1.

Box 7.1: Evaluation questions addressed in Chapter 7

QUESTION 6: Did the establishment of the DPO ensure, in an independent manner, the intended level of data protection in Europol (at least that which results from the observation of the principles of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, signed in Strasbourg on 28 January 1981?) *(Group 1)*

QUESTION 15: Has the establishment of Europol's specific data protection regime benefited the fulfilment of Europol's activities while ensuring adequate protection of personal data processed in the framework of police and judicial cooperation in criminal matters during its transfer by Member States to Europol? *(Group 2)*

QUESTION 16: Has the JSB contributed to ensuring that the rights of the individual are not violated by the storage, processing and use of the data held by Europol, and that the permissibility of the transmission of data originating from Europol is adequately monitored? *(Group 2)*

The ECD did not make any changes to Europol's data protection regime, but Article 28 establishes a DPO at Europol. There has always been a DPO, but the ECD makes this a formally independent role. Interviewees stressed that data protection had been vital throughout Europol's history, and that independence was central to the DPO even before the ECD (04, 05, focus group 1).

As well as stating that the DPO 'shall act independently', the ECD provides an 'escalation procedure' under which the DPO can raise issues to the director, then the MB and then, if he or she claims that the provisions of the ECD relating to data protection have still not been applied, to the JSB (Article 28(4)).

The interviewees, implicitly or explicitly, made a distinction between the protection of operational, criminal intelligence data and data relating to Europol staff.

7.1 Europol has a strong data protection regime for criminal intelligence and a good record of data protection

There was agreement among participants from a range of stakeholder groups (including the JSB, HENUs, liaison officers, Europol staff, the European Commission and Frontex) that Europol's data regime (the principles of which were not amended by the ECD) was extremely rigorous. An interviewee from the European Parliament thought that Europol

was compliant with data protection and was 'doing quite well' relating to data security (52). It was noted in two interviews that Europol had experienced no major compliance issues as regards data protection (34, 44), and overall this is verified by the DPO report (Europol, 2011c). The interviewee from the JSB (103) was of the opinion that Europol's data protection regime is seen as the benchmark standard for law enforcement data protection, and praised the work of the Europol DPO.

In the web-based survey, 21 per cent of respondents chose not to answer question 15, and 30 per cent answered 'don't know'. Of those who provided a substantive answer (i.e. did not respond 'don't know') views were favourable towards the data protection regime at Europol.

Interviewees from the European Commission and the European Parliament noted that Europol was working in an area where data protection will always be an important and difficult issue.

The advent of the Terrorist Finance Tracking Programme (TFTP) was mentioned as an example where Europol was being asked to operate in controversial areas (for example, see Europol JSB, 2012). During discussions with Europol during the validation stages of the evaluation, the active involvement of the DPO in relation to TFTP was provided as an example of good practice, where the DPO, JSB and Europol worked closely to devise an approach.

7.2 The Data Protection Officer and the data protection regime build trust with Member States

The DPO was perceived by the majority of interviewees within Europol as being genuinely independent in his activities and in a strong position to carry out his mandate (13, 14, 38). Key findings from analysis of interview discussions are that the independence of the DPO and the strength of the data protection regime is communicated to internal and external audiences; a strong data protection regime makes Europol appear a 'credible' organisation, which in turn could facilitate information sharing. The interviewee from the JSB also took this view, arguing that a strong data protection regime built trust, improved data quality and therefore supported law enforcement activities. These quotations from interviewees within Europol illustrate this view:

> The function is different, meaning also the value of the DPO is different. Before it was not independent, now it's independent – so meaning his opinion has more value, also towards the outside world. (Interview 04, head of unit)

> We see this now really as a competitive advantage ... if you want to have trust from your partner and get to the sensitive data, then this is the only way. (Interview 29, head of unit)

> I think it's also an advertising policy, because it's good to be known that we have this data protection regime. (Interview 13, Europol Directorate)

Similar findings appear from the web-based survey in relation to question 6 (which asked about the DPO): around 17 per cent of respondents chose not to answer question 6; of those that did, around 34 per cent responded 'don't know'; 42 per cent said that the DPO

had ensured independent data protection 'to a considerable extent' or 'to some extent'. Views were fairly consistent across respondents' groups.

7.3 Examples of using the Data Protection Officer consultatively

The implementing rules for the DPO state that there should be timely consultation of the DPO (Europol, 2011c). Interviewees from different perspectives within Europol (those in the DPO, heads of unit, project managers and liaison officers [01, 07, 08, 09, 16]) reported good cooperation with the DPO, and thought that the DPO was consulted and his advice sought early, working in teams with him.

> If you use him in the correct way ... meaning proactively, then it's very, very useful. It's also very useful to have him tapping on your shoulder and telling you, 'Okay, you should do it otherwise.' So I have very good experiences. I also involve him proactively ... I'm very happy to have the DPO with me, to tell me how far can you go and how far you cannot go. (Interview 04, head of unit)

> We have a good consultation with [the DPO], and I must say that the cooperation with the DPO is, in general, very good. They are also, kind of, working together with the organisation when it comes to the new AWF concept. (Interview 02, head of unit)

These views are supported by comments in the 2010 JSB Inspection Report, which confirms that the DPO audits contribute to better compliance throughout Europol (Europol, 2011c). They are supported also by the DPO, who told the evaluation team that there have been changes in the 'process landscape', which have led to a more structured approach of seeking data protection guidance, advice and best practice at an early stage. Two specific examples were provided by the DPO in its written submission to the evaluation team:

- the development of 'Check the Web' from a standalone portal which could not process any operational personal data into AWF Check the Web, which has the possibility to conduct fully-fledged crime analysis on websites connected to Islamist extremist terrorism, including the processing of personal data; and
- the development of SIENA and the new AWF concept were very good examples of 'privacy by design'. The DPO reported close cooperation between Europol's capabilities, operations and the government department and the DPO. This was confirmed by another member of Europol staff.

7.4 Some instances of dissatisfaction with the data protection regime and the Data Protection Officer

This is not to say that all interviewees thought that Europol's data protection regime struck the correct balance. Out of 41 interviews in which data protection was addressed, eight interviewees thought that data protection imposed obstacles to their work. This is confirmed by the DPO's Annual Report 2010, which notes that 'data protection is occasionally still perceived as hindering effective law enforcement' (Europol, 2011c, p. 4). There were a small number of issues raised by interviewees which related to perceptions of overly narrow interpretation of data protection.

One issue raised by one member of the Directorate (31) was that steps to protect Europol staff data could go too far, requiring high levels of internal bureaucracy and sign-off to secure routine access to staff data. Along similar lines, another interviewee suggested that the DPO's focus was perhaps too much on administrative data (32).

Another example mentioned by one interviewee was the installation of closed-circuit television (CCTV) at Europol headquarters. It was reported that this had been a slow process due to data protection concerns, and that the final arrangement was more in favour of the protection of those living close by than to operational concerns at Europol. The DPO reported cooperation with the Security Unit on this issue, and felt that the arrangement 'satisfies the security needs of the organization and at the same time incorporates important data protection safeguards' (written submission to evaluation team from the DPO).

The assessment of these examples by the evaluation team is that while they are helpful illustrations of the DPO's impact, they do not appear to have significant consequences (or at least, no significant consequences were described by interviewees).

7.5 Functional independence of the Data Protection Officer

In three interviews concerns were raised that the DPO's position might compromise his or her ability to provide *ad hoc*, *internal* advice. All strongly agreed that Europol should have an independent DPO who is able to see and investigate any aspect of Europol's function. However, there was a concern that if the DPO is seen to sit outside the organisation and not have an internal role, he or she is less able to provide consultation or advice to the director and act as a 'tool' to allow the director to address data protection issues internally (29, 30). This quotation explains this concern:

> We already have this independent scrutiny, and I think it would have been fair to leave the director to have an internal advisor where he can close the door and say, 'Look, what are my issues here ... so that I can fix this before the JSB comes' … In my view the DPO should help the director to identify risks like a specialised administrative staff with a strong legal background. (Interview 29, head of unit)

Europol also has external supervision from the JSB already, and these interviewees felt that the DPO was acting as a second JSB. Similar perceptions among Europol staff regarding the functional independence of the DPO were mentioned in the 2012 DPO report, indicating that this is a longstanding problem (Europol, 2011c).

7.5.1 Assessment by the Data Protection Officer and Joint Supervisory Body

The evaluation team asked the DPO to comment on this issue during the validation stages. The submission from the DPO confirms that there is a difference of opinion on this matter, and that 'difficulties persist in understanding how the functional independence in the performance of tasks would still enable the DPO to be part of Europol'. However, it was strongly argued that the DPO is an internal function. The interviewee from the JSB also strongly supported the view that the DPO was an internal function.

In a submission to the evaluation team, the DPO stated that it was not the role of the DPO to act as a second JSB. It was stressed that the DPO is an internal function that is essential because 'it facilitates the building of trust among Europol staff, ensures

compliance from inside and enables the provision of advice or intervention at an early stage when potential risks for data subjects tend to be lower'. The DPO argued that the following highlighted the internal role:

- the DPO is not in a position to prevent staff from taking certain action or stopping processes; and
- the DPO has the task of providing advice and directly addressing the director in the case of detected non-compliance with the ECD. The final decision lies with the director as head of the organisation.

Therefore, the evaluation team is confronted with opposing views on this issue. Having carefully assessed these and consulted with the Expert Advisory Group, the evaluation team concludes that the evidence available supports the argument made by the DPO and the JSB that the DPO is acting as an internal function. This conclusion has been based on the following considerations.

- Concrete examples of the DPO acting in a consultative way have been provided (one being the reworking of the AWF concept).
- Submissions made by the DPO to the evaluation team regarding other findings in this report, indicate a problem-solving approach (for example, the DPO has made suggestions for a 'privacy-by-design' approach to reform the data processing and analysis environment at Europol).
- The interviewee from the JSB supported the position of the DPO and commented on the high quality of the work of the DPO.
- The level of trust reported by interviewees as a result of the functional independence of the DPO.
- A small number of interviewees (just two) expressed concern about the position of the DPO, and the examples given were not significant.

However, this clearly remains an issue of contention; the perception of the DPO's role is important in its own right. It could be that interviewees and others in Europol are able to provide concrete and significant examples of the DPO's functional independence operating as a barrier, which have not been made available to the evaluation team. Europol could seek to obtain relevant evidence to substantiate or allay these concerns. As such, an internal review or dialogue could be considered a route to reaching a shared understanding, and thus improving relationships.

7.5.2 Many layers of data protection supervision

It was noted that Europol is subject to several different forms of supervision as regards data protection: there is the DPO, the JSB and the European Data Protection Supervisor. Some called for clarification of competencies (05, 42).

> There is a question whether there are too many data protection institutions … struggling against each other's competencies instead of protecting personal data. (Interview 34, MB member)

Interviewees wondered if there was overlap or redundancy, but did not identify any different divisions of responsibilities between these agencies. The following anomalies were identified also regarding Data Protection Supervision.

- In relation to classified information, Article 46 of the ECD states that Europol should apply Council security regulations. However, Europol has its own security regulations (05).
- Article 39(6) of the ECD states that Europol should apply the 'principles' of the Regulation on processing staff data. However, this provision does not say that the Regulation itself applies. This contributes to a lack of clarity about who is responsible for staff data – the European Data Protection Supervisor or the JSB.

A specific example, in regard to access to Eurodac, was explained as follows:

> If we want to access Eurodac, we have to comply with certain data protection conditions ... but the regulation of Eurodac foresees that ... case. Member States have to give us [Europol] data, that means we don't ... receive information directly from this external system, and if Europol gives the information from Eurodac to Member States, Europol's data protection framework applies – so you have a double layer of data protection safeguards which basically cover the same topic, which makes little sense. (Interview 05, DPO)

7.6 The resources devoted to data protection

Concern about the resources devoted to data protection was raised by two interviewees within Europol.

The 2010 DPO Annual Report states that the DPO comprised eight members of staff. The Annual Report acknowledges that this might appear to be a high number of staff 'on first glance', but justifies this level of staffing on the grounds that 'Europol's core business relates to the processing of crime related information', a significant amount of which is 'linked to identified or identifiable persons' (Europol, 2011c, p. 4).

One interviewee (05) noted one small way in which the ECD had lightened the administrative load on Europol, which was in relation to requests from citizens to Europol to disclose what information was held about them. Under the Europol Convention Europol had to apply Member State law; now Article 30 of the ECD applies. This has made it slightly easier for Europol to respond to these requests, but it was the opinion of data protection experts that a Europol Regulation should reduce the burden further.

7.7 The Joint Supervisory Body

The JSB is an independent body with the task of ensuring compliance with data protection principles, consisting of representatives from national data protection authorities. This existed before, and was not changed significantly by, the ECD: it introduced a provision allowing the JSB to cooperate with other supervisory authorities when necessary (Article 34(5)), in order to increase consistency in the application of data protection rules.

There was discussion of the JSB in 15 interviews. Responses in relation to question 16 on the JSB were in general terms: it was good to have a JSB, and that Europol had always implemented its recommendations indicated a good relationship (38, focus group 2). Reports of the JSB were helpful in ensuring that past mistakes could be avoided (38). These quotations illustrate these positive views:

> I think we have a very good dialogue with the JSB, even on the most difficult subjects … But at the end of the day they've worked with us to put that right. (Interview 30, head of unit)

> The JSB is, actually in my view, very helpful in that it can show to the public by its independency that everything is okay here. If it was to be somehow integrated or more attached to Europol, then it would actually not really help us, because it would lose legitimacy in the eye of the public. (Interview 29, head of unit)

In the web-based survey, question 16 had a high proportion (50 per cent) of 'don't know' responses. Of those who gave a substantive answer the vast majority of respondents answered positively ('to a considerable extent' or 'to some extent').

One interviewee from within Europol (30) reported that the advantage of the JSB is that it is made up of people who are both expert in law enforcement and data protection. It is therefore well placed to make the data protection decisions and trade-offs that are necessary in a law enforcement environment. This is in contrast with the European Data Protection Supervisor, whose expert knowledge is in the area of citizens' data protection rights. In addition, the fact that the JSB is made up of representatives from Member States was welcomed by interviewees (04, 42).

Only one problem with the JSB was voiced during the interviews. This related to a disagreement about whether the JSB should have issued a public communication regarding TFTP. The European Commission (and a small number of MB member interviewees) thought that the JSB should not have issued this press release independently, but that this kind of thing should be done in communication with the European Commission.

One interviewee mentioned that Europol differed from other EU agencies in that it finances the JSB from its budget, and it would increase the independence of the JSB if it were financed independently (32).

During the validation stages this issue was raised with the interviewee from the JSB, who agreed that in an ideal situation the JSB would be independently funded. However, the interviewee noted that there had been no problems regarding independence in the past, and that if Europol were to cease funding the JSB, a plausible alternative source of funding would have to be identified.

7.8 Chapter conclusions and recommendations

The Europol Council Decision has not had an impact on the further development of a European Criminal Intelligence Model or on Europol's analysis capability.

The provisions of the ECD do not refer directly to the powers or capabilities regarding intelligence analysis, and participants in the evaluation did not identify any indirect impacts.

Europol is perceived to have a unique and robust data protection regime that is trusted by stakeholders.

The ECD did not make any changes to Europol's data protection regime. Analysis of interviews, focus groups and the web survey indicates a high level of support for Europol's specific data protection regime. The robustness of the regime is important for developing trust with Member States, as they share information with Europol.

Specific instances of strong cooperation with the Data Protection Officer were reported.

Interviewees within Europol gave examples of working collaboratively with the DPO. The development of the new AWF concept was one project in which the DPO had been extensively consulted and involved. The DPO reported that a more structured approach has been introduced recently for seeking data protection guidance, advice and best practice at an early stage.

Interviewees within Europol indicated few examples where they considered the correct balance between Europol's requirements and the interest of data protection had not been achieved.

Procedures relating to legitimate access to staff data by senior managers and the process of installing closed-circuit television (CCTV) at Europol headquarters were mentioned as examples where the balance was too far towards the protection of data subjects.

There was strong endorsement of the value of an independent Data Protection Officer, but a few interviewees expressed concerns about its functional independence.

A small number of interviewees perceive the DPO's role as located 'outside' the organisation. Consequently the DPO is seen as less able to act as adviser and consultant to the Director and the Director is less able to use the DPO as a tool to solve data protection issues internally. However, the DPO does not recognise this perception of the DPO's role. On the basis of the available evidence, the evaluation team concludes that the current position of the DPO strikes an acceptable balance between independence in function (essential to stakeholder trust in Europol) and offering internal advice. However, noting the opposing views with regard to the functional independence of the DPO stemming from the ECD and how it is interpreted in practice, the evaluation team encourages Europol to take steps to understand further this difference of views, and to work to achieve a shared understanding across the Europol workforce and its stakeholders.

There are several layers of data protection supervision applicable to Europol, which introduces the possibility of duplication.

Europol is supervised by the DPO, JSB and European Data Protection Supervisor. The need for clarification between these forms of supervision was called for by a small number of interviewees, including those from the DPO.

The Joint Supervisory Body is respected, merging both data protection and law enforcement expertise.

Europol has acted upon previous JSB recommendations, and research participants' reported a high degree of satisfaction with the role played by the JSB. The current situation under which the JSB is funded directly from Europol's budget is not consistent with the ways in which other similar bodies are funded. This anomaly was raised by one interviewee. In the absence of further evidence on this point, the evaluation team flag this as an issue which could be reviewed in the forthcoming Regulation.

CHAPTER 8 Is Europol a platform for specialist areas and does it pioneer new techniques?

This chapter sets out findings in relation to the three questions set out in Box 8.1.

Box 8.1: Research questions addressed in Chapter 7

QUESTION 28: Does the ECD allow Europol to pioneer new techniques to prevent and combat international serious crime and terrorism? *(Group 3)*

QUESTION 29: To what extent does the ECD allow Europol to strengthen its position as a platform for specialist areas? *(Group 3)*

QUESTION 30: Does the ECD allow Europol to provide expertise and quality training in key law enforcement techniques? *(Group 3)*

8.1 The Europol Council Decision did not have a significant impact on Europol's specialist support

The questions in Box 8.1 were discussed in 16 interviews. Overall, the interviewees did not think that the ECD had had any effect on this aspect of Europol's work, although some went on to acknowledge that it was important for Europol to fulfil these roles, and that they had been developing since before the introduction of the ECD:

> It's actually something ... which started before the ECD but which was not really highlighted as a priority ... Now it's become a high priority because to fulfil our task we have to get ... the best knowledge, best expertise. (Interview 13, Europol Directorate)

> I don't see the ECD strengthening the platform for specialist areas … that's a natural progression for Europol. (Interview 35, MB members)

Cybercrime was mentioned frequently as an area where Europol provides specialist advice and knowledge (12, 26, 36, 35, 37). To develop capacity in areas such as cybercrime it may be necessary for Europol to diversify its staff, to include technical experts from scientific disciplines

In the web-based survey, the majority of respondents provided positive answers to questions 28 and 29. For both questions around a third of respondents answered 'don't know' and around 60 per cent answered 'to a considerable extent' or 'to some extent'. Further explanations provided by some respondents were not detailed, but they indicate that respondents had in mind seconded national experts at Europol, the European Platform for Experts (EPE) (see Section 8.1.2) and specialist analysts. A few mentioned that the ECD does not *prevent* development of specialist support. Two respondents

mentioned that the lack of a research and development function at Europol inhibited the development of new techniques. Therefore, this confirms the views expressed in interviews that the provision of specialist support and expertise is seen as part of Europol's role, but the ECD did not have an effect on this. In focus groups 4 and 5 HENUs identified expertise in cybercrime and forensic support and mentioned the EPE.

8.1.1 Specialist forensic equipment

As discussed in Section 3.1, interviewees noted that Europol adds value through the provision of specialist equipment. An interviewee from the Council Secretariat (50) and the Europol Directorate (15) commented that Europol might act further as a platform for expensive equipment: for example, forensic equipment that smaller Member States did not use frequently enough to justify purchasing individually. Such equipment could then be 'borrowed' by Member States. This was supported by liaison officers (06, 19) and HENU (focus group 5).

8.1.2 The European Platform for Experts

In response to questions 28 and 29 about specialist technical knowledge, the development of the EPE was mentioned as one way in which Europol can facilitate the sharing of best practice (see Box 8.2). It is one of Europol's Annual Objectives[25] to 'optimise the usage of EPE as the principal experts' forum for the EU law enforcement community'. The EPE is mentioned in the Europol Strategy 2010–2014 as a means through which Europol should 'strengthen the position of Europol as a platform for specialist areas' (Europol, 2009b, p. 12). Interviewees highlighted that the EPE could prevent duplication between Member States in developing the same investigative tools, and could be particularly useful in areas such as cybercrime (21). In addition, it may be the case that Europol could act as an instigator for equipment and technological solutions in areas where currently there are none available, but which would increase the efficiency and effectiveness of law enforcement across the EU if it were researched and procured.

The development of the EPE is not due to any provisions of the ECD.

Box 8.2: European Platform for Experts

EPE is intended as a secure environment for specialists in a variety of law enforcement areas, enabling them to share knowledge, best practice and non-personal data on crime. Member States will be able to access these products through one web-based portal.

EPE will be available both on the Europol secure network and on the internet.

The EPE on the Europol secure network will be the environment where specialists can share not only knowledge and best practice, but also non-personal, technical data on specific criminal events. The EU Bomb Data System is a pilot in this respect.

ENUs, Europol liaison officers and staff members, as well as Member State competent authorities, will have access to the Europol secure network version of the EPE.

Source: Europol (2011b)

[25] Objective 3.2.4.

8.2 The Europol Council Decision did not make any significant changes to Europol's training

Question 30 asked interviewees to reflect on the effect of the ECD, if any, on Europol's ability to provide expertise and quality training in key law enforcement techniques.

The delivery of training is mentioned in Article 5(4)(a) of the ECD and is included as one of Europol's annual objectives.[26] Some of the training activities undertaken by Europol are outlined in Box 8.3.

Box 8.3: Examples of training provided by Europol

Europol carries out analytical training and training for experts in specific crime areas. Some examples include the following.

Operational integrated analysis training: covers the essential elements in the intelligence cycle and focuses on analysis.

Strategic analysis training: covers the essential elements and steps for producing a strategic product. These tools and methods are delivered and are intended to be used afterwards in analysts' daily work.

Tactical/technical training on payment card fraud: for law enforcement and forensic experts.

Training on currency counterfeiting (technical investigations): knowledge on currency counterfeiting and specific tools in detecting counterfeit money. For law enforcement and forensic experts.

Training course on the dismantling of illicit synthetic drugs laboratories: knowledge on the safe and secure raiding and dismantling of synthetic drug production sites, collection of evidence and disposal of chemicals and chemical waste.

Source: Europol (2011b)

Training was discussed in 15 interviews. Overall, interviewees were of the opinion that the ECD did not make any significant changes:

> It's in the ECD that Europol should get involved in training, but they were doing that before the ECD came about … it would have happened anyway whether or not it was a requirement …. We send people training, but that would have happened anyway. (Interview 35, MB member)

In the web-based survey responses to question 30 were broadly positive: 59 per cent answered that the 'ECD allows Europol to provide expertise and quality training in key law enforcement techniques' 'to a considerable extent' or 'to some extent'. Thirty per cent or respondents answered 'don't know' and 11 per cent answered 'to a very limited extent' or 'not at all'. In the focus groups, participants described training in which Europol was involved, but did not comment on the impact of the ECD.

8.2.1 Coordination with the European Police College

Interviewees from CEPOL reported a good degree of coordination and a clear division of responsibility between Europol and CEPOL. Europol delivered a small number of training events each year (around 10), specifically focusing on serious and organised crime. The remit of CEPOL is broader: to deliver training in all aspects of policing including

[26] Annual Objective 3.3.1: Develop and deliver training and awareness activities with CEPOL, including modules on European Criminal Intelligence Model, COSPOL and cybercrime. Europol's strategic cooperation with CEPOL as primary training partner will be further strengthened as a result of planned improvement initiatives in 2011 (Council of the EU, 2011b, p. 35).

management, disaster response, human rights and so on. Another difference, reported by an interviewee from CEPOL, is that:

> When Europol organises training they are in contact directly with practitioners from the Member States and the training is based on Europol expertise ... CEPOL works together with the national training institute of the Member States. (Interview 47, CEPOL)

The majority of interviewees within Europol who discussed CEPOL agreed that the current division of tasks between CEPOL and Europol was acceptable and working well (45): CEPOL should coordinate training, but benefit from Europol's expertise (26, 44). Interviewees mentioned training courses delivered by Europol in their home countries: for example, relating to intelligence analysis (06), dismantling of drug laboratories (12) and combating cybercrime (28).

8.3 Chapter conclusions and recommendations

The Europol Council Decision does not have a significant impact on Europol's role in providing specialist advice, equipment and training.

A review of the provisions of the ECD indicates that it did not have a significant effect (in terms of introducing new provisions or abilities) on Europol's status as a centre for specialist advice, training and techniques. There were calls for Europol to support Member States through the provision of high-tech forensic equipment. The kind of assets envisioned here are those which are extremely costly to purchase and rarely required in a Member State. However, being able to call on Europe-wide assets could add value in specific investigations conducted by Member States. The evaluation is unable to conclude how widespread the demand for such equipment is (beyond the few interviewees who raised this issue). Further, no details were provided about the precise nature of the equipment which could add value to Member States. Thus any response to this suggestion should begin with a systematic assessment of the stated needs of Member States for equipment or support, as well as seeking to identify future needs and requirements.

In order to respond to future developments, Europol must ensure that it has staff with relevant technical and specialist knowledge.

The future creation of an EC3 at Europol is an example of where Europol may need to recruit from a range of non-law enforcement backgrounds.

CHAPTER 9 Cooperation and partnership

This chapter discusses the three evaluation questions as set out in Box 9.1, below.

Box 9.1: Research questions addressed in Chapter 9

Question 18: To what extent has cooperation with EU institutions, bodies, offices and agencies (e.g. Eurojust), particularly in the context of agreements or working arrangements, been beneficial to the achievement of Europol's objectives? *(Group 2)*

Question 19: To what extent has the establishment of provisions for the cooperation with third parties and organisations benefited Europol in the achievement of its objectives? *(Group 2)*

Question 24: Does the ECD allow Europol to develop more effective cooperation with external partners? *(Group 3)*

The benefits of existing cooperation with other EU agencies were identified by interviewees from several stakeholder groups. Interviewees mentioned cooperation agreements with Frontex, Eurojust and Interpol, and specific instances of cooperation with CEPOL, Frontex and Eurojust (04) were mentioned. Interviewees from within Europol noted 'close cooperation' with JHA agencies (16).

> We have organised … joint operations, where Interpol, Frontex, Europol were … involved, the more sources of information gives a better result in this type of cooperation. (Interview 33, MB member)

> We notice since the implementation of the ECD that the cooperation with other EU agencies is more intensive … including study visits and information exchange of personnel. (Focus group participant, HENU)

Findings from the web-based survey show that a majority of respondents thought that cooperation was beneficial. In response to question 18, 68 per cent of respondents answered 'to a considerable extent' or 'to some extent'. In response to question 24, 60 percent answered 'to a considerable extent' or 'to some extent' and only 12 per cent answered 'to a very limited extent' or 'not at all'. As for the evidence base for these responses, the minority of respondents who provided external sources listed operational activity reports, Europol Annual Reports and presentations given at HENU meetings.

Europol must conclude a cooperation agreement with EU agencies in the same way as it does with third States. The need to check the data protection regimes of other EU agencies before entering into a cooperation agreement was thought to be somewhat unnecessary, given that other agencies had strong data protection regimes (29) – even then, agencies can have access to an AWF only with the agreement of the analysis group (09).

9.1 Cooperation with Frontex

Europol has had a cooperation agreement with Frontex since 2008. This agreement is of a strategic nature and allows for the exchange of strategic and technical information, explicitly excluding the exchange of personal data (Wills *et al.*, 2011, p. 48). An interviewee from Frontex described a very good level of cooperation with Europol:

> The cooperation at the director's level is excellent. [They are] constantly in touch and meet each other often. They discuss strategies and how to improve things ... within the agencies of course there are some frictions, some different views ... but I think we are in the situation where Frontex can support Europol and Europol can support Frontex. (Interview 48, Frontex)

Interviewees from Frontex (48, 55) mentioned that Frontex and Europol (as well as Eurojust) have close cooperation in joint operations at the borders where Europol deploys mobile teams and brings specialist equipment (especially for collecting personal data, which until recently was outside Frontex's remit). Europol's involvement was said to ensure that joint operations were more 'targeted', which meant less intrusion for *bona fide* travellers.

Another form of cooperation was through exchange of information that feeds into documents and assessments: Europol provides analysis in the area of trafficking to Frontex, and Frontex shares threat and risk assessments with Europol. Europol has been integrated into the Frontex Risk Assessment Network:

> So in both terms we contribute to the Europol analytical products and vice versa – they provide input for our analytical products. (Interview 48, Frontex)

9.1.1 Potential areas for future improvement in cooperation between Europol and Frontex

The most commonly mentioned issue of concern among interviewees related to potential duplication of functions between Europol and Frontex in the collection and analysis of personal data (see Section 9.5.1).

Additionally, the following issues were raised (each by only one or two interviewees) as potential areas for improvement in cooperation between Frontex and Europol:

- ENUs and Frontex national units are not always co-located within Member States (often the latter is based in the border force);
- Frontex would welcome more feedback from Europol on joint operations and existing cooperation to further improve links between the agencies (55);
- one Frontex interviewee suggested that Europol and Frontex could examine the different methodologies used by the agencies to produce their assessments, with a view to greater harmonisation (55) and increasing the specificity of some of Europol's analytical outputs (48);
- there was an appetite, at least within Frontex, for greater cooperation with Europol in relation to third States, to ensure that policies and activities were harmonised (55, 48);

- joint training of Member State-level practitioners to raise awareness about Europol and Frontex might benefit both organisations (55).

9.1.2 Impact of the Europol Council Decision on cooperation with Frontex

All three interviewees from Frontex (48, 54, 55) believed that the ECD had an impact upon strategic-level cooperation between Europol and Frontex. Now that Europol is an EU entity it has commonalities with Frontex in terms of administration, human resources and strategic partners. These commonalities, for example, facilitated staff exchange and joint procurement.

> I have not seen any remarkable changes in the way Europol is working [since] the Council Decision has entered into force, but I think the most visible part of that Decision ... is [that] Europol is more involved [in] the EU structures and cooperation structures like [with] Frontex. (Interview 48, Frontex)

One interviewee from Frontex thought that a trigger for greater cooperation had been the new policy cycle, the establishment of COSI and the new legal basis for Frontex, which may 'really open new prospects for the future cooperation ... this will be the beginning of a new time and new dimension of the cooperation' (48).

9.2 Cooperation with the European Police College

Cooperation with CEPOL was discussed in 12 interviews. An interviewee from CEPOL described 'excellent' cooperation between CEPOL and Europol and a clear division of labour between the organisations (47). The following was given as an example of deepening cooperation:

> The European police exchange programme ... invites CEPOL to organise the European police exchange programme. Based on our consultation with the Europol director we incorporated Europol into the police exchange programme and this year ... more than 70 senior police officers visited Europol, learnt about Europol's potential services and capabilities. (Interview 47, CEPOL)

The interviewee from CEPOL thought that CEPOL was contributing to raising awareness of Europol among Member State law enforcement through a CEPOL e-learning module as well as the exchange programme.

9.2.1 Potential areas for future improvement in cooperation between Europol and the European Police College

Two liaison officers (22) questioned the existence of a separate training organisation, since much of the expertise came from Europol. One other interviewee noted that there were some calls for Europol and CEPOL to merge, but went on to say that he was not in favour of this:

> I think it wouldn't make sense – except the very small mentioning of Europol's task in training on specific subjects – to give to Europol the whole of police training, because this would be a completely different task to what Europol is doing now. (Interview 34, MB member)

Similarly, one HENU (focus group 4) commented that cooperation with CEPOL allowed Europol to lend expertise to training courses but to maintain focus on its core role, which did not include the provision of training.

9.2.2 Impact of the Europol Council Decision on cooperation with the European Police College

Interviewees from CEPOL did not think that the ECD had had an effect on cooperation between CEPOL and Europol.

9.3 Cooperation with Eurojust

Cooperation between Europol and Eurojust is essential, as the latter provides judicial follow-up from Europol's operational support to Member States.

Europol and Eurojust first concluded an operational agreement in 2004. This was revised in 2009. The main purpose of this agreement is 'to make the investigation and prosecution of crimes within the [agencies'] respective mandates as efficient as possible and to avoid duplication of effort wherever possible' (Wills *et al.*, 2011, p. 48). This agreement provides for the exchange of operational, strategic or technical information, and even personal data. In 2008, a secure communication link was established to facilitate the exchange of information between Europol and Eurojust.

The interviewees from Eurojust and the one interviewee from the Council Secretariat said that cooperation between Europol and Eurojust 'could be better', but that there was a very good personal relationship between the directors of Eurojust and Europol. The interviewee from Eurojust reported that barriers to cooperation were thought to be cultural to some extent; there are natural differences between prosecuting and police agencies, and these differences carry through to EU-level agencies (43). Two HENUs remarked on the importance of cooperation with Eurojust in relation to JITs (focus group 2) and in specific operations (focus group 5).

9.3.1 Potential areas for future improvement in cooperation between Europol and Eurojust

Few interviewees commented directly on Eurojust, and those who did were unable to discuss the detail of the relationship with Eurojust or provide specific instances or examples to support their views.

One interviewee from Eurojust reported that currently Eurojust and Europol are investigating the possibility of developing an ability to interrogate each other's data systems (43), but this possibility had not been developed to the point of being operational.

A HENU (focus group 4) commented that the future role of Eurojust in conducting analysis was not clear, and that there was a risk of overlap between Europol and Eurojust. Any duplication between agencies may send confusing messages to Member States' law enforcement agencies.

One barrier to cooperation between Eurojust and Europol, mentioned by two interviewees from the Council Secretariat (50, 52), is that Member States may be less willing to share information with Europol if they believe that it will be shared with Eurojust. No explanation about why this might be the case was provided, but a similar point was made by a liaison officer (who also did not provide further information). However, the evaluation team notes that currently Eurojust is associated to 17 AWFs. Eurojust's participation in AWFs is governed by the same provisions of the ECD that govern access by Member States, which means that Eurojust's participation in an AWF must be

approved by the other members of the particular work file. Therefore, Member States must have been willing to share information with Eurojust in these circumstances.

Invitations to participate in operational meetings and Joint Investigation Teams
Europol can hold operational meetings that bring together relevant officials from Member States' law enforcement authorities to discuss a case or coordinate action. It was suggested by the interviewee from Eurojust that Europol could notify or invite Eurojust more systematically to attend operational meetings.

However, the evaluation team learned that a system to address this problem has since been introduced: Eurojust receives an overview on a weekly basis about the operational meetings (financed by Europol) which are relevant to topics covered in the AWFs to which Eurojust is associated.

Third States
The interviewee from Eurojust suggested that Europol and Eurojust could act more consistently and congruently in relation to third States. For example, currently both Eurojust and Europol are in negotiation with the Russian Federation, and it 'would make sense to have a joined-up approach to the discussions' (43). A revision to the Eurojust Decision means that it will be able to place representatives in third States. When this happens, interviewees from Eurojust thought that the liaison officers from the two organisations should coordinate.

9.3.2 The effect of the Europol Council Decision on cooperation with Eurojust

The single interviewee from Eurojust could not identify any significant impacts of the ECD on the cooperation with Europol (43).

9.4 Cooperation with the European External Action Service

Europol has objectives relating to intensifying cooperation beyond the EU, with Interpol,[27] the United States, EU Candidate and Potential Candidate Countries and Russia.[28] It is also one of Europol's objectives to strengthen working relationships with EEAS[29] (Council of the EU, 2011b). To this end, Europol has an external strategy which 'supports the achievement of the external aspects of Europol's strategic goals as defined in the Europol Strategy and ensures that Europol's external relations are coherent with its overall Strategy' (Europol, 2010a, p. 3).

Since 2007, Common Security and Defence Policy (CSDP) missions of the EEAS have developed strategic information sharing agreements with Europol. These agreements allow the exchange of strategic information about crime and criminal activities between all the missions and Europol. Since CSDP missions do not have a legal personality, Europol cannot enter into an operational agreement with them. To overcome this, missions can share information with a ENU within a Member State, which then shares it with Europol (UK, Sweden and Finnish national units have been involved).

[27] Annual Objective 1.3.2.

[28] Annual Objective 1.3.1.

[29] Annual Objective 1.3.3.

The development of cooperation with CSDP police missions is a strategic objective in Europol's External Strategy (Europol, 2010a) and an objective in the 2012 Work Programme (Council of the EU, 2012c).

9.4.1 Potential areas for future improvement in cooperation between Europol and the European External Action Service

Two interviewees from the EEAS (46) thought that there was scope for improved cooperation between Europol and the CSDP missions. They thought that the strategic agreements had not been sufficiently used. Most information exchange was with missions within Europe, such as Kosovo and Bosnia, and in relation to these two countries there was strong information sharing and cooperation. In relation to the European Union Rule of Law Mission in Kosovo, Europol has a direct information-sharing agreement, and exchange occurs through this mechanism rather than the CSDP Information Sharing Agreement.

Both Europol and the EEAS could help improve the situation. The two interviewees from the EEAS (46) thought that part of the reason for underuse of the Strategic Agreement is a lack of time, as mission staff are focused on their duties. Conversely, interviewees from the EEAS thought that Europol should request information from the missions (for example, in the Congo and other countries which are major drug trafficking routes), or could use CSDP staff to verify threat assessments. There was an opportunity for Europol to use the missions and EU delegations as tools, which in some instances could help to build trust between Europol and the country in which a mission was based.

Interviewees from the EEAS suggested that a new Regulation might create the possibility of Europol sharing information with the missions directly.

Both EEAS interviewees, as well as two interviewees from Europol (29, 30), discussed the possibility for EEAS and Europol to develop a liaison officer network where Europol could post seconded officers in the missions (this is mentioned in the Internal Security Strategy). This network would facilitate information sharing and would be a cost-effective way to improve outreach to third States. Currently, although there is a formal point of contact within EEAS for Europol, there is no liaison officer.

9.4.2 The effect of the Europol Council Decision on cooperation with the European External Action Service

Interviewees from the EEAS had not noticed any impact of the ECD on cooperation with Europol (46).

9.5 Opportunities and threats from reforms to Justice and Home Affairs agencies

This evaluation takes place at a time when there are moves towards greater cooperation between EU agencies as a result of the Stockholm Programme and the accompanying European Commission Action Plan, which encourages greater cooperation between Europol, Eurojust and Frontex (see Box 9.2). Following from this, Europol has objectives to extend operational cooperation arrangements with EU agencies including Eurojust,

Frontex and the European Anti-Fraud Office (OLAF)[30] 'to further improve the bilateral and multilateral operational cooperation against common priorities' (Council of the EU, 2011b, p. 19).

Box 9.2: A common approach to EU agencies

EU agencies have been established progressively, and on an *ad hoc* basis, to meet certain regulatory, executive or operational needs generated by the development of the Single Market and EU competencies. The increase in the number and function of agencies has resulted in calls to define a common understanding between the EU institutions of the purpose and role of agencies. Consequently, the European Parliament, Council of the EU and European Commission agreed to launch an inter-institutional dialogue on decentralised agencies, leading to the creation of an Inter-Institutional Working Group in March 2009.

The Working Group has addressed a number of key issues put forward by agencies and clarified the status and *modus operandi* of agencies, as set out in the Common Approach. The Common Approach sets out the role and position, structure and governance, operations, programming activities and resources, accountability controls and transparency and relations with stakeholders. This Common Approach relates neither to agencies operating in the field of foreign and security policy, nor to executive agencies, but applies to Europol.

Source: Council of the EU (2012e)

Interviewees from the European Commission and within Europol identified a need for better interlinking between agencies to ensure a clear division of labour (44, 53), that projects and programmes run by individual agencies do not overlap with or contradict each other and prevent fragmentation (01, 07, 29, 33), and that resources are used most effectively (14). Similarly, an interviewee from within Europol (31) raised the possibility of greater 'structural' cooperation between Europol, Frontex and Eurojust.

9.5.1 Concerns over duplication with Frontex

The new legal basis for Frontex foresees that the agency will be able to process personal data.[31] Previously, holding and processing personal data has been the preserve of Europol, and interviewees from within Europol expressed some concern that there could be duplication between the agencies, especially if Frontex undertakes analysis of personal data. Specifically, interviewees' concerns about duplication included the following:

- the development by Frontex of systems to analyse personal data would not be an effective use of resources across EU agencies, given Europol's extensive analytical capacity;
- data held by Frontex is relevant to the achievement of Europol's strategic goals, and thus should be analysed by Europol;
- there is a risk of confusion within Member States about whether to send information to Frontex or to Europol, and therefore vital information might be 'lost'.

[30] Annual Objective 1.2.2.

[31] Articles 11(b), 11(c) of Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU.

Currently, these are hypothetical concerns. Europol is explicitly mentioned in the Frontex Decision as an organisation which should receive information from Frontex for analysis.[32] Europol experts were involved in the negotiation of the new legal basis for Frontex, highlighting the risks of duplication to the European Commission and the European Parliament during the legislative process. Interviewees from the European Commission (44, 45, 53) thought that Frontex should not acquire powers to analyse this information, noting that analysis should be undertaken by Europol.

However, as highlighted by the Evaluation Steering Committee, not all immigration flows are steered and exploited by criminal groups; some specific analysis (including that which uses personal data) might be conducted by Frontex without affecting Europol's competence.

The impact of Frontex's ability to analyse personal data will depend upon the implementing rules and the content of a new operational agreement between Frontex and Europol, neither of which have been drafted yet. Thus it remains to be seen whether concerns about the potential for duplication will be realised in practice, or whether both agencies can conduct analysis without overlap.

9.5.2 Concerns about duplication with Eurojust

During discussions of this issue in the workshop with the Expert Advisory Group, there was agreement that there was a future risk of overlap not just with Frontex, but also with Eurojust, which also may develop operational analysis capability. Concerns about duplication with agencies other than Frontex were raised during six interviews (02, 07, 10, 44, 45, 53). An interviewee from the Council Secretariat suggested that COSI could take some responsibility for avoiding duplication between agencies:

> Concerning duplication, I have no evidence but I am sure that we have duplication between the agencies, Frontex and Europol … But we have to do something at EU-level … to avoid duplication and develop synergies in the action of these agencies … [It] is … a question for the COSI. (Interview 50, Council Secretariat)

9.6 Cooperation with the Standing Committee on Operational Cooperation on Internal Security

The background to COSI is set out in Box 9.3. The frequent references to COSI and interviewees' comments indicate that COSI is recognised as a central player in the JHA landscape and for international law enforcement cooperation. The centrality of Europol in the work of COSI was also recognised, not least through production of the OCTA, which was used by COSI in the policy process, as this interviewee explains:

> The whole aim of the policy cycle is to make sure that the Brussels procedure gets closer to the expert level, so in that sense … without Europol we couldn't do that. (Interview 51, Council Secretariat)

[32] Article 11c(3)(a) of Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU.

Europol representatives attend all of the COSI meetings, and one benefit of this to Europol was that:

> Europol gets the possibility to understand … Members States' priorities … [rather than] … only getting feedback once a year when the Council defines the priorities on the basis of Europol's organised crime reports. (Interview 50, Council Secretariat)

However, reflecting on this quotation, the Evaluation Steering Committee suggested that Europol also has opportunities to 'understand' Member States' priorities through the MB and through HENUs.

Box 9.3: Background to COSI

Article 71 TFEU states that a 'standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union', that will 'facilitate coordination of the action of Member States' competent authorities'.

In accordance with this, in 2010 the Council created a Standing Committee on Operational Cooperation on Internal Security (COSI).[33] Its responsibilities include facilitating effective operational cooperation and coordination around organised crime and other threats to EU internal security.

COSI works in a policy cycle: a methodology which starts with the Europol OCTA (in future, the SOCTA), which is used to define Council priorities, strategic goals and operational action plans. These are then implemented by the Member States and the agencies.

Europol is involved in the implementation of several projects coordinated by COSI and Council working groups. For example: projects relating to the fight against arms trafficking, reinforcing the protection of external borders and combating illegal immigration.

Source: Council of the EU (2012b, 2012c)

9.6.1 Areas for improvement

In six interviews (01, 10, 22, 39, 50, 53) interviewees indicated that the role of COSI vis-à-vis other groups and organisations is in need of clarification, as it was not clear 'who did what' (41). An interviewee from Frontex (55) commented that it was not 'straightforward to reconcile the coordinating role of COSI with the autonomy of the management board of each of the agencies' and that the division of roles between COSI and the European Commission could be further clarified (55).

Since conducting these interviews, the evaluation team notes that a paper on the tasks, role and position of the Europol MB has been published, which sets out principles regarding the way in which Europol interacts with and responds to demands from the Council structures, including strategies for communicating Europol's work and activities.

9.7 Cooperation with third States

Europol's ability to conclude cooperation agreements with third States was retained by Article 23 of the ECD. Article 23(2) states that 'such agreements may concern the exchange of operational, strategic or technical information, including personal data and classified information, if transmitted via a designated contact point'. Cooperation agreements with third States may be concluded 'only after the approval by the Council, which shall previously have consulted the Management Board and, as far as it concerns the

[33] Council Decision 2010/131 of 25 February 2010 on setting up the Standing Committee on Operational Cooperation on Internal Security.

exchange of personal data, obtained the opinion of the Joint Supervisory Body via the Management Board' (Article 23(2) of the ECD).

In the European Commission's original proposals for the ECD, Europol's international relations would be brought more in line with the external relations of the EU as a whole. Therefore, this would have limited Europol's ability to conclude cooperation agreements. In the end, the pre-ECD mechanism was maintained: Europol can conclude its own cooperation agreements (De Moor and Vermeulen, 2010, p. 1121). However, interviewees from the European Commission and the Council Secretariat advocated future reforms to align Europol's cooperation agreements with EU external relations.

As at May 2012 Europol had entered into 10 operational and 22 strategic agreements with third States. One interviewee (15) mentioned that cooperation with third States could involve the provision of training or exchange of officers and experts, as well as information. HENUs (focus group 3 and 5) reported that Europol's links with third States were useful since individual Member States may not have liaison officers in third States.

Responses to the web-based survey question 19 were positive: 65 per cent of respondents answered 'to a considerable extent' or 'to some extent'. Six external sources were listed by respondents, but the vast majority of responses were based upon respondents' expertise and judgement.

An interviewee from the Council Secretariat (50) raised questions about the nature of information exchanged with third States under existing cooperation agreements. While this was not raised by other interviewees, similar questions as to the quality and timeliness of information exchange have been raised by members of the Expert Advisory Group.

9.7.1 Areas of concern and for improvement in cooperation with third States

Time needed for negotiation of operation agreements

Under the current regime, Europol has to examine the data protection regime in countries and organisations outside of the EU before it can conclude an operational agreement, and therefore share information. Box 9.4 sets out the steps involved in concluding an operational agreement.

Amongst interviewees who discussed cooperation with third States, five (10, 13, 29, 31, 45) noted the length of time concluding such an arrangement can take. This quotation is illustrative:

> [The] process … can take five years to complete … apart from denying … Europol … the dividends of that operational engagement for a five-year period, it consumes significant internal resources, not just of Europol but other parts of the EU institutional machinery ... It also … has the effect of giving a very negative impression of Europol and the EU to the third party. (Interviewee 31, Europol Directorate)

To illustrate these views, Table 9.1 takes information provided to the MB in April 2011, and notes the length of time taken for the negotiation of operational and strategic agreements as at April 2011 for a selection of countries for which initiation dates were provided.

Box 9.4: Steps involved in concluding operational agreement with third States under the Europol Council Decision

1. Data protection questionnaire – is there an adequate level of data protection?
2. Data protection study visit/confidentiality study visit.
3. Study visit report is provided to the MB, which forwards it to the JSB.
4. JSB provides opinion on the study visit report to the MB.
5. The MB adopts the report, taking into account the JSB's opinion.
6. Europol enters into actual negotiations.
7. Europol submits draft agreement to the MB.
8. A draft is forwarded to the JSB, which provides an opinion to the MB.
9. The MB forwards the draft and JSB opinion to the Council for approval.

Source: Europol (2011c)

Table 9.1: Operational and strategic agreements under negotiation – length of time in processing as at April 2011

Country	Initiation date (or date on which data protection questionnaire was sent)	Approximate time taken, as at April 2011
Operational agreements		
Albania	December 2007	4 years, 4 months
Bosnia and Herzegovina	First quarter 2009	2 years, 1 month
Liechtenstein	September 2008	2 years, 7 months
Moldova	March 2009	2 years, 1 month
Serbia	September 2009 (data protection questionnaire sent)	1 year, 7 months
Turkey*	February 2006 (data protection questionnaire sent)	5 years, 2 months
Strategic agreements		
Morocco	November 2008	2 years, 5 months

* Negotiations appear to have halted

Source: Europol (2011f)

In seven interviews (13, 16, 29, 31, 44, 45, 51) it was suggested that Europol should find a more flexible way to exchange information with third parties: a halfway position where a full operational agreement was not needed for information exchange, subject to a proportionality assessment made in cooperation with, for example, the JSB to ensure legitimacy. What exactly such a 'halfway' position should be was not explained by interviewees; neither did they engage with any practical or legal implications of such an opportunity.

In contrast with this view, the interviewee from the JSB thought that the solution was not to abandon the idea of cooperation agreements, but to examine the process through which operational agreements are concluded and to make moves to streamline it. The interviewee from the JSB explained that the purpose of cooperation agreements was to specify operational issues regarding information sharing (for example, the contact point, whether the Third State can transfer information, confidentiality and so on). In some cases, an operational agreement can permit information sharing with countries which otherwise would not meet the standards of 'adequacy': the general principle of EU data protection

that permits information sharing with third States only when that country has adequate data protection arrangements. For these reasons, some form of cooperation was needed before information could be shared.

During discussions at COSI on 11 April 2012 delegations were positive towards simplifying the procedure to negotiate and sign operational agreements, but insisted that further clarification was needed about the proposed system.

Using Article 23(8) and (9) of the European Council Decision

Article 23(8) and (9) provide derogation from the provision, allowing Europol to transmit personal data to third parties without an operational agreement in exceptional cases. A number of conditions need to be fulfilled in order for this to happen. During the validation stages of the evaluation the DPO suggested that it is not clear upon which sources the director can base a decision. He recommended more reflection on the criteria to be used and suggested that not only should data protection safeguards be taken into account, but also other criteria such as the human rights situation, whether or not the death penalty is in force, the judicial system, effectiveness of investigations, level of corruption, etc.

We asked the interviewee from the JSB to comment on this suggestion from the DPO. The view of the JSB member was that the provision was sufficiently clear. It allows other factors to be taken into account, and it was not necessary to prescribe the conditions further.

The evaluation team is not able to assess whether the way in which Article 23(8) and (9) is drafted has inhibited information sharing with third States in exceptional circumstances.

Selecting third States and alignment with European Union external relations

The interviews indicate a tension in selecting third States for cooperation agreements between following EU-wide priorities in relation to third States, and dealing with those countries which were relevant from a law enforcement perspective, as these quotations indicate:

> It's a fear … that Europol will be obliged to have operational agreements with some countries that maybe are not so important for the internal security of the EU, but because of political reasons. (Interview 37, MB member)

> Who should decide which countries they should cooperate with, or not? Currently it's the Council … Is the decision procedure too heavy? … What should be the priorities in international cooperation? It has turned out to be quite a heavy workload for [Europol]. (Interview 34, MB member)

> We never made a real assessment of … whether there is a need to have [a] cooperation agreement … Perhaps one should envisage a policy debate [which looks] at different regions in the world, [and asks] 'Where do we have a need for cooperation?' (Interview 50, Council Secretariat)

This tension raises a question about the purpose of concluding operational agreements, whether to support Member States in combating serious and organised crime and terrorism, or to further the internal security of the EU as a whole. While these two purposes are not entirely contradictory, they could lead to different priorities regarding the selection of third States for cooperation agreements.

From the European Commission's perspective it was important that Europol's work in third States was given sufficient 'political coverage', and thus should be better regulated in the future (34, 53). For the European Commission, this meant better communication with Europol about its work with third States, but also greater visibility of Europol's activities in those countries. An interviewee from the Council Secretariat noted that both the Council and the European Commission 'would like to see Europol, Eurojust, [and] Frontex more active in implementing strategies that we have in third countries' (52).

Possibilities for better cooperation with the EEAS in relation to third States were discussed in Section 9.4. An interviewee from the Council Secretariat (50) suggested that there was scope for improvement in the extent to which agreements with third States are compatible with the EU's external relations policy. However, it was noted also that the EEAS was still 'finding its place' (51), and so could not yet fully define or guide positions towards third States. An interviewee from within Europol (31) noted that while in principle greater cooperation with the EEAS in negotiating cooperation agreements could help, there are unique considerations in these agreements relating to the exchange of personal data, and these fundamental considerations would remain, regardless of who leads on negotiations.

9.7.2 Effect of the Europol Council Decision on cooperation with third parties

The ECD has made some small improvements: 'it gives the Management Board slightly more latitude in some parts of that process without reference to Council' (31).

9.8 Cooperation with Interpol

Cooperation with Interpol was discussed in seven interviews. There has been a formal cooperation agreement with Interpol since 2001. The arrival of a new director at Europol in 2009 had a refreshing impact on the relationship between Europol and Interpol, and now cooperation was strong and strengthening (13). Similarly, an interviewee from Interpol talked of 'tremendous goodwill between Europol and Interpol' (56) and pointed to the number of joint operations as evidence of the strong cooperation.

Supporting this, the Europol 2010 Activity Report states that in that year joint operational activities with Interpol increased, especially in the areas of maritime piracy and the protection of intellectual property rights (Europol, 2011a). Further, a specific example to demonstrate the nature of the cooperation between the agencies was provided to the research team: Europol will host a new EC3 and soon after this decision was taken, the secretary-general of Interpol wrote to the director of Europol to start cooperation regarding plans for an Interpol cybercrime centre in Singapore.

One interviewee from Europol commented that Europol relies on Interpol for links with countries such as Azerbaijan and Georgia. This arrangement reflects a sensible division of labour between the organisations and best use of their resources (13), which another interviewee said was especially important in the current financial climate (56).

HENUs in two focus groups commented on strong and recently improved cooperation with Interpol, as this quotation illustrates:

> From a practical point of view it's really good that Europol and Interpol have excellent cooperation and Interpol is represented here with the liaison officer who can facilitate information exchange. If we have a case where we have to contact countries with which

> Europol does not have an operational cooperation agreement … we can… turn to the Interpol liaison officer at Europol. (Focus group 2, HENU)

This makes sense from both a strategic and practical point of view. Interpol links with law enforcement globally, and Europol needs that linkage to bring relevance to much of its work.

9.8.1 Areas for improvement

None of the interviewees from Europol or Interpol identified specific areas for improvement. Things were not perfect, but there was a strong relationship and cooperation was increasing and improving (13).

Three liaison officers within Europol mentioned that information could be 'lost' to Interpol when law enforcement officers within Member States do not understand when Europol should be involved or when it should be Interpol (12, 22, 25). This was partly a problem of awareness (Member State law enforcement officers might be more used to using Interpol), but also might be improved by clear communication about when to use Europol or Interpol. Members of the MB noted 'grey areas' about whether Europol or Interpol should lead in a particular case (36). This view was supported by HENUs in one focus group, who were of the view that in some Member States Interpol had a higher profile than Europol, and there was some 'competition' between agencies.

9.8.2 Effect of the Europol Council Decision on cooperation with Interpol

Interviewees from Interpol welcomed the ECD, believing that it can strengthen indirectly cooperation with Interpol because the ECD draws Europol closer into the policy and political environment of Europe. It was hoped that this change would encourage Member States to contribute to and develop stronger ownership of regional policing cooperation, and through attention from policy and decision makers, would increase support for joint investigations and information sharing.

9.9 Cooperation with the private sector

The Europol Strategy 2010–2014 identifies the need to 'establish effective arrangements for cooperation with the private sector' (Europol, 2009b), and the OCTA 2011 calls for 'strong and effective partnerships … with the private sector for the purposes of information gathering, crime prevention and awareness raising' (Europol, 2011e).

Under the ECD Europol can receive strategic, non-personal information direct from the private sector, such as companies and non-governmental organisations (NGOs) (Europol, 2011c). However, for personal data, Article 25(3)(a) of the ECD specifies that if the private organisation is 'established under the law of a Member State', then information from that organisation may be processed by Europol only if it is transmitted via the ENU.

Similarly, if the private organisation is established under the law of a Third State with which Europol has a cooperation agreement, information from that organisation may be transmitted to Europol only via the contact point of that state. If a private party is established under the law of a Third State with which Europol has no cooperation agreement, the data can be processed by Europol only if the organisation is on a list approved by the MB, and a memorandum of understanding has been drawn up after obtaining the opinion of the JSB.

It should be noted that Article 25 relates to Europol receiving information from the private sector. Europol has no authorisation under the ECD to send information to the private sector.

The document review indicates that as part of the programme of implementing the ECD, Europol drafted rules for receiving information from the private sector (Europol, 2009a). Establishing effective arrangements for cooperation with the private sector is mentioned in the Europol Strategy 2010–2014 (Europol, 2009b), and the External Strategy (Europol, 2010a). The 2012 Work Programme contains plans for an outreach programme to build links with private entities (Council of the EU, 2012c).

Europol has established contacts with private parties at operational and strategic levels in the fields of cybercrime, payment card fraud, financial crime, Euro counterfeiting and intellectual property crime (Europol, 2012).

9.9.1 Private sector information was welcomed

The issue of cooperation with the private sector was discussed in 17 interviews. There was a consensus among interviewees who addressed this topic that Europol's ability to receive information from the private sector was welcomed. It was recognised by interviewees that private sector organisations hold information that could be vital to law enforcement: for example, companies which provide anti-virus software and other similar services that collect data about the nature of malware and cyber-attacks.

A report from the director of Europol to the MB on the use of Article 25 outlines the ways in which Article 25(3)(a) and (b) have been used (see Box 9.5). Article 25(3)(c) had not been used at the time of writing.

Box 9.5: Examples of receipt of information from the private sector

Article 25(3)(a): Europol is in contact with credit card companies such as Eurocard and MasterCard, located in Belgium, and American Express, located in Amsterdam. Information from these organisations has been forwarded to Europol by the Belgium and Dutch ENUs.

Article 25(3)(b): Europol is contact with VISA HQ, located in the USA. Visa is aware that any personal data intended to reach Europol has to be channelled via the US competent authorities.

Source: Europol (provided to the evaluation team by during the validation stages)

Additionally, during the validation stages of the project, Europol provided a specific example of the receipt of information, which is described in Box 9.6.

Box 9.6: Example of positive interaction with the private sector

Through their analysis, Europol identified activities related to payment card fraud. Eastern European gangs were modifying cash machines in Mediterranean countries. The Member States in question, not the payment card companies had detected this. Europol devised a way of preventing the frauds, and this information was provided to the Spanish National Unit, who set up a meeting with the private sector in which Europol shared technical information about prevention techniques with the companies involved.

Source: Europol (provided to the evaluation team during the validation stages)

9.9.2 Should Europol directly receive information from private entities?

The question of whether Europol should be able to directly receive information from the private sector was raised by interviewees and was discussed at the COSI meeting on 11 April 2012 (Council of the EU, 2012d).

Eleven interviewees (02, 06, 10, 16, 21, 27, 30, 31, 36, 44, 51) thought that the requirement for personal information from the private sector to come through ENUs was overly restrictive, and that Europol should be able to interact directly with private companies. Arguments made in support of this view were as follows.

- In the case of large multinational companies, identifying the Member State in which the company is based does not really make sense (02, 21).
- In some instances information relevant to crimes in Member State A or B might be held by a private entity in Member State C. If the crime is not a priority in Member State C, and especially at a time of limited resources, it might be difficult for law enforcement authorities to devote time to accessing information from the private entity (51). Some Member States have more businesses based within their borders, which means that some ENUs receive a disproportionate number of requests to pass information to Europol (51) (Europol, 2012). Further, if the information does not relate to a case in Member State C, there might be legal restrictions on the ENU's ability to forward the information to Europol (10). What exactly these legal restrictions might be was not specified. Similarly, the director's report to the MB on the use of Article 25 mentions, but does not explore in detail, potential legal issues related to an ENU's ability to share information about a case in which it is not involved (Europol, 2012).
- Member States might not want to act as a conduit for a certain piece of information, and may prefer Europol to have direct contact (27). One reason for this is that ENUs may not be able to validate the information:

> If [operational data] come from the private sector I cannot guarantee that they are correct. So I prefer that Europol takes them on board and makes sure with that company that they are correct. (Interview 06, liaison officer)

- The current system relies on the ENUs, and as discussed above, there are some concerns about their capacity to share information with Europol (31).
- Private companies might prefer to interact directly, and have an expectation that they can work with Europol in the same way as they currently work with criminal intelligence agencies within Member States. This point is mentioned in the director's report on the use of Article 25 (Europol, 2012), and by this interviewee:

> The private sector … does not know how this process works. So they still have to go via this liaison bureau in their own country, so it makes it complicated – and that's not what you need if you want to work with the private sector … So they still have to deal with all these administrative issues that, according to me, they don't like that much. (Interview 10, project manager)

One interviewee noted the risks of direct receipt of information by Europol: that once a private company had shared information with Europol it would not prioritise any further cooperation at Member State level, and this might place a burden on Europol to act as the single point of contact for information from the private sector. However, this interviewee went on to support the idea or direct receipt of information.

A further argument is made in the director's report to the MB on the use of Article 25: the current situation 'results in ENUs with no interest in a case becoming aware of personal

data of perpetrators and victims, which could be questioned under the data protection "need to know" principle' (Europol, 2012, p. 4).

9.9.3 Assessment of these arguments

Assessment of these responses was undertaken by the evaluation team during the validation stages of the evaluation. Europol was asked to provide specific cases in which Article 25(3) had impeded the work of the organisation. Two examples were provided and are set out in Box 9.7. Further, the DPO and the interviewee from the JSB were invited to reflect on the arguments.

Box 9.7: Examples of barriers to cooperation with private entities under the current legal basis

A first example is that as a result of a hacking attack on a payment card company, data relating to EU citizens was stolen. Europol was able to retrieve this stolen data from the internet. The preferred course of action would have been to communicate this information to the payment card companies, who could have blocked these cards and thus prevented fraud using these details. However, the provisions of the ECD meant that Europol cannot send personal data to private sector entities. Instead, they had to package this data and send it to ENUs. This was a much more time-consuming solution.

A second example is that Europol cannot invite private sector entities to participate in operational meetings to discuss cases of internet-related crime, because Europol cannot share personal information with the private sector. The solution, which was reported to be unsatisfactory, is that representatives from the private sector are invited to sections of these meetings where no personal information is discussed. Europol experts claimed that this significantly hindered their operations.

Source: Europol (provided to the evaluation team during the validation stages)

In assessing these views, the evaluation team bear in mind that that Europol's role, as set out in the ECD and Article 88 TFEU, is to support Member States. If Europol were to be able to received information directly from private entities, it could be considered a departure from this principle and from the principle of subsidiarity. The position of the ENU as the gatekeeper for contact with Europol is an important principle in Europol's current framework. These points were made also by the interviewee from the JSB.

Another reason for the current situation is that procedural rules governing the collection and processing of evidence (in an investigation or in court) are variable and specific to each Member State. If Europol collects information directly from private entities, there is a risk that the information is not collected in accordance with such rules, and therefore will not be able to be used by Member State law enforcement.

However, a submission from the DPO offered support for changing Article 25(3) along the following lines:

> It is not evident why the processing of information from private parties is determined by the question in accordance with which national law a company is established, Article 25(3) ECD. Possibilities of direct receipt of information should be assessed. Otherwise, it should at least be the ENU/contact point concerned by a case. This would grant more flexibility beyond the purely legal question with which national law a company is established. The entity concerned by a case will have the highest motivation to provide operational support and will at the same time be best suited to take over data protection responsibilities of providing the respective data from the private party to Europol. (Written submission to evaluation team from the DPO)

These proposals were also discussed with the interviewee from the JSB, whose view, albeit expressed more cautiously, supported that of the DPO. The JSB member suggested that there could be situations in which some flexibility or an exception to the rule was possible,

provided that principles of subsidiarity remain intact and changes are compliant with Article 88 TFEU. For example, Europol may be able to receive information directly from private entities on the direction of Member States.

This is very similar to the proposal made in the director's report to the MB on the operation of Article 25: Europol should be able to receive personal information directly from private parties, but safeguards could ensure a continuing role for Member States. The report states that:

> Where relevant, such measures could be made subject to authorisation by the concerned Member States, on a case by case basis. This would allow the Management Board to maintain full oversight over an operationally-driven approach whereby cooperation with trusted partners is not limited by a uniform approach to all private parties. (Europol, 2012, p. 5)

Taking all of this evidence into account, the evaluation team concludes that there is a case for including, in a future Europol Regulation, the possibility of receiving information directly from the private sector. In addition to the kinds of safeguards suggested by the interviewee from the JSB and the director's report, the evaluation team suggests that the following could be considered:

- JSB approval and supervision;
- the use of formal memoranda of understanding as the basis for direct receipt of information;
- transparency as to the information exchanged;
- restrictions related to whether the data were lawfully collected;
- purpose limitation (whether information was collected for commercial purposes); and
- checks on accuracy of the data.

The director's report also proposed that Europol should be able to pass personal information to private entities. This ability would have helped in the cases outlined in Box 9.7.

9.10 Cooperation with the research and academic community

Two interviewees within Europol (06, 13) mentioned the need to develop links with academics to develop both criminological and technical expertise and to take a greater role in the area of research and development. A comparison was made with Frontex, which does have a research and development budget and can commission research. The Europol Strategy 2009–2010 stated the aim for Europol to 'develop a research and development capacity with external partners' (Europol, 2009b), and this is reiterated in the External Strategy (Europol, 2010a). Another interviewee supported this objective. The Work Programme for 2012 outlines Europol's advisory role to the European Commission's Seventh Framework Programme and other research initiatives, to 'bring end-user needs' into research priorities (Council of the EU, 2012c).

9.11 Chapter conclusions and recommendations

Cooperation with other European Union agencies is clearly beneficial to the achievement of Europol's objectives.

Interviewees from a range of stakeholder groups spoke of the importance of cooperation with Frontex, CEPOL and Eurojust. The benefits stemmed from strategic cooperation (for example, through meetings of EU agencies), operational cooperation (for example, joint operations with Frontex), and through information sharing (in the context of working agreements or to feed into analytical products).

The Europol Council Decision has had a limited effect on operational cooperation with other European Union agencies.

Europol's status as an EU entity brings it closer to its partner agencies and may enhance strategic cooperation. However, operational cooperation has not been significantly affected. Other developments, such as involvement in the policy cycle, also have enhanced strategic cooperation.

Europol and Frontex have a good level of strategic cooperation, and there is an appetite for closer operational links.

Europol shares common areas of concern with Frontex and there is evidence – for example, the existence of a staff exchange programme – that strategic cooperation with this newer agency is being put into practice. However, there is concern about overlapping functions in relation to the analysis of personal data.

Cooperation with CEPOL in matters of police training has continued as before the Europol Council Decision.

Few research participants commented upon cooperation between CEPOL and Europol. Those who did described a good relationship, guided by a shared understanding of the roles and tasks of each agency.

Europol has strategic links with Eurojust, but these are not always translated into practice.

Eurojust is a key partner for Europol, particularly in the context of JITs. However, few interviewees or web survey respondents commented in detail on partnership with Eurojust. Cultural differences between policing and prosecuting agencies and a lack of information sharing were reported to act as barriers to closer operational cooperation. However, detailed descriptions of how and to what extent these factors have damaged cooperation were not provided by research participants.

Cooperation between the European External Action Service and Europol is at an earlier stage of development, but there are many opportunities for future partnership.

Cooperation between Europol and the EEAS is warranted in the context of Europol's relationships with third States, and because threats to Europe's security also stem from countries outside the EU. Opportunities for collaboration and partnership, suggested by interviewees from the EEAS, include the development of information sharing and coordination between liaison officers from both entities.

Reform to Frontex, Eurojust and Europol create opportunities and threats, including risks of duplication, overlap and lack of coordination.

Interviewees expressed concern about Europol, Eurojust and Frontex undertaking increasingly similar and overlapping activities in the area of processing and analysis of

personal data, and the Expert Advisory Group agreed, being of the view that criminal intelligence analysis should remain the preserve of Europol. Currently, these are fears about possible future overlapping functions rather than concerns stemming from existing examples of duplication. However, greater cooperation between JHA agencies is likely in the future. Unless reform and development is joined-up, there is a risk that agencies will duplicate work. This is something which requires monitoring.

The risk of overlap, duplication and even contradiction between Europol and other Justice and Home Affairs agencies could be monitored, as could proposed changes to other agencies.

The evaluation team, having taken advice from the Expert Advisory Group suggest that monitoring is a way in which Europol could respond to the threat of overlap with other agencies. Such monitoring would enable an assessment of potential impacts on cooperation and a check on the efficient and effective use of resources. The outputs of these monitoring activities should be communicated to relevant audiences such as the European Commission, Council and COSI, and should be considered in relation to the new legal basis of EU agencies in accordance with the TFEU.

Cooperation with third States was highly valued, but the time and resources necessary to conclude cooperation agreements was a concern.

Interviewees and web survey participants thought that cooperation agreements with third States are an important added value of Europol. However, it is the case that concluding such agreements can take years. This is because Europol must examine the data protection regime in countries and organisations outside of the EU before it can conclude an operational agreement. A small number of interviewees suggested that Europol should be granted more flexibility in information sharing with third States, involving a halfway position between time-consuming and labour-intensive international agreements, and the 'emergency clause' under Article 23(8) and (9) of the ECD.

How such a halfway position would satisfy data protection requirements was not elaborated by evaluation participants. Therefore, this evaluation concludes that the status quo should remain in the absence of a feasible alternative. However, given the amount of time and resources expended on the conclusion of cooperation agreements, there is a strong case for investigating whether and how a more flexible process could be developed.

RECOMMENDATION 11: Given the length of time that it takes to negotiate a cooperation agreement with a Third State, in preparation for a new Regulation analysis should be conducted, closely involving the DPO and JSB, to identify any possible ways in which the current process of negotiating operational agreements could be streamlined, in order to facilitate Europol in transmitting personal data to third States in accordance with its mandate.

In exceptional cases the Europol Council Decision creates a possibility to share information with third States without a cooperation agreement. This has been used only once.

This derogation is set out in Article 23(8) and (9) of the ECD. The derogation was not discussed in detail in any of the interviews, but was raised in a submission from the Europol DPO in later stages of the evaluation. In this submission the DPO called for a clearer articulation of the criteria to be used when the Director exercises the power under

Article 23(8) and (9). This point was not raised by other evaluation participants. In the absence of other supporting evidence on this issue, and without analysis of the potential consequences of doing so, this evaluation is reluctant to recommend such a change.

Europol and Interpol have strong strategic links which are increasingly translated into joint operational action.

Heads of Interpol and Europol have strong relationships, and the number of joint activities is increasing each year. Interviewees reported instances in which there is lack of clarity within Member States about when to use Europol or Interpol. The ECD had an indirect effect on cooperation with Interpol, since as an entity of the EU, Europol is perceived to be a more powerful and relevant partner.

The Standing Committee on Operational Cooperation on Internal Security is a new policy forum of relevance to Europol.

Europol has established good links with COSI on the basis of the policy cycle, but there is scope for greater clarity of the division of roles and responsibilities between COSI, European Commission, MB and other groups. The MB has addressed the issue of its relationships with Council structures and should monitor this issue regularly.

Interviewees welcomed the ability to receive information from the private sector, but the requirement that this information should come through a Europol National Unit was considered too restrictive.

The ECD introduced scope for information sharing with the private sector. Europol cannot send information to private entities but can receive personal information from a private entity, only through the ENU in the country in which the entity is based. The vast majority of interviewees who commented on this issue welcomed the ability to receive information from the private sector. Only one interviewee voiced concerns about working with the private sector. However, interviewees thought that the requirement that information should come through an ENU was too restrictive, and called for an ability to receive information from the private sector directly.

In assessing these views, the evaluation team bears in mind that Europol's role is to support Member States (Article 88 TFEU). If Europol were to be able to receive information directly from private entities, it could be considered a departure both from this principle and from the principle of subsidiarity. The evaluation team also notes that the ENU's position as the point of contact with Europol is an important principle in Europol's current framework. This being so, any departure from the status quo would need to be based on good evidence. The current rules are also intended to protect Europol from inadvertently breaching procedural rules governing the collection and processing of evidence in particular Member States. If Europol is to gather information directly from private entities that innovation would have to be carefully managed with this in mind.

However, both the Europol DPO and an interviewee from the JSB offered cautious support for introducing flexibility for Europol to receive information directly from private entities in certain specific circumstances as an exception to the general rule (for example, at the request of Member States). Therefore, the evaluation concludes that there is enough support to warrant further, careful consideration of the proposal in the context of a future Europol Regulation. However, we add a caveat to this conclusion in the form of some suggested safeguards which might accompany such a new capability.

RECOMMENDATION 12: Consideration should be given to the possibility of permitting direct information exchange with private entities, keeping in mind the role of Europol in Article 88 TFEU and the need for compliance with procedural laws in Member States. Direct exchange would be permitted in certain prescribed situations and Member States should be kept informed. The evaluation team supplements the views of interviewees and the DPO by suggesting the following safeguards for consideration:

- JSB approval and supervision;
- formal memoranda of understanding as the basis for exchange;
- transparency as to the information exchanged;
- Member States would need to be informed;
- restrictions related to whether the data were lawfully collected;
- purpose limitation (information collected for commercial purposes); and
- checks on accuracy.

Collaboration with researchers and academic institutions is not fully developed at Europol, but could add value to the organisation.

A small number of interviewees raised the issue of cooperation with academics and researchers. At present it appears that there is no effective means for Europol to engage with academic and other research bodies, or to compose and drive its own research and development agenda.

PART 3: ADMINISTRATIVE AND GOVERNANCE ISSUES

CHAPTER 10

Financial and human resources at Europol under the Europol Council Decision

This chapter discusses the four evaluation questions as set out in Box 10.1, below.

Box 10.1: Evaluation questions addressed in Chapter 9

QUESTION 4: Has the implementation of the general rules and procedures applicable to EU agencies simplified Europol's administration, allowing the organisation to devote more resources to its core tasks? *(Group 1)*

QUESTION 11: Has the new financial regime improved Europol's functioning? *(Group 1)*

QUESTION 33: To what extent does the ECD allow Europol to improve the management of its human and financial resources? *(Group 3)*

QUESTION 38: To what extent has Europol achieved better and more structured law-enforcement cooperation at Union level at a reasonable cost in terms of the financial and human resources deployed? *(Group 4)*

Now that Europol is an entity of the EU, its budget is drawn from the European Community budget and thus is subject to the EU's Financial Regulations and Staff Regulations. Europol put in place a programme team to implement the regulations, which required additional staff resources. Some funding was received to support this from the European Commission.

There was a strong consensus among interviewees that the EU Staff Regulations and Financial Regulations were not fit for purpose, given Europol's operational focus. This is reflected in responses to questions 1, 4, 33 and 38 in the web-based survey. Since these questions are related, the findings from the web survey are summarised in Table 10.1. An explanation for the very positive response to question 38 offered by the evaluation team is that respondents' answers reflect their broadly positive views of Europol's work (as discussed in Chapter 3).

Table 10.1: Web-based survey responses to questions relating to human and financial resources

	'Fully', 'to a considerable extent' or 'to some extent'	'To a very limited extent' or 'not at all'	'Don't know'
Question 4: To what extent has the implementation of the general rules and procedures applicable to EU agencies simplified Europol's administration, allowing the Organisation to devote more resources to its core tasks?	31 per cent	35 per cent	43 per cent
Question 11: To what extent has the new financial regime improved Europol's functioning?	34 per cent	17 per cent	48 per cent
Question 33: To what extent does the ECD allow Europol to strengthen its ICT and business alignment?	35 per cent	18 per cent	47 per cent
Question 38: To what extent has Europol achieved better and more structured law-enforcement cooperation at Union level at a reasonable cost in terms of the financial and human resources deployed?	57 per cent	42 per cent	None

Interviewees both within Europol (30) and in the European Commission (45) were of the opinion that Europol had been very efficient in applying the new rules (03). Three specific requests for deviation from the Financial Regulation were made:

1. to be able to tender with other agencies in The Hague;
2. the position of the IAF, which deviates from that of other agencies;
3. if auditors are present then they normally have access to all information – in Europol's case they cannot have access to operational information (32).

10.1 Impact of the new financial regime on Europol's functioning and ability to devote more resources to its core activities

Interviewees' views on the new financial regime differed. A small number of individuals (29, 30) working within Europol, who were required to authorise payments, thought that the new system had made their job easier; the process of electronic sign-off was more straightforward and less bureaucratic than before:

> As an authorising officer I have seen my workload drop dramatically ... I can do it all electronically. When it comes to me I know it's been through everybody's hands, I know that it's been checked ... that's much better than having to sit and go through everything to make sure all the signatures are there – electronically I know it's there when it gets to me. That's a huge saving in time ... it's been difficult to get there, but having got there, it's worth it. (Interview 30, head of unit)

One MB member welcomed the new financial regulations because they enhance the transparency of the organisation (42).

However, interviewees who were involved in procurement and making requests for budgets reported that the new financial regime was insufficiently flexible and more complicated than the pre-ECD situation:

> The whole financial system is more complicated ... it has its good reasons ... my unit does a lot with procurement, meaning that we have a certain experience of it ... It's more or less a problem of processes ... who has to see it when and how it has to go and what has to be in place ... lots of people signing off. (Interview 4, head of unit)

> I think those of us who have come from law enforcement have found it a little bit … difficult dealing with the financial regime. So for instance, I've been in situations where I've needed to go to a conference, we quite often get sent to these things at short notice … and I'm then told by Finance, 'Well, if it's not in the Commission's payment system, you can't go' … This is essentially an operational meeting, and you're telling me that I can't go or it's going to take six weeks? … We're conscious that in that respect we've become part of a much larger entity where things can take time. So it's like switching from one bureaucracy, which may have been a little bit more responsive, to another bureaucracy that isn't quite so, or at least isn't necessarily geared towards law enforcement needs. (Interview 39, project manager)

Relevant to question 4, these interviewees did not consider the new financial regime to be a simplification; rather it was 'cumbersome', in the view of one project manager (21):

> To my mind, when the Commission was speaking about administrative simplification, what they meant by this was that Europol, like with all other agencies, would use the same legal framework instead of having a separate [one]... then you can use the word 'simplification'. (Interview 32, head of unit)

> It has not simplified our administration, in many ways it's complicated it: our financial regulations and staffing regulations are more complex … and overall are less fit for purpose than they were before ECD, and that's not surprising given that … our previous framework provided for a bespoke, tailor-made set of arrangements. (Interview 31, Europol Directorate)

10.1.1 **Procurement**

Procurement was highlighted as being more complex now that Europol was subject to the EU Financial Regulations. Adding new suppliers took much longer than before (32) because they had to be approved and registered at EU level. It also took more time to pay suppliers (24). As a result of the transition to its new status, Europol had to re-tender some previous contracts to comply with the regulation (03). The risk was that the bureaucracy involved in procurement could damage Europol's image with Member States:

> The rules on public procurement are there to ensure – not encourage, but ensure – the widest possible competition, which is very good in environments [with no] sudden peaks of unexpected operational work, so it could happen that unexpectedly you need good services for particular operations ... if we are confronted with a lot of requests and demands from ... Member States ... and have to implement them quickly. Sometimes the procurement framework seems to stand in our way. (Interview 29, head of unit)

10.1.2 **The process of agreeing the budget after the Europol Council Decision**

In response to questions 4, 11, 33 and 38, interviewees frequently mentioned the budget process (even though this was not explicitly mentioned in the questions).

Nine interviewees (02, 04, 06, 14, 29, 31, 32, 37, 38) from Europol and focus group participants (focus group 1) thought that the budget for the organisation was signed off too far in advance (up to two years) and could be inflexible, since it could mean that Europol could not respond to emerging operational needs. One interviewee said that predicting the particular demands on, and requirements of, Europol far in advance was very challenging (04):

> We are unable to say … one year ahead that, yes, we're going to have 20 operational meetings or we're going to have 26 operational missions, because what if something

> happens? What if the criminal picture changes? We have a new criminal organisation come in, a new event ... a terrorist attack? (Interview 02, head of unit)

The advanced preparation of the budget was confirmed to be a problem in discussions with Europol in the validation stages of the evaluation. For example, the budget proposals for 2013 were sent from Europol to the European Commission in January 2012, but confirmation of the budget will not be received until December 2012. A further complication is that the MB adopted the budget March 2012 (the MB provisionally adopted the budget before sending it to the European Commission) which means that the budget put forward in January 2012 may not be the final version.

Involvement of the Management Board in the budget

According to the Article 37(10)(a) of the ECD, 'each year the Management Board shall adopt the draft estimate of revenue and expenditure, including the draft establishment plan, to be submitted to the European Commission; and the final budget'.

However, in putting this provision into practice, an MB member commented that the MB had a short time to look at budget documents and to reach a position (38). After the ECD, once the budget is approved by the MB, it then goes through a separate budget establishment process, which means that there is final agreement on the budget much later.

One advantage of the new situation was that the funding for Europol now comes from the EU rather than Member States, which simplifies things for Europol as the previous process of negotiation does not need to happen: therefore, the budget discussion is much shorter in the MB (38, 39, 42). The downside of this is a perception that the MB has less control over the budget (despite Article 37(10)), and therefore on personnel and organisational structure (33, 38, 40).

> The budget is … presented, it's discussed, without many influences from Member States … We can recommend that some areas can be more addressed than others, but Europol has no obligation to do that, and we have to rely on the budget authority to make its recommendations, (Interview 39, MB member)

One specific example of this, provided by a MB member was after 9/11:

> When we had 9/11/2001 there was, fortunately, shortly afterwards, a MB meeting, there was a clear demand from Member States … to prepare for … something similar … At that time Europol was fully funded by Member States and it was an easy exercise within one meeting of the MB to agree to extra funding for [establishing the necessary support structures]. (Interview 34, MB member)

However, one MB said that the effect was not significant:

> If you look at it from a processing perspective, you could say that the role of the MB has decreased when it comes to the budgetary procedure, because now the funding is coming directly from the EU system. But has it made a major change? No, I don't think so. (Interview 39, MB member)

10.2 Staff Regulations are perceived as insufficiently flexible

The limitations and inflexibility of the Staff Regulations were very frequently mentioned by interviewees (01, 03, 14, 27, 29, 30) in response to questions 4, 33 and 38. They were

mentioned by seven web survey respondents in relation to question 35, and 10 respondents in response to question 2. The particular problems included the following:

- out-of-hours working – evenings, nights and weekends – which is very restricted;
- shift working is very restricted; and
- a limited ability to compensate workers for overtime or out-of-hours work.

As discussed in Section 3.5, interviewees expressed the opinion that Europol's requirements were different to other EU bodies and agencies. The nature of Europol's work meant that night working, shift working, last-minute travel and so on were often necessary to respond to operational needs:

> Europol is a police organisation ... there is no provision in the Regulations for any of our staff to work between midnight and 6am ... we don't have overtime and we have no way of compensating staff ... The ECD does not recognise Europol as a police agency in terms of things like HR. (Interviewee 30, head of unit)

> It is very hard ... to provide 24/7 ICT services if we are not allowed to have people working on Saturday and Sunday in the night ... ICT activities are done when people go home after 6pm ... we need to do such an activities 50 times every year and for two or three times we can find volunteers that stay until midnight ... but on a regular basis it is very hard ... We need an appendix to the Staff Regulation to ... reduce the cost, because compared to the Europol Staff Regulations, the cost for shift or night work is excessively high. (Interviewee 14, Europol Directorate)

Interviewees at the European Commission were not entirely dismissive of this argument; some acknowledged that 'the framework was not very flexible'. However, European Commission interviewees stressed the importance of the harmonisation of internal regulation and a common approach to EU-funded agencies (44).

During the validation stages the evaluation team asked experts at Europol to comment on interviewees' perceptions as to the inappropriateness of the Staff Regulations. The judgement was that it is impossible for Europol to meet most of its needs within the current Regulations. One area where there was a problem related to compensating some categories of staff. However, it was reported that this is a problem for all agencies, not just Europol.

The European Commission had exercised strict control over the way in which Europol implemented the Staff Regulations, approving (and vetoing) each implementing rule. Europol reported that this left the MB with little room for tailoring to Europol.

In assessing these findings, the Expert Advisory Group highlighted a precedent for permitting derogation from the rules: derogations from the Protocol on Immunities. However, during the validation stage of this evaluation we were informed that currently Europol is not applying for changes to the Staff Regulations.

In the Expert Advisory Group's view Member State operational law enforcement agencies could perceive that Europol staff work only office hours. This may reinforce a view that Europol is primarily an administrative agency and not truly an operational support agency. Such a perception could, in the Expert Advisory Group's view, lead to Europol becoming excluded from vital details of operational policing in Member States.

10.3 The rotation principle, short-term contracts and the effect of working at Europol on career opportunities at home

10.3.1 The rotation principle

Approximately half the posts within Europol are filled by law enforcement officials from Member States employed at Europol under short-term contracts, up to nine years long. The rationale behind the rotation principle is that it ensures that new expertise is brought into the organisation. However, three interviewees working in Europol felt that this made it difficult in some instances for the organisation to retain knowledge and develop a Europol culture (03, 04, 32).

One interviewee (32) supported the rotation principle for law enforcement officials working at Europol, but suggested that short-term contacts were more of a problem for non-law enforcement staff: whereas it was probably quite easy for those previously employed in law enforcement in a Member State to rejoin that organisation, non-law enforcement staff had no other employer to return to – and in the current financial climate in which employment might be hard to find, this could reduce the pool of high calibre recruits willing to apply to work at Europol.

One liaison officer (12) suggested that more use could be made of law enforcement officials who have spent time in Europol after they leave the organisation: for example, through more involvement in awareness-raising activities in Member States.

10.3.2 Promotion opportunities and career progression at home

Some law enforcement officials working at Europol may lose out on opportunities for career progression at home. According to four interviewees' accounts (01, 04, 21, 30), is that it is necessary for some individuals to resign from an existing law enforcement position in his or her home country in order to work at Europol. This is a requirement imposed by the law enforcement authority in some Member States.

> We have an imbalance here, where the countries whose Europol service counts to[wards] their continuance service, who don't have to give up their pension rights and things like that, are also the ones that are progressing. (Interview 21, project manager)

Because these individuals are no longer employed by a competent authority, they cannot apply for other, more senior posts within Europol (30). This risks not finding the best people to fill Europol posts.

10.3.3 Restricted posts

Four interviewees (09, 30, 21, 32) working within Europol (in addition to respondents to the web-based survey in response to question 35) questioned whether it was necessary for as many posts to be restricted to personnel from law enforcement organisations.

Specifically, it was suggested that posts within the operations department relating to human resources, communications or administrative roles could be de-restricted:

> I recently was given a file of people who had tried to apply for jobs at Europol but didn't get through the sift because they didn't meet the criteria. These were guys with a military intelligence background, with a commercial intelligence background, who were all trained analysts working in areas like money laundering, intellectual property rights, terrorism, all with an extensive experience which would have been absolutely superb for this

> organisation – but because they haven't been badged as a cop, they're not allowed. (Interview 30, head of unit)

There may be a need to hire technical specialists, for example, in relation to cybercrime:

> We need to be able to … hire people from outside of the really strict tradition of law enforcement environments, because the kind of guys that we need to fight cybercrime – you know, the Member States are concerned that we're just going to suck all the high-tech crime units out of the Member States and there's going to be nobody left in the Member States. So we need to be able to get guys from universities, from the private sector. (Interview 21, project manager)

Another interviewee in the same interview agreed:

> If we start going through more, for example, encryption methods, for sure a law enforcement person will quite struggle in finding solutions, so we need to hire mathematicians, for instance … we need to go outside that arena. (Interview 21, project manager)

10.4 Chapter conclusions and recommendations

Concerns were expressed about the new financial regime: there is a widespread view that Europol devotes more resources to administration after the Europol Council Decision.
While the new financial systems have eased the workload of a minority of interviewees, the majority who spoke on this issue considered the financial regulations to be more complicated and less responsive to operational needs than the pre-ECD regime. However, interviewees from the European Commission stressed the importance of harmonising internal regulation and a common approach to EU-funded agencies. Overall, there is a perception that Europol is becoming a more bureaucratic organisation and devotes more of its staff resources to administration after the ECD. No accounting data or other analysis were available to support or disprove this.

As an entity of the European Union, Europol must draw up its budget more than a year in advance of its implementation, which makes it difficult to arrive at accurate estimates of likely expenditure.
There is a perception among MB members that the MB has less time to approve and discuss the budget. No tangible implications of this were highlighted to the evaluation team. However, members of the Expert Advisory Group agreed that a planning cycle initiated long before its implementation is less likely to result in a budget and work programme that are suited to the needs of Member States at the date of implementation.

Staff Regulations relating to overtime are not fit for purpose.
While Europol can operate largely within the existing Staff Regulations, the inability to deploy staff, except on a voluntary basis, outside of core hours prescribed by the Regulations remains an important operational barrier. When Europol staff do work out of hours voluntarily to support operational colleagues in Member States, they cannot be compensated for that work. This might diminish trust in Europol and perceptions of Europol's added value. To this extent, the ECD does not allow Europol to manage its human resources effectively.

Europol should collect information about the impact of the Staff Regulations on its operations, which could evidence the case for derogation from some or their elements.

There are mixed views on the rotation principle: while it ensures a close connection with Member States and brings in new ideas, it also means that Europol loses institutional knowledge.

The rotation principle is central to Europol's staffing model. The case for exceptions to the rotation principle is stronger in relation to posts requiring specialist technical skills, which law enforcement officials from Member States might not be able to offer.

One result of the rotation principle is that staff who have been based at Europol return to their home countries. One interviewee questioned what use, if any, is made of these individuals, who could have a role in awareness-raising in their home country. While this suggestion was made by only one interviewee, the idea warrants further consideration since it could provide a cost-effective mode of spreading the Europol 'brand'.

RECOMMENDATION 13: Europol should consider whether it is making best use of law enforcement officials who have worked in Europol and have now returned to their Member State. These individuals could have a role in awareness-raising, and an 'alumni' network could be a useful resource and link to Member States. Rotation at senior levels is a very efficient way of growing trust relations with Member State competent authorities.

National rules regarding employment at Europol are inconsistent, can act as a disincentive to national law enforcement officials working at Europol, and might inhibit Europol's ability to attract the best-qualified staff.

Some Europol staff must step down from their national posts to join Europol, thus interrupting their career in national law enforcement and being prejudicial to their pensions and other benefits. In some cases this also means that they become ineligible to apply for other posts at Europol whilst they are working at Europol, because they are no longer employed by a national law enforcement authority. This can act as a disincentive to apply for Europol posts. As far as possible, career progression at Europol should be compatible with career progression in Member States.

RECOMMENDATION 14: An analysis of the incompatibilities in career progression structures between Europol and national law enforcement authorities should be conducted, accompanied by sensible suggestions for mitigation by the harmonisation and removal of obvious anomalies.

CHAPTER 11 Governance and accountability

This chapter examines findings in relation to the five questions in Box 11.1 which relate to governance and accountability.

Box 11.1: Evaluation questions addressed in Chapter 11

QUESTION 8: To what extent has the establishment of a two-third majority rule improved Europol's governance? *(Group 1)*

QUESTION 9: Has the enhanced control over Europol by the European Parliament ensured that Europol remains a fully accountable and transparent organisation (due account being taken of the need to safeguard the confidentiality of operational information)? *(Group 1)*

QUESTION 12: To what extent has the establishment of the IAF, through independent and objective assurance and consulting services, added value and improved Europol's operations? *(Group 1)*

QUESTION 31: To what extent does the ECD allow Europol to strengthen its accountability arrangements? *(Group 3)*

QUESTION 36: To what extent have Europol's organisational set-up and governance structures contributed to the effectiveness and efficiency of its operations? *(Group 3)*

There are several bodies involved in Europol's governance, and a brief overview of their roles is provided in Box 11.2.

In the web-based survey, the responses to question 36 ('To what extent have Europol's organisational set-up and governance structures contributed to the effectiveness and efficiency of its operations?') were as follows: 16 per cent answered 'to a considerable extent', 31 per cent 'to some extent', 13 per cent 'to a very limited extent' and only 3 per cent 'not at all'. Just over a third of respondents answered 'don't know'.

Box 11.2: Bodies involved in governance and supervision of Europol

The Council (JHA configuration)

This is responsible for the political steering of Europol. It sets strategic priorities, taking into account the Europol threat assessment and strategic analysis, approves agreements between Europol and third States, and appoints the director of Europol (Article 38(1) of the ECD).

Management Board

This consists of a representative from each of the Member States (a mix of ministries and police representatives) and a representative from the European Commission (Article 37(1) of the ECD). Article 37(9) of the ECD sets out a strategic focus for the MB, as well as a results-oriented approach: the MB must set benchmarks to measure whether objectives have been met, and the MB must report on results achieved against priorities set. Article 37(8) of the ECD introduced qualified majority voting in the MB, apart from on the matter of the 'internal language arrangements of Europol', which must be decided by unanimity (Article 47(2)). Previously, all decisions needed unanimity.

European Parliament

Parliamentary control over Europol is split between national parliaments and the European Parliament: the latter comes about because Europol is funded directly from the general budget of the EU, which the European Parliament adopts. Recital 20 of the ECD says that it is 'desirable' to provide for enhanced control over Europol by the European Parliament, and in pursuance of this Article 48 of the ECD requires the chair of the MB and the director to appear before the European Parliament when requested (previously the Europol Convention merely said that they *could* appear). The Committee on Civil Liberties, Justice and Home Affairs of the European Parliament holds special hearings and issues special reports on Europol's activities.[34]

The Treaty of Lisbon provides that the European Parliament and the Council shall determine Europol's structure, operation, field of action and tasks, by regulations (Article 88 TFEU). This means that supervision of Europol by the European Parliament will come from outside the ECD.

Internal Audit Function

Article 37(9)(f) of the ECD requires the MB to establish an IAF. The IAF operates within Europol and is accountable to the MB. It is part of the mechanism ensuring financial accountability.

Source: De Moor and Vermeulen (2010)

11.1 Qualified majority voting in the Management Board

Among interviewees who discussed the issue, there was a consensus across stakeholder groups (within Europol [13, 14, 16], MB members [38, 35], Council Secretariat [50, 51, 52] and European Commission [44]) that the introduction of qualified majority voting was very much welcome: it could speed up decision making in the MB and was in line with the processes in other agencies. Focus group participants also thought that this was a positive change (focus group 1).

In the web-based survey just under 50 per cent of respondents answered 'don't know' to question 8, which asked directly about the two-thirds majority rule. Forty-four per cent answered 'to a considerable extent' or 'to some extent', and only 6 per cent answered 'to a very limited extent'.

However, there was a further agreement among interviewees from within each of these groups that even though majority voting was possible, it always would be preferable to seek consensus and engage in discussion, since this meant that the Member States were on board, which was essential to Europol's work:

[34] For example, a public hearing on the future of Europol held in April 2007.

> The information from Member States police services is … 'the water to the tree', otherwise there will be no future from Europol … We need to have and to keep and to maintain a good relationship between Europol and Member States because they are feeding the databases, they report back whether specific analysis … was useful or not – and therefore still I think Europol is very much listening to what Member States, on the Management Board level, on the operational level, are reporting to Europol. (Interview 34, MB member)

Four interviewees (14, 30, 32, 52) said that the existence of qualified majority voting was in the background of decision making in the MB, and might encourage consensus building:

> It's sharpened people's thinking ... you don't ... see an intransigent single Member State blocking progress ... it has almost by default created a more consensual attitude towards some quite prickly issues. (Interview 30, head of unit)

> In the past each Member State ... knew that they had a lot of power, because then the smallest one could block important decisions. So now, although it was not necessary ... to count the votes, knowing that individually you cannot block anything anymore, as a consequence we see that the discussions are going on in an easier way. So that there's an added value, yes. (Interview 32, head of unit)

As well as preferring consensus among MB members, an interviewee made the point that it was vital for Europol to maintain links with Member States. If decisions were consistently taken on a majority basis, this would indicate a lack of buy-in by Member States, which could harm Europol in the future.

11.2 The increasing voice of the European Commission in the Management Board under the Europol Council Decision

MB members noted that Europol's status as an EU entity meant that they (necessarily) had less control over the budget of Europol, than before the ECD. MB interviewees reported that the presence of the European Commission on the MB was very noticeable:

> There's hardly any issue discussed at MB level now without an advisory input from the Commission delegate. This may be a good thing, in that we're becoming more aligned with the European institutions, but [it means that]… rather than working exclusively, internally for Europol, we're now looking to see whether we are EU compliant. (Interviewee 35, MB member)

Another MB member agreed that:

> One of the major impacts of the ECD is the increased power of the Commission within the MB of Europol. (Interviewee 42, MB member)

However, this MB member went on to mention a concern that:

> There is not always a clear link between the operational level and the political level. I think that politicians in most cases are driven by political demands, not by expert demands … so it is not always clear that the message that we send as experts will be accepted very well by the politicians. (Interview 42, MB member)

11.3 Changing role of the Management Board under the Europol Council Decision and in the future

Two interlinked issues regarding the MB arise from the evidence available to the evaluation. First, it was mentioned frequently by interviewees in the European Commission and within Europol (including MB members) that the MB needed to clarify and assert its role in the ECD era. There was a lack of clarity about the relations between the MB, European Commission and COSI (see Section 9.6),[35] among other organisations, institutions and bodies, in making decisions about prioritisation. Second, it was mentioned that the MB could take a more strategic focus, as there was a tendency to focus too much on operational issues.

Before outlining these points in detail, it is noted that these issues appear to have been recognised already within Europol, and proposals have been advanced to respond to them. A Working Group on the function of the MB has been established to look at this issue. Europol shared the output of this Working Group with the evaluation team (Europol Management Board Working Group, 2011). This states that 'the most important task of the MB is to determine the strategic direction of Europol', and sets out proposed measures to 'create the best circumstances in which the MB can perform this task'. Additionally, this Working Group has considered the role of the Europol MB in the post-ECD era and how to manage demands stemming from this new situation.

Changes along the lines outlined in these Working Group proposals may offer a solution to the concerns voiced by interviewees. However, evidence regarding the concerns voiced on these issues during the evaluation is set out below on the grounds that it may be relevant to discussions about the Working Group proposals in the MB.

11.3.1 Role of the Management Board

MB members noted that the landscape of organisations with an interest in Europol was changing, which had implications for the role of the MB:

> One concern … is that … groups like COSI are considered as one of the tools in the tool box, and I think that's natural because it's now an EU agency. The only concern for me is that it's a bit difficult to be discussing work programmes for Europol, strategies for Europol, not really knowing who is really deciding the direction for Europol. Is it the Europol MB, or to what extent are other bodies … capable of or able to prioritise the work of Europol? That has raised some concern to me I would say and that might be something that you could nominate in the legislation, I don't know if that's possible but at least a thought should be given regarding this particular problem if you can call it that. (Interview 39, MB member)

> Europol has different bodies governing it: Management Board, director, … the Council … the Commission … we … have a lot of masters … and Europol doesn't have any clear rule in what direction it should turn. (Interview 39, MB member)

Two MB members (40, 41) called for a stronger role and focus for the MB under a new legal basis:

[35] Although some MB members were also COSI members.

> There are many players in the EU … that would like to send issues and new tasks to Europol … The MB… has seen some surprises that are more or less decided on [the] political level … without even consulting the MB … that's why we considered how we [the MB] should develop … what should be the role of the MB … how should we influence Council working groups? (Interview 40, MB member)

11.3.2 Strategic focus of the Management Board

The ECD sets out the strategic role of the MB. Interviewees from a range of stakeholder groups – the European Commission (44, 45, 53), Europol Directorate (16), a liaison officer who had previously sat on the MB (25) and MB members (41) – held the view that there were occasions when the MB could better focus its time and expertise and take a more strategic approach (53), focusing less on operational details. These quotations illustrate such views:

> I think the essence we should be talking about on the MB is about the strategy, the Work Programme and expectations, how do we implement those expectations, and I think we should not talk too much about the administrative questions in principle. (Interview 41, MB member)

> The MB is changing for the better, but still carries this legacy of being more inclined to deal with minutiae of day-to-day detail and … dealing with governance and strategic issues in the way that it should have. (Interview 31, Europol Directorate)

We asked interviewees to provide specific examples where they felt that the MB had engaged in discussions which, they believed, would have been better conducted elsewhere. Examples were provided (and are outlined below). However, during the validation stages the Evaluation Steering Committee clarified that each of the examples provided refer to tasks required by implementing the rules of the ECD, rather than tasks that the MB had chosen to perform.

It is difficult to validate these views independently and to establish the extent to which the MB is acting at a sufficiently strategic level. It is clear that MB members come from a variety of backgrounds, have a variety of relationships with their competent authorities and consequently a variety of mandates.

Example 1: Staff Regulations

Article 110 of the Staff Regulations requires agencies to adopt implementing rules to give effect to the Regulations (discussed in Section 10.2).[36] One interviewee from the European Commission (44), an interviewee from the Europol Directorate (16) and another interviewee within Europol (29), questioned the effectiveness of the way in which the MB has developed implementing rules; the issue related to preliminary adoption of the rules, which then go to the European Commission before returning for adoption by the MB. However, the Evaluation Steering Committee stated that this procedure is specified by the European Commission.

Example 2: decisions in the director's absence

One interviewee, a MB member, mentioned an example of the MB making a decision about procedures in the director's absence:

[36] After consultation of the relevant Staff Committee and in agreement with the Commission.

> One thing that we decided on in the MB was … if the director isn't there, which order the deputy directors take his place. I can't understand why that should have to be decided. To me, it should be up to him [the director]. (Interview 40, MB member)

Again, the Evaluation Steering Committee explained that the MB had to take this decision, according to the implementing rules of the ECD.

Example 3: procedure regarding public holidays

A MB member described an example where the MB made decisions about the procedure regarding public holidays:

> I have asked myself several times, why is the MB dealing with this or that issue, which … should have been … dealt with by the director? For instance, we [dealt with] the written procedure regarding public holidays … somewhere in the legislation it's laid down that this is an issue to be dealt with by the MB … Really that's nitty gritty in my opinion … When dividing the tasks between the MB and the director, I think all the day-to-day work should be done by the director and … you should limit the work for the MB to issues of a more strategic nature … and laying down the rules on what day should be the public holidays is not really, in my opinion, a strategic matter. (Interview 39, MB member)
>
> The Evaluation Steering Committee explained that this is required by the implementing rules of the ECD.

11.4 The administrative burden of Management Board meetings

Two interviewees (16, 37) indicated that there was a significant administrative burden in preparing the MB meetings. The cost of interpretation of the MB meetings was mentioned as a specific example. There had been some improvement now that the MB met less frequently: six times in 2010, five times in 2011 and four times in 2012.

11.5 Expertise in the working groups

Two MB members and an interviewee from the Europol Directorate mentioned MB working groups.

One way to allow the MB to focus on more strategic issues is to use working groups more effectively. Supporting this view, an MB member thought that a greater role could be given to the working groups of the MB, where subject experts are involved (37). There was an onus on Member States to send the right subject experts. One MB member (36) commented that in some instances, members of working groups were not all subject experts. Another interviewee from the Europol Directorate held a similar view:

> You need to ensure that the experts are really there … I don't believe that a liaison officer who is dealing with operational work is an expert in [for example] human resources or budget plans. Some countries do send experts, but others don't – and if you then reopen the whole debate [on issues discussed by working groups], again at MB level, then you can most likely skip them [working groups]. (Interview 16, Europol Directorate)

11.6 The European Parliament

By making Europol an entity of the EU it is brought within the provision of the Lisbon Treaty, which enhances the supervision of JHA agencies. While the Amsterdam Treaty introduced an obligation on the Council to consult the Parliament (Article 39 TEU), the Lisbon Treaty provides the Parliament with legislative power over Europol through the co-decision procedure (De Moor and Vermeulen, 2010). Further, the Lisbon Treaty explicitly provides for the new Europol Regulation to include provisions on parliamentary 'scrutiny' (Wills *et al.*, 2011). More generally, over the past decade the European Parliament has developed a growing interest in Europol and other JHA bodies.

11.6.1 Enhanced control over Europol by the European Parliament

The role of the European Parliament was discussed in 26 interviews. The majority view was that supervision by the European Parliament of Europol was, in principle, strongly welcomed by interviewees in Europol, the European Commission and in the Parliament. It was seen as appropriate, since supervision by the European Parliament increases Europol's democratic legitimacy and accountability, and it was important to be a transparent agency. Two interviewees commented that increased scrutiny by the European Parliament was welcomed because of the message it communicates to external audiences about Europol's willingness to be accountable and open, giving the organisation greater 'credibility' (04, 02).

In the web-based survey question 9, ('To what extent has the enhanced control over Europol by the European Parliament ensured that Europol remains a fully accountable and transparent organisation?'), 42 per cent answered 'don't know', the same proportion answered 'to a considerable extent' or 'to some extent' and 15 per cent answered 'to a very limited extent' or 'not at all'. Seventy-seven respondents provided further explanations for their answers to question 9; a thematic analysis of these found the following.

- About one-third of the respondents who provided further information endorsed the principle of supervision by the European Parliament. Appearances of the director at the European Parliament were mentioned by a small number of respondents as tangible examples of improved supervision.
- Around 10 per cent noted that there had always been some supervision and transparency, and a small number thought it was too early to comment, since the role of the European Parliament was developing.
- Just under 10 per cent suggested that there was scope for Members of the European Parliament (MEPs) to improve their knowledge and understanding of Europol, in order to undertake better scrutiny.
- The next most commonly mentioned issue (by just under 10 per cent of respondents who explained their answers) was that parliamentary scrutiny should not go too far, that the operational work of Europol should not be politicised.
- A small number of respondents noted that facilitating parliamentary supervision through reporting, appearances and awareness-raising with MEPs was time-consuming, and could take resources away from Europol's 'core work'.

11.6.2 The benefits of involvement by the European Parliament

Seeking and securing the agreement and advice of Parliament could be time-consuming and often involved debate. However, an interviewee from the European Commission thought that it could make agreements 'more sustainable' (53). Similarly, an interviewee from within Europol was of the opinion that time spent throughout the year in engaging with the European Parliament meant that when time came to scrutinise the budget, the Parliament would have a good understanding of Europol (30). Greater attention from the European Parliament brought greater exposure of Europol to the media, public and community in Brussels, which could improve the level of knowledge and awareness about Europol generally, and show that Europol was an open organisation (31).

A head of unit at Europol described the European Parliament as being very 'constructive' towards Europol (29). The time spent 'convincing' the European Parliament on an issue was a good challenge to Europol, forcing it to think through and justify its activities (13). An interviewee from Frontex expressed a similar view:

> It should be considered as an opportunity, because the closer you are linked to [the] European Parliament and the better rapport you have with the Parliament, the better you can then promote your objectives. (Interview 48, Frontex)

11.6.3 Impact of the Europol Council Decision on accountability to the European Parliament

One interviewee thought that the ECD was not a 'revolution' in accountability (45), but other interviewees thought that the ECD had had an effect on encouraging parliamentarians to be more interested in Europol (30). Another raised questions about the extent to which the European Parliament's supervision of the budget actually amounted to holding Europol to account (51).

In the web-based survey, question 31 ('To what extent does the ECD allow Europol to strengthen its accountability arrangements?'), 50 per cent of respondents answered 'don't know' and 43 per cent answered 'to some extent' or 'to a considerable extent'. This mirrors interview findings of a perception that the ECD did not have a significant effect on accountability.

It was mentioned in interviews that the director regularly attended meetings and committees of the Parliament, being 'visible' to Members of the European Parliament, and that this had increased since the entry into force of the ECD (29, 30, 31). During the validation stages of this evaluation it was possible to confirm, through statistics on attendance, that Europol staff attended the European Parliament more regularly after the ECD (see Table 11.1). Invitations include attendance at the Committee on Civil Liberties, Justice and Home Affairs and at *ad hoc* hearings. The Europol 2010 Activity Report states that Europol hosted a visit from the Committee on Civil Liberties, Justice and Home Affairs in that year (Europol, 2011a).

Table 11.1: Attendance by Europol at the European Parliament

Year	Number of appearances by the director and other Europol staff
2009	4
2010	6
2011	11

Source: Europol (discussions during the validation stages of this evaluation)

11.6.4 Parliamentary supervision is in development

One interviewee from the European Parliament said that while the appearances of the director were 'appreciated', but…

> I wouldn't say that this presence was a real interaction concerning a decision making process on the work of Europol. So I would expect that a new framework for Europol would include a regular presence of the Europol director before the Committee [on Civil Liberties, Justice and Home Affairs], which then has the possibility to give clear binding indications to Europol how to conduct its work. (Interview 52, MEP)

One interviewee from the Council Secretariat (50) cautioned that it is yet to be seen whether the European Parliament will take a new role: a view that was echoed by the participants in focus group 1. A MB member commented on the content of the Parliament's input:

> The Management Board can already see the influence of European Parliament … but I have until now been quite disappointed about the role of European Parliament because … it seems to me that they don't have decent preparatory organisation behind the Committee [on Civil Liberties, Justice and Home Affairs]. So it's more or less work of some active persons in Parliament … their role as a political guide, adding transparency or democracy – it's still developing. (Interview 40, MB member)

There was a consensus among the interviewees who raised this issue that the role of the European Parliament, and in particular the Committee on Civil Liberties, Justice and Home Affairs, in supervising JHA agencies and security activities was in development (02, 31, 34, 53). An interviewee from the Council Secretariat (50) stressed that supervision of Europol by the European Parliament had to be seen within the context of supervision of other JHA agencies: Frontex and Eurojust.

The desire for greater supervisory power was supported by an interviewee from the European Parliament (52), who commented that the current ability to scrutinise Europol's budget was not a sufficient level of supervision.[37]

11.6.5 Concerns about operational supervision

There is a careful balance to be struck between the democratic legitimacy that European Parliament supervision brings, and the desire not to allow the European Parliament to have an influence on operational matters or priorities. There was consensus that the European Parliament's supervision should not extend to operational matters (44, 45, 50). Some interviewees felt that current mechanisms – control of the budget and calling the director to give evidence – were sufficient (interviewee 34, MB member).

[37] A study commissioned by the Parliament criticised a lack of accountability for Europol and Frontex (Guild *et al.*, 2011).

11.7 The Internal Audit Function

Question 12 asked about the IAF. Under the ECD the MB has responsibility to establish the IAF and adopt implementing rules which, among other things, include 'safeguards for the independence of the function'. The IAF is accountable to the MB, and the ECD states that the IAF 'shall have access to all documentation necessary to the performance of its duties' (Article 37(9)(f) of the ECD). Therefore, the ECD provides independence for the IAF.

The role of the IAF was discussed in 12 interviews. An interviewee from the European Commission commented that Europol had a very good record of financial propriety, having never had any negative audit reports (45). Many of the responses to question 12 referred to the fact that the role of the IAF was being filled by the same staff member who previously had been the financial controller (02). This was important, as this individual already was perceived to have credibility and 'credit' (05) within the organisation, and this could have increased the likelihood that staff members would approach him for advice.

In the web-based survey 57 per cent of respondents answered 'don't know' to question 12. Thirty per cent answered 'to some extent' or 'to a considerable extent'.

11.7.1 Using the Internal Audit Function in a consultative capacity

Six interviewees within Europol (02, 04, 05, 15, 16, 29, 31) claimed that they had used the IAF in a consultative way, approaching it proactively for advice and experiencing good cooperation. The internal auditor attended the MB meetings, and in that sense was on hand to provide advice.

> The internal auditor is giving us good and independent information regarding the situation in Europol, so he's a very good partner for the MB, for the functions we are valuable partners. (Interview 21, MB member)

11.7.2 Is the Internal Audit Function less independent and powerful than the previous financial controller?

An interviewee within Europol who was an expert on the audit function (32) argued that the introduction of the IAF could make the process of financial audit less independent, notwithstanding the provisions of the ECD described above. The basis for this argument was that the IAF consists of regular Europol staff. However, the evaluation team notes that the IAF is able to take matters directly to the MB.

A second point, made by the same interviewee, is that previously the financial controller could block a spending decision. Now, the IAF can advise against a decision, but this can be overruled by the authorising officer.

11.7.3 Many layers of audit

Three interviewees from within Europol (29, 05, 32) described the different organisations and bodies which audit Europol: the European Court of Auditors, European Commission Internal Audit Service (IAS) and the IAF. One interviewee (05) from within Europol, an expert on the IAF, described what he considered to be a confusing situation arising from the relationship between the IAF at Europol and the IAS of the EU: according to the framework Financial Regulation of the European Commission, the IAS is the auditor of the EU agencies. The Europol Financial Regulation (which implements the ECD) is based

upon the framework Financial Regulation. Articles 71, 72 and 73 of the Europol Financial Regulation[38] assign joint responsibility to the IAF and the IAS for the audit of Europol.

The interviewee described this as a 'complicated formula', which required the two organisations to plan audit activities. The interviewee described how this has effectively resulted in two separate audits:

> A joint cooperation audit programme for 2011, 2012 and 2013 was drafted ... [which] stated that the audit activities ... will be performed jointly by the IAS and the IAF. That ... statement was agreed by the MB, but when it came to performing the audit, the IAS stated that they couldn't do it … jointly, because then they couldn't apply the framework Financial Regulation. (Interview 05, head of unit)

The MB was then issued with two separate audit reports which, the interviewee reported, was an occurrence that was not welcomed by the MB. An interviewee from the European Commission (44) did not think that it was anomalous for Europol to have an IAF and to be subject to the IAS, and said that the two had agreed on a joint audit plan.

Conversely, another interviewee thought that Europol could 'get additional benefit from the "double audit" from the fact [that auditors from IAS] come from a much larger operating environment, and can import best practice from other parts of the EU constitutional framework' (31).

The advice of our Expert Advisory Group is that it is not unusual for EU agencies to be subject to both internal and external audit. However, the current system could be seen as subjecting Europol to two internal audits in addition to the external audit from the European Court of Auditors, and that might be deemed excessive.

11.8 Chapter conclusions and recommendations

The Management Board continues to strive for consensus, despite the possibility of making decisions on a qualified majority basis.

Qualified majority voting, introduced by the ECD, was an improvement to Europol's governance since it can protect against slow decision making and provides an incentive for MB members to reach agreement. However, decisions taken on a majority basis may indicate a lack of buy-in from Member States, which is not in Europol's long-term interests.

The introduction of the Europol Council Decision, alongside other developments such as creation of the Standing Committee on Operational Cooperation on Internal Security, has implications for the role of the Management Board.

It was mentioned frequently by interviewees in the European Commission and within Europol (including MB members) that the MB needed to clarify and assert its role in the ECD era. An MB Working Group has addressed these points and made proposals for responding to, and managing the demands placed upon, Europol by Council working structures, which the MB endorsed and implemented. The effect of these changes should be regularly reviewed.

[38] 2010/C 281/01.

Research participants called for the Management Board to shift to a more strategic focus, but concerns of an overly operational or tactical focus have not been fully evidenced.
Some interviewees – including members of the Directorate and MB – wanted the Europol MB to occupy a more strategic role, and to step back from tactical or operational details. Some instances were provided to support this, but there is insufficient evidence on which to draw firm conclusions about the extent to which the MB is acting at a sufficiently strategic level. Importantly, an MB Working Group has considered these issues and set out proposals to create the circumstances which would allow the MB to focus on its core role in determining Europol's strategic direction.

Supervision by the European Parliament is welcomed and has symbolic importance, but there are concerns about future changes to the role of Parliament.
The European Parliament's role in supervising Europol and other agencies in the area of JHA was described by interviewees (from the European Parliament and other stakeholder groups) as being in development in accordance with the process of implementing the Lisbon Treaty. While there is now greater opportunity for engagement and helpful scrutiny, this also gives rise to concerns about the extent to which the European Parliament will be involved in supervising Europol's operational activities. There is an opportunity for Europol to be proactive in providing information about its role and functions to the European Parliament, in order to make the most of parliamentary scrutiny of non-operational issues.

Consideration should be given to developing a strategy which anticipates future changes to how Europol is held to account, and in particular, possible changes to the role of the European Parliament. This should include the possibility of extended scrutiny by the European Parliament. The potential added value of additional Parliamentary scrutiny should be considered, along with how to maximise it. Additionally, resource implications for Europol (through providing information to the Parliament and increased attendance at hearings) should be considered.

The Internal Audit Function is used consultatively within Europol and is adding value. However, there is a double layer of internal audit.
Potential duplication of internal audit functions, between the European Commission Internal Audit Service (IAS) and the Europol Internal Audit Function (IAF), was mentioned by interviewees who thought it could lead to redundancy and inefficiency. In addition, Europol is subject to external audit from the European Court of Auditors. While it is not uncommon for EU agencies to have an internal and external audit function, Europol has, in effect, two internal auditors.

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APPENDICES

Appendix A: protocol for focus groups

Materials available

There will be hard copies of the questions for discussion in the focus group on the desks, so participants can continually refer back to them.

The research team will use a PowerPoint presentation to aid in the facilitation of the meeting.

Opening and introduction by the facilitator (3 minutes)

1. Facilitator opens the meeting by introducing themselves and their background and explains:
    - the aim of the focus groups
    - how long it will last
    - the importance of participants being concise and sticking closely to the issues at hand, given limited time available
    - the importance that, where possible, participants provide concrete and specific examples to illustrate their views and points.
2. Facilitator asks for permission to make an audio recording of the discussion, and explains that the discussion will be kept confidential and will not be reported in such a way that any comments can be attributed to particular individuals.
3. The facilitator reminds participants that they also have a chance to complete an on-line survey, where they can comment on all the evaluation questions.
4. The facilitator asks if participants have any questions before the discussion begins.

Prioritising questions (5 minutes)

The facilitator asks participants if they would like to prioritise any of the questions for discussion.

- Why these are considered more important?
- Are there particular cases, instances, examples which led participants to consider them important?

Discussion of research questions (1 hour 10 minutes)

The facilitator will pose each question to the group, asking for their views.

If views are not forthcoming, or to structure the discussion, facilitators can use prompts including:

- Have you had experience of [issue of hand]? If not facilitator will move on from that question. If yes, facilitator will encourage participants to talk about that experience, to encourage discussion.
- Use scales like: To a considerable extent? To some extent? To a very limited extent? Not at all?
- Could you give a specific example of this?
- Is there a particular provision of the ECD / other legislative document which is a barrier / facilitator?
- What steps could be taken to resolve this problem? Who should take those steps? What are the barriers?
- Is [X] a problem with the legal framework, or the way in which it has been Implemented?

Close and next steps (2 minutes)

The facilitator will bring a discussion to a close when there is 2 minutes left.

Facilitator will thank participants for their contributions, and provide contact information so that participants can add any comments or remarks by email after the meeting.

Facilitator will explain that the audio file will be transcribed and analysed, and will be used in the evaluation report.

Questions to be discussed in the focus group meetings

Group 1: questions about the implementation of the ECD

1. To what extent has Europol fulfilled its objective under the ECD (namely to enhance law-enforcement cooperation at EU level)?
2. On the extent of the ECD implementation: has any outstanding, non-transitional issue adversely affected the functioning of Europol since 1 January 2010?
3. Simplification and improvement of Europol's legal framework: to what extent has the establishment of Europol as an EU entity simplified and improved its legal framework? How does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities?
4. Simplification of Europol's administration: to what extent has the implementation of the general rules and procedures applicable to EU agencies simplified Europol's administration, allowing the Organisation to devote more resources to its core tasks?
5. Simplification and improvement of Europol's functioning: to what extent has Europol's functioning been simplified and improved through measures aimed at widening its possibilities to assist and support the competent Member States' law enforcement authorities?

6. Establishment of a Data Protection Officer (DPO) at Europol: to what extent did the establishment of the DPO ensure, in an independent manner, the intended level of data protection in Europol (at least that which results from the observation of the principles of the Council of Europe Convention for the protection of individuals with regard to Automatic Processing of personal data, signed in Strasbourg on 28 January 1981)?
7. To what extent has Europol's legal framework contributed to the effectiveness and efficiency of its operations?
8. To what extent has the establishment of a two-third majority rule improved Europol's governance?
9. To what extent has the enhanced control over Europol by the EP ensured that Europol remains a fully accountable and transparent organisation (due account being taken of the need to safeguard the confidentiality of operational information)?
10. To what extent has the widening of Europol competences contributed to the effectiveness and efficiency of its operations?
11. To what extent has the new financial regime improved Europol's functioning?
12. To what extent has the establishment of the Internal Audit Function, through independent and objective assurance and consulting services, added value and improved Europol's operations?

Group 2: Europol's activities: (a) evaluation of the implementation of the activities stemming from the ECD and Europol; (b) other evaluation topics based on the Commission's evaluation standards

1. To what extent has the participation of Europol staff in a support capacity (without benefiting from the application of immunities) benefitted Joint Investigation Teams (JIT)?
2. To what extent has direct access of Europol national units to all data in the Europol Information System (EIS) taken place?
3. To what extent has the establishment of Europol's specific data protection regime benefitted the fulfilment of Europol's activities while ensuring adequate protection of personal data processed in the framework of police and judicial cooperation in criminal matters during its transfer by Member States to Europol?
4. To what extent has the Joint Supervisory Body contributed to ensuring that the rights of the individual are not violated by the storage, processing and use of the data held by Europol and that the permissibility of the transmission of data originating from Europol is adequately monitored?
5. To what extent were the possibilities for the creation and management of information processing systems at Europol widened?
6. To what extent has Europol's access to data from other information systems (Art. 21, ECD) assisted the Organisation in its objectives?

7. Which elements have impaired the establishment of new systems processing personal data?
8. To what extent has cooperation with EU institutions, bodies, offices and agencies (e.g. Eurojust), particularly in the context of agreements or working arrangements, been beneficial to the achievement of Europol's objectives?
9. To what extent has the establishment of provisions for the cooperation with third parties and organisations benefitted Europol in the achievement of its objectives?
10. What is the extent of Member State's commitment to share information with Europol?
11. To what extent are Europol's objectives in line with the needs of the addressees of its activities and of the issues that Europol is meant to address?
12. To what extent has Europol achieved better and more structured law-enforcement cooperation at Union level at a reasonable cost in terms of the financial and human resources deployed?
13. To what extent have the activities of Europol resulted in unintended/unplanned results and impacts (both desirable and undesirable)?
14. To what extent are the activities of Europol unique and distinctive, not duplicating those of other EU entities?

Group 3: Europol's activities (c) Evaluation of the ECD in the context of the Europol Strategy 2010-14

To what extent does the ECD allow Europol to:

15. Add value to the operational requirements of Member States, thereby enhancing the Organisation's impact?
16. Ensure the effective delivery of a unique set of operational support services?
17. Enhance the coordination of operational action in the EU?
18. Develop more effective cooperation with external partners?
19. Lead the further development of a European Criminal Intelligence Model?
20. Improve its analysis capability?
21. Strengthen its information management capabilities?
22. Pioneer new techniques to prevent and combat international serious crime and terrorism
23. Strengthen its position as a platform for specialist areas?
24. Provide expertise and quality training in key law enforcement techniques?
25. Strengthen its accountability arrangements?
26. Strengthen its ICT and business alignment?
27. Improve the management of its human and financial resources?
28. Build a strong Europol culture and a positive external image?

29. How could any obstacle impairing the above objectives be overcome?
30. To what extent have Europol's organisational set-up and governance structures contributed to the effectiveness and efficiency of its operations?

Appendix B: Web-based survey instrument

This appendix sets out the text of the web-based survey.

The Europol Management Board has commissioned RAND Europe to conduct an independent and external assessment of the way in which the European Council Decision is being implemented and of the programmes and activities carried out by Europol.

Such an evaluation should take into account the views and expert opinions of a wide range of stakeholders and, since you have been identified as a key stakeholder of Europol, we would like to invite you to share your views on Europol through an on-line survey.

This survey contains 45 questions.

We acknowledge you may not be familiar with certain aspects of Europol and might not be able to respond to all questions. Please select the option 'don't know' (DN) where you do not wish to answer a particular question.

For each question we provide:

- A simple range of defined answers in a tick-box format
- An opportunity to explain that answer in your own words
- A simple range of defined answers about the types of information or experience which has informed your answer, again in a tick-box format

Participation in this study is voluntary and the answers you provide will be kept confidential.

The findings from the survey will be used only in this study, and no information will be attributed to any individual. We are only asking for your job title to assist us with analysing the data.

If you have any questions or difficulty accessing or completing the survey, please call e-mail srgwebhelp@rand.org.

If you have any questions about the evaluation or the survey, please contact Dr. Emma Disley at RAND Europe (edisley@rand.org, +44 (0) 1223 222 717).

Thank you in advance for completing this survey.

Section A: General information

1. Please indicate the country in which you currently work, or in which you have previously worked (tick one)

❑	Albania	❑	Ireland
❑	Australia	❑	Italy
❑	Austria	❑	Latvia
❑	Belgium	❑	Lithuania
❑	Bulgaria	❑	Luxemburg
❑	Canada	❑	Malta
❑	Colombia	❑	Netherlands
❑	Croatia	❑	Norway
❑	Cyprus	❑	Poland
❑	Czech Republic	❑	Portugal
❑	Denmark	❑	Romania
❑	Estonia	❑	Slovakia
❑	Finland	❑	Slovenia
❑	France	❑	Spain
❑	Germany	❑	Sweden
❑	Greece	❑	Switzerland
❑	Hungary	❑	United Kingdom
❑	Iceland	❑	United States
		❑	Other (please specify)

2. How would you best describe your institutional affiliation or position? (tick as many as apply)

Europol Directorate	❑
Liaison Officers based at Europol	❑
Head of Europol National Units (HENUs)	❑
Deputy head of Europol National Unit	❑
Project manager at Europol	❑
Head of Unit at Europol	❑
Management Board Member	❑
European Commission	❑
Council of the European Union	❑
Civil Liberties, Justice and Home Affairs Committee (LIBE) of the European Parliament	❑
European Parliament	❑
FRONTEX	❑
Eurojust	❑
European Anti-Fraud Office (OLAF)	❑
European External Action Service	❑
European Police Training College (CEPOL)	❑
Interpol	❑
A director of a national competent authority within the EU	❑
An officer within a national law enforcement authority	❑
An official within a law enforcement agency outside the EU	❑
Other (please specify)	❑

3. What is your job title or position

Single open-ended response of maximum 2000 characters

Section B: Questions about the implementation of the Europol Council Decision (ECD)

This section contains 13 questions about the Council Decision establishing Europol. This entered into force on 4 June 2009. Following its application on 1 January 2010 Europol became an entity of the Union, funded from the general budget of the European Union.

4. To what extent has Europol fulfilled its objective under the Europol Council Decision (ECD) - to enhance law-enforcement cooperation at EU level? (please tick one)

Fully	To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑	❑

4.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

4.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

4.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

5. Apart from issues stemming from the implementation of the ECD, what issues, if any, adversely affect the functioning of Europol since 1 January 2010?

Single open-ended response of maximum 2000 characters

5.1. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

5.2. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

6. To what extent has the establishment of Europol as an EU entity simplified and improved its legal framework?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

6.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

6.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

6.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

7. To what extent does the ECD allow the adaptation of Europol's legal framework to changing circumstances and emerging political priorities?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

7.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

7.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

7.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

8. To what extent has the implementation of the general rules and procedures applicable to EU agencies simplified Europol's administration, allowing the Organisation to devote more resources to its core tasks?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

8.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

8.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

8.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

9. The ECD contains measures which aim to widen the possibilities for Europol to assist and support competent Member State law enforcement authorities. To what extent have these measures simplified and improved Europol's functioning and effectiveness?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

9.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

9.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

9.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

10. Establishment of a Data Protection Officer (DPO) at Europol: to what extent did the establishment of the DPO ensure, in an independent manner, the intended level of data protection in Europol *(at least that which results from the observation of the principles of the Council of Europe Convention for the protection of individuals with regard to Automatic Processing of personal data, signed in Strasbourg on 28 January 1981)?*

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

10.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

10.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

10.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

11. To what extent has Europol's legal framework contributed to the effectiveness and efficiency of its operations?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

11.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

11.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

11.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

12. To what extent has the establishment of a two-third majority rule improved Europol's governance?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

12.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

12.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

12.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

13. To what extent has the enhanced control over Europol by the European Parliament ensured that Europol remains a fully accountable and transparent organisation *(due account being taken of the need to safeguard the confidentiality of operational information)?*

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

13.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

13.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

13.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

14. To what extent has the widening of Europol competences contributed to the effectiveness and efficiency of its operations?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

14.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

14.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

14.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

15. To what extent has the new financial regime improved Europol's functioning?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

15.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

15.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

15.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

16. To what extent has the establishment of the Internal Audit Function, through independent and objective assurance and consulting services, added value and improved Europol's operations?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

16.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

16.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

16.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

Section C: Questions about Europol's activities - evaluation of the implementation of the activities stemming from the ECD

This section includes 10 questions about the activities stemming from the European Council Decision.

17. To what extent has the participation of Europol staff in a support capacity (without benefitting from the application of immunities) benefitted Joint Investigation Teams (JIT)?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

17.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

17.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

17.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

18. To what extent has direct access of Europol national units to data in the Europol Information System (EIS) taken place?

Fully	To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑	❑

18.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

18.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

18.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

19. To what extent has the establishment of Europol's specific data protection regime benefitted the fulfilment of Europol's activities while ensuring adequate protection of personal data processed in the framework of police and judicial cooperation in criminal matters during its transfer by Member States to Europol?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

19.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

19.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

19.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

20. To what extent has the Joint Supervisory Body contributed to ensuring that the rights of the individual are not violated by the storage, processing and use of the data held by Europol and that the permissibility of the transmission of data originating from Europol is adequately monitored?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

20.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

20.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

20.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

21. To what extent were the possibilities for the creation and management of information processing systems at Europol widened by the ECD?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

21.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

21.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

21.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

22. To what extent has Europol's access to data from other information systems (Art. 21, ECD) assisted the Organisation in its objectives?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

22.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

22.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

22.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

23. Article 10 of the ECD allows Europol to establish new systems for processing personal data. No new systems have yet been established. Which elements have impaired the establishment of new systems processing personal data?

Single open-ended response of maximum 2000 characters

23.1. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

23.2. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

24. To what extent has cooperation with EU institutions, bodies, offices and agencies (e.g. Eurojust), particularly in the context of agreements or working arrangements, been beneficial to the achievement of Europol's objectives?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

24.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

24.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

24.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

25. To what extent has the establishment of provisions for the cooperation with third parties and organisations benefitted Europol in the achievement of its objectives?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

25.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

25.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

25.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

26. What is the extent of Member State's commitment to share information with Europol?

Very considerable	Considerable	Somewhat limited	Very limited	Don't know
❑	❑	❑	❑	❑

26.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

26.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

26.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

Section D: Questions about Europol's activities - evaluation of the ECD in the context of the Europol Strategy 2010-14

This section includes 16 questions about the impact of European Council Decision upon the aims and objectives in the Europol Strategy 2010-14.

27. To what extent does the ECD allow Europol to add value to the operational requirements of Member States, thereby enhancing the Organisation's impact

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

27.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

27.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

27.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

28. To what extent are the activities of Europol distinctive - not duplicating those of other EU entities and ensuring the effective delivery of a unique set of operational support services?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

28.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

28.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

28.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

29. To what extent does the ECD allow Europol to enhance the coordination of operational action in the EU?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

29.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

29.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

29.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

30. To what extent does the ECD allow Europol to develop more effective cooperation with external partners?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

30.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

30.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

30.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

31. To what extent does the ECD allow Europol to lead the further development of a European Criminal Intelligence Model?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

31.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

31.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

31.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

32. To what extent does the ECD allow Europol to improve its analysis capability?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

32.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

32.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

32.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

33. To what extent does the ECD allow Europol to strengthen its information management capabilities?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

33.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

33.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

33.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

34. To what extent does the ECD allow Europol to pioneer new techniques to prevent and combat international serious crime and terrorism?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

34.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

34.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

34.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

35. To what extent does the ECD allow Europol to strengthen its position as a platform for specialist areas?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

35.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

35.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

35.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

36. To what extent does the ECD allow Europol to provide expertise and quality training in key law enforcement techniques?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

36.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

36.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

36.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

37. To what extent does the ECD allow Europol to strengthen its accountability arrangements?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

37.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

37.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

37.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

38. To what extent does the ECD allow Europol to align its information and communication technology with its activities and objectives?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

38.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

38.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

38.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

39. To what extent does the ECD allow Europol to improve the management of its human and financial resources?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

39.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

39.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

39.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

40. To what extent does the ECD allow Europol to build a strong Europol culture and a positive external image?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

40.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

40.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

40.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

41. How could any obstacle impairing the above objectives (set out in questions 27-40) be overcome?

Single open-ended response of maximum 2000 characters

41.1. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

41.2. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

42. To what extent have Europol's organisational set-up and governance structures contributed to the effectiveness and efficiency of its operations?

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

42.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

42.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

42.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

Section E: Questions about Europol's activities - other evaluation topics based on the Commission's evaluation standards

This section contains 3 questions which refer to the European Commission's Evaluation Standards. These are set out in "Responding to strategic needs: Reinforcing the use of evaluation - European Commission evaluation standards: SEC(2007)213, "Responding to strategic needs: Reinforcing the use of evaluation (annex II)".

43. To what extent are Europol's objectives in line with the needs of Member States and other stakeholders and in line with the issues that Europol is meant to address?

Fully	To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑	❑

43.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

43.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

43.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

44. To what extent has Europol achieved better and more structured law-enforcement cooperation at Union level at a reasonable cost in terms of the financial and human resources deployed

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

44.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

44.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

44.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters

45. To what extent have the activities of Europol resulted in unintended/unplanned results and impacts (both desirable and undesirable)

To a considerable extent	To some extent	To a very limited extent	Not at all	Don't know
❑	❑	❑	❑	❑

45.1. Please explain your answer in your own words

Single open-ended response of maximum 2000 characters

45.2. Is your answer informed by or based upon?

External sources: Findings from research or evaluation (*please provide details below*)	❑
External sources: Statistics or performance monitoring data (*please provide details below*)	❑
External sources: Other specific documentary sources (*please provide details below*)	❑
Expert view: Expert view/ judgement commonly held amongst those in your area of work	❑
Expert view: Your own expert view/ judgement	❑
None of the above	❑
Don't know	❑

45.3. Please provide information about any research, statistics of documentary sources which have informed your view.

Single open-ended response of maximum 2000 characters