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TECHNICAL R E P O R T

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

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Prepared for the Europol Management Board

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

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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.