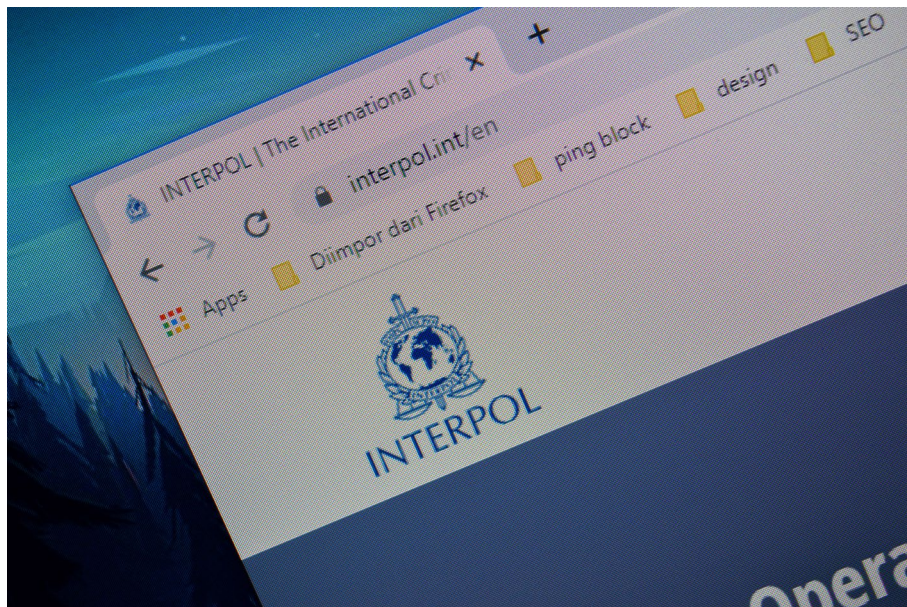


# Ensuring the rights of EU citizens against politically motivated Red Notices

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Possibilities under EU law to establish a platform for the exchange of information between the EU and the Member States to address the problem of abusive or politically motivated Interpol notices against EU citizens





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## **Abstract**

This paper, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Civil Liberties, Justice and Home Affairs, analyses Interpol's system of Red Notices and the EU-based mechanisms to safeguard citizens against political abuse of Interpol's system. Recent reforms of Interpol are significant but many problems remain unaddressed. The paper discusses existing and possible platforms, including the European Search Portal, as ways to ensure a more effective enforcement of EU-based legal limits and fundamental rights on a European level.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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## LIST OF ABBREVIATIONS

<b>The Charter</b>	The Charter of Fundamental Rights of the European Union
<b>CCF</b>	Commission for the Control of Interpol Files
<b>CISA</b>	The Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 (entered into force on 26 March 1995).Interpol
<b>CoE</b>	Council of Europe
<b>CP</b>	Contact Point
<b>EAW</b>	European Arrest Warrant
<b>EctHR</b>	European Court of Human Rights
<b>EFTA</b>	European Free Trade Association
<b>EJN</b>	European Judicial Network
<b>EP</b>	European Parliament
<b>GA</b>	General Assembly
<b>GS</b>	Interpol General Secretariat
<b>ICJ</b>	International Court of Justice
<b>IDPO</b>	Interpol Data Protection Officer
<b>IRPD</b>	Interpol Rules on the Processing of Data
<b>LED</b>	Law Enforcement Directive, Directive 2016/680
<b>MS</b>	Member State of the European Union
<b>PC-OC</b>	The Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters

<b>RCI</b>	Rules on the Control of Information and Access to Interpol's Files
<b>UDHR</b>	Universal Declaration of Human Rights



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## EXECUTIVE SUMMARY

### Background

Over the last decade, the European Parliament, together with the Parliamentary Assembly of the Council of Europe and civil society organisations worldwide, have continually addressed the misuse of Interpol Red Notices and diffusion orders to arrest political enemies and the necessity that Interpol steps up its internal procedures and sanctions regimes to properly ensure basic human right standards.

In 2014, the European Parliament issued a resolution with recommendations on the matter (2013/2109(INL)) and since then, it has followed up with debates and further questions, most recently in 2021 concerning the candidacy for the Presidency of Interpol. In 2019, the DROI Committee of the European Parliament published a commissioned study on the misuse of Interpol Red Notices, putting forward a number of recommendations for Interpol reform. Also in 2019, the LIBE Committee and subsequently the European Parliament passed a resolution responding to the Russian Federation's targeting of Lithuanian judges, prosecutors and investigators, and calling on EU Member States and Interpol to desist from assisting in the targeting (2019/2938(RSP)).

The Parliamentary Assembly of the Council of Europe issued a resolution in 2017 (2161/ 2017) and again in 2019 (2315/2019) both with recommendations for Interpol reform and with recommendations for its Member States.

Numerous articles and civil society organisations continue to document abuse and express concern over the exploitation of Interpol and the further need for reform. The leadership of Interpol and the composition of it have attracted considerable attention in this regard.

On the European level, the Court of Justice of the European Union has in recent case-law addressed Member States' obligations under EU law to limit the use of arrest warrants and extraditions to third countries – also in regard to Red Notices.

On this basis, the study analyses recent reform efforts of Interpol with a view to politically motivated Red Notice requests and the possibilities under EU law to establish a platform for the exchange of information between the EU and the Member States to address this problem for EU citizens.

### Aim

The aim of the study is to 1) describe Interpol, its organisational setup, its financial foundation, and the practice of the notice system, 2) discuss the recent reforms of Interpol, 3) give an overview of the recent case-law development of the Court of Justice of the European Union, and identify what information is necessary to share for Member States to ensure EU citizens against politically motivated Red Notices, and 4) discuss possible platforms on which EU Member States and the EU may exchange information to address the problem. Finally, the aim is to 5) give recommendations for possible action.

### Key findings

#### *The Interpol Organisation*

A Red Notice is a request to have a person arrested. It is issued through Interpol's global notice system.

Interpol is governed by its General Assembly made up by its 194 members. The President and the Executive Committee Members are elected. A General Secretariat manages the daily operations. Financially, the largest donors to the Interpol are the European Union, the Interpol Foundation for a Safer World (fully funded by the United Arab Emirates), the United States of America, Canada, and Norway.

The General Secretariat coordinates and manages all Interpol's activities. National Central Bureaus in member countries operate within domestic authorities and carry out part of Interpol's work. The National Central Bureaus are managed by staff of the domestic authorities.

Red Notice requests are communicated by the National Central Bureau to the General Secretariat with a view to circulation worldwide. A task force in the General Secretariat reviews the requests prior to circulation. If approved, the notice is circulated and possibly publicised. Diffusion orders to arrest are not formal notices and are sent directly to other members of Interpol. In 2020, Interpol issued 11,094 Red Notices and had more than 66,000 Red Notices in circulation. There has been a significant increase in numbers of Red Notices and Diffusion Orders since 2010.

Within the General Secretariat, a Secretary granted independence is appointed to support the Interpol Commission of the Control of Files. The commission handles individual complaints and performs both a supervisory and advisory role.

#### *Interpol Rules governing the system of notices*

Interpol activities, including the processing of Red Notices, must respect Interpol rules and must be consistent with the laws of the jurisdictions engaged by the acts in question. Interpol is obliged not to assist or aid members that act in violation of international human rights law, and to respect the principle of neutrality stipulated in art. 3 in its Constitution. The rule forbids the organisation to undertake any intervention or activity of a political, military, religious or racial character. Furthermore, a Red Notice must concern a serious ordinary-law crime and must pass a specific penalty threshold for the notice to be considered.

The National Central Bureaus and subsequently the General Secretariat's task force review requests to ensure that all thresholds and rules are respected.

Interpol rules on data protection apply alongside overlapping regional and national data protection rules. In the area of the European Union, the Law Enforcement Directive, EU Fundamental Rights laws, and the case law of the Court of Justice of the European Union apply equally in every Member State. Since 2015, Interpol appointed a Data Protection Officer overseeing and developing data protection practice and organisation of Interpol. Each National Central Bureau equally appoints data protection officers.

#### *Recent reforms of the Interpol Red Notice system*

Politically motivated Red Notices allow governments to persecute political and other opponents abroad with significant consequences for those affected.

Despite the rights-based limitation of Interpol's mandate to communicate Red Notices, the risk of politically motivated Red Notices is real. Moreover, observing that democracies are under pressure and that many countries have developed in an authoritarian direction, there is a strong argument that the risk has increased.

Interpol has carried out significant reforms since 2013. The review of Red Notice requests has been strengthened and a complaint mechanism under the Commission of the Control of Files has been enforced. Interpol has assigned a Data Protection Officer and implemented learning and knowledge sharing programmes to support the legal frameworks and good practices of all parts of the Interpol organisation.

Regardless, a number of legal tools continue to be lacking and there is a substandard transparency in the processing of Red Notices. Furthermore, more fundamental problems remain. First, considering the increasing number of notices in circulation and considering the current setup, proper legal safeguards cannot be expected to be sufficiently enforced in the near future. Second, decentralised National Central Bureaus under the authority of domestic authorities represent a structural problem that is not sufficiently addressed through Interpol's knowledge management organisation. Third, the use of national databases to store and update Red Notices means that Interpol updates are ineffective on a global scale and leave inaccurate notice information in circulation on a significant level.

#### *An EU-based platform for exchanging information*

The Court of Justice of the EU has developed rights-based boundaries of its Member States' use of arrest warrants – both in regard to extradition to Member States and to third countries. The Council of the EU has subsequently affirmed initiatives to enforce these boundaries.

Member States must consider fundamental rights as grounds for refusing arrest warrants and extraditions. Verifying that there is a real risk, the executing authority must find that the person in question is subjected to such real risk considering the specific circumstances of the case. If affirmative, a decision to extradite must be deferred. If the risk cannot be discounted, the authority must reach a decision itself or terminate the proceedings. In making this risk evaluation, information that is "*objective, reliable, specific and properly updated*" must be relied upon.

In its judgment in C-505/19, the Court extended the restrictions to the Member States' use of Interpol Red Notices. In a case concerning a ne bis in idem violation and violation of the freedom of movement, the Court of Justice of the EU held that a) the mere possibility of a violation of the ne bis in idem principle is not enough to bar a preliminary arrest of the person in question. Only if it has been established "*in a final judicial decision taken in a Contracting State or in a Member State*" arrest and extradition are prohibited.

The Court also held that it is not unlawful to process data in a Red Notice if the ne bis in idem principle may apply. If, however, it is established that the principle does apply and there are no grounds for a criminal process against the person, there is no longer basis for data processing and the person can legitimately require the Member State to erase the data on the Red Notice. On all accounts, the Member State must effectively communicate the limitation in a note, thus making sure that the individual is not subjected to future arrests on the same grounds elsewhere.

Both within and outside the European Union, digital and professional network-based platforms are applied to facilitate the exchange of information across borders.

Technically, European Union institutions have established digital software platforms to facilitate effective exchange of general and case specific information in the area of justice and security. Schengen Information System II, eEDeS, and e-Justice are important examples. The European Search Portal that provides a single point of entry to searching in several relevant databases simultaneously provides a strong case for a future platform.

Legally, all Member States may exchange information in their own capacities and can process personal data in Red Notices within the legal framework of the Law Enforcement Directive. To some extent the

European Search Portal already provides legal and institutional mandate to some necessary data. However, several specific data needs further legal mandate and institutional framework for EU-institutions and EU Member States to share them.

Furthermore, effective exchange of information in the field of justice and security continue to require support from professional human-based networks. In the European area, the European Judicial Network is significant, establishing contact points in each Member State and integrating EU-based digital platforms.

## Key recommendations

With regard to modelling an effective review and redress mechanism in Interpol for the future:

*The European Parliament should call on the EU Commission to include the production of a forecast analysis and modelling that account for high volume cases and decentralised review & update process in the negotiations with Interpol as an area of collaboration.*

With regard to procedural and substantive improvements (in prioritised order):

*(1) the European Parliament could call on the EU Commission to include in the legal tools currently under development to support the European Arrest Warrant system, the processing of Red Notice requests. This should include step-by-step guidelines for all EU Member States on how to handle Red Notice requests (deciding on, communicating, updating, erasing, inserting notes).*

*(2) the European Parliament could call on the EU Commission to include in the negotiations with Interpol an item to have Interpol produce, update and make available procedural and substantive tools on the legal handling – including rights-based boundaries – of Red Notices, ensuring consistent and transparent processing of requests, reviews, challenges, corrections and deletions.*

*(3) the European Parliament could call on the EU Commission to include in the negotiations with Interpol an item to have Interpol produce yearly statistical data on processing of requests for Red Notices with data on country of request, criminal offence category, review outcome, reasons for denial, and the use of available sanctions against member countries. If this is not achieved, the European Parliament could call on the EU Commission to ensure that statistical data on EU Member States' handling of requests for Red Notice arrests is developed for all Member States.*

*(4) based on the statistical data, the European Parliament could call on the EU Commission to include in the negotiations with Interpol an item to have Interpol develop public risk profiles of Red Notice requesting countries. This is necessary to evaluate the risk of abuse associated with the requesting countries and to evaluate the effectiveness of the enforcement mechanisms of Interpol.*

*(5) the European Parliament could call on the EU Commission to include a mechanism for EU to formulate and monitor the agenda of reform initiatives with regard to Red Notices, in the current negotiations for a collaboration agreement with Interpol.*

Recommendations with regard to institutional support of platforms for exchange of necessary information: Both digital platforms and professional human-based networks to facilitate the information exchange already exist. The most important actions are to support and further develop the proper functioning and synergies of these platforms. The European Search Portal provides an optimal starting point.

*(1) the European Parliament could call on the EU Commission to further develop the legal and institutional framework of the European Search Portal to include a database on final judicial decisions related to existing Red Notices and prior decisions on arrest and extraditions related to an existing Red Notice, as well as a repository with relevant and updated human rights information on requesting countries.*

*(2) the European Parliament could call on the EU Commission to take the necessary steps to develop and administrate databases on final judicial decisions related to existing Red Notices, and prior decisions on arrest and extraditions related to an existing Red Notice, as well as a repository with relevant and updated human rights information on requesting countries.*

*(3) to support access and exchange of data, the European Parliament could call on the EU Commission to involve the European Judicial Network in the design of best practices when connecting to other authorities in Member States and when exchanging information concerning Red Notice warrants.*

*(4) the European Parliament could call on the EU Commission to establish an office to support the update of relevant data, the administration of the databases, and to coordinate the update and prepare procedural and legal guidelines to ensure fundamental rights of citizens going forward.*

## 1. OVERVIEW OF INTERPOL AND SYSTEM OF NOTICES

### KEY FINDINGS

A Red Notice is a request to have a person arrested. It is issued through Interpol's global notice system and communicated to authorities in all 194 member countries.

Interpol is an international organisation functioning as a network organisation between police authorities worldwide. It is governed by its General Assembly made up by its 194 members. The President and the Executive Committee Members are elected. A General Secretariat manages the daily operations of the organisation.

Interpol is funded by its members. The five largest donors are currently the European Union, the Interpol Foundation for a Safer World (fully funded by the United Arab Emirates), the United States of America, Canada, and Norway.

The General Secretariat coordinates and manages all Interpol's policing and administrative activities. Each member country establishes a National Central Bureau operating within the relevant domestic authority. The National Central Bureaus carry out a significant part of Interpol's work with regard to notices and updates of databases. Bureaus are managed by staff that belong to the domestic authorities.

Red Notice requests are communicated by the National Central Bureau to the General Secretariat with a view to circulation worldwide. Prior to circulation, a task force in the General Secretariat reviews the request. If approved, the notice is circulated. Diffusion orders to arrest are not formal notices and are sent directly to other members of Interpol. In 2020, Interpol issued 11,094 Red Notices and had more than 66,000 Red Notices in circulation. There has been a significant increase in numbers of Red Notices and Diffusion Orders since 2010.

Within the Secretariat, a Secretary granted independence from the General Secretariat is appointed to support the Commission for the Control of Interpol Files. The commission handles individual complaints and performs both a supervisory and an advisory role.

A lack of transparency in the governing of Interpol continues to prevail including a lack of available statistical information on the operation of the notice systems.

### 1.1. The Interpol Organisation

Interpol – the International Criminal Police Organisation – enjoys standing as an international organisation. Its purpose is to enable cooperation between national police forces worldwide. It has a membership of 194 countries and thus brings together the entire world. The history of the organisation dates back to 1914, it was granted consultative status by the UN in 1949, and in 1975 was designated as an intergovernmental organisation under ECOSOC Rules. Its status was confirmed by the UN Office of Legal Affairs in 1982. The organisation has gone through substantial changes since 2001 and the 9/11 attacks. Among other things, the General Secretariat was reorganized and a new post of Executive Director for Police Services was created to oversee the operational functioning of the organisation<sup>1</sup>.

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<sup>1</sup> Martha Rutsel Silvestre J et al., The Legal Foundation of Interpol (2020), p. 109.

It is well established that its formal status as an international organisation does not describe the organisation as it actually functions. The organisation functions as a network organisation between domestic authorities and relies on both formal and informal networks with and between domestic police authorities worldwide. This is further described below. Nevertheless and at the same time, Interpol enjoys a significant standing and operational cloud vis a vis other international organisations, including the UN agencies, the Council of Europe, and the European Union<sup>2</sup>. This combination of formal organisation and relying on network structures provides for a lack of transparency and asymmetrical governing structures between the international central offices and the domestic authorities part of the network. This is also discussed below under section 3.6.

### 1.1.1. Current organisational structures and functional setup

Interpol is governed by its General Assembly. The Assembly is composed of delegates appointed by the members of the organisation<sup>3</sup>. For each country there should be only one delegation head, appointed by the competent governmental authority.<sup>4</sup> Members are obliged to do everything within their power, in so far as is compatible with their own obligations, to carry out the decisions of the General Assembly according to art. 9 of the Interpol Constitution. Representatives from the Commission for the Control of Interpol's Files attend the General Assembly<sup>5</sup>. Decisions are made through resolutions. Each member country has one vote, and decisions are made by either simple or two-thirds majority depending on the subject.. Each country appoints a head of delegation to vote on its behalf.

The voting members are made up by both strong democratic, weaker, and authoritarian systems. Of the 194 members it is estimated that less than half were characterized as democracies in 2020<sup>6</sup>. The most recent development shows an overall sliding of democracies and rule of law standards towards authoritarianism<sup>7</sup>. While the concentration of this development is observed outside of the European Union, erosion of democratic institutions and the rule of law is also a development which is observed within the Union in the case of Hungary, Poland and Slovenia<sup>8</sup>.

The Executive Committee is elected by the General Assembly and consists of Interpol's President, Vice Presidents and nine delegates, representatives of the members in all regions of the world.<sup>9</sup> The

<sup>2</sup> See further Anderson, M., *Policing the World :Interpol and the Politics of International Police Cooperation*, Oxford:Clarendon, 1989; Savino, M., "Global Administrative Law Meets Soft Powers: The Uncomfortable Case of Interpol Red Notices", in *New York University Journal of International Law and Politics*, 2011, Vol. 43, 263-336; Sheptycki, J. "Transnational Organization, Transnational Law and the Ambiguity of Interpol in a World Ruled with Law." *Brill Research Perspectives in Transnational Crime*, 2017, 2-3: 65-86

<sup>3</sup> Interpol Constitution, art. 6.

<sup>4</sup> Interpol Constitution, art. 7 (a)(b)(c).

<sup>5</sup> See "Interpol's Supreme Governing Body - General Assembly" at

[https://www.interpol.int/var/interpol/storage/images/9/0/1/3/143109-1-eng-GB/GOV\\_Governing%20Body\\_feb19\\_01.jpg](https://www.interpol.int/var/interpol/storage/images/9/0/1/3/143109-1-eng-GB/GOV_Governing%20Body_feb19_01.jpg) last visited on 13/10 2021.

<sup>6</sup> International Institute for Democracy and Electoral Assistance, "The Global State of Democracy. Building Resilience in a Pandemic Era", 2021, p. 4

<sup>7</sup> Idem, p. 3-4

<sup>8</sup> Idem, p. 6.

<sup>9</sup> See "Who are we" at <https://www.interpol.int/Who-we-are/Governance/Executive-Committee> last visited on 27/09/2021.



members of the Committee often sit at the top level of policing in their own countries. It meets three times a year and sets organisational policy and direction<sup>10</sup>.

The role of the Executive Committee is to supervise the execution of the General Assembly's decisions and the administration and work of the General Secretariat.<sup>11</sup>

Interpol's General Assembly elects the President of Interpol for a period of four years. The rules governing the presidential election are set out in the "Rules of the ICPO - Interpol General Assembly". Due to COVID-19 the Presidential election was postponed. The new President, Major General Ahmed Nasser Al-Raisi, of the United Arab Emirates was elected at the 89th General Assembly in Istanbul in November 2021. He will serve as President of Interpol until 2025.

The most recent candidature of the former UAE minister was criticized heavily in light of the human rights history of the United Arab Emirates and the required integrity with the leadership of the organisation<sup>12</sup>. The criticism has not slowed down after General Al-Raisi was elected. Most recently, a lawyer representing the UAE jailed human rights defender and blogger Ahmed Mansour, filed a torture complaints against the General, in January 2022. The Guardian reports that two additional lawsuits were also filed against the Interpol President<sup>13</sup>.

At the same time the election process is characterized by a lack of transparency<sup>14</sup>. The voting history of the members of the General Assembly remains unavailable. The role of President is part-time and unpaid with the holder retaining their full-time post within their national authority.<sup>15</sup>

### *The General Secretariat*

The General Secretariat coordinates and manages all Interpol's policing and administrative activities. It is run by the Secretary General, who is currently Jürgen Stock (Germany).<sup>16</sup>

The General Secretariat is the centralized management body of Interpol's activities as well of the National Central Bureaus that exist in all member countries. At the same time, the secretariat supports also the functioning of the Commission for the Control of Interpol Files (CCF). According to art. 7 of the Rules on the Control of Information and Access to Interpol's files, the General Secretariat shall also appoint a Secretary to the Commission for the Control of Files, who shall be completely independent of the General Secretariat in the exercise of the assigned duties<sup>17</sup>. The General Secretariat is also required to provide the commission with the 'necessary budget'<sup>18</sup>. This can be problematic in terms of

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> The Norwegian Helsinki Committee, the Italian Federation for Human Rights and the Arrested Lawyers Initiative, Statement on integrity issues of Interpol's leaders, 15 November 21, available at <https://www.nhc.no/en/statement-on-integrity-issues-of-interpols-leaders/>, last visited 20/11 2021.

<sup>13</sup> The Guardian "Torture Complaint Filed Against New Interpol President" (Raisi <https://www.theguardian.com/world/2022/jan/18/torture-complaint-filed-against-new-president-of-interpol>

<sup>14</sup> Sir David Calvert-Smith, Undue Influence: The UAE and Interpol, p. 6.

<sup>15</sup> See "Who we are" at <https://www.interpol.int/Who-we-are/Governance/President> last visited on 27/09/2021.

<sup>16</sup> Ibid.

<sup>17</sup> Art. 7 (a) of the RCI.

<sup>18</sup> Idem, art. 8.

independence since the General Secretariat's data processing decisions will oftentimes come under the commission's scrutiny<sup>19</sup>. The independence between the Secretary appointed by the General Secretariat and the General Secretariat is further emphasized in the commission's Operating Rules, which state that the commission's secretariat is to receive directions "*only from the CCF or from its duly empowered members*"<sup>20</sup>. These explicit declarations try to ameliorate the de facto double role played by the commission's secretariat. This may be problematic in some cases. For example, in order to offset the commission's limited ability to release information to the individual, it is necessary to adhere to standards of independence and impartiality.

According to art. 5 (e) (2) of the RCI the CCF has "*free and unlimited access*" to all data processed by Interpol. Consequently, it does not need to be assisted by staff from the General Secretariat in order to access data processed in the organisation.

### *The National Central Bureaus*

What is often neglected in the analysis of the screening mechanisms in Interpol is the fact that a first and important part of the screening takes place inside the domestic authorities of member countries at the National Central Bureau, which is the contact point that each of Interpol's member countries is obliged to run. In Schengen countries, it is preferred that the same person covers the desk for Interpol and Schengen. Often, it will also be the same who covers European arrest warrants and other international contact point functions.

The persons responsible for the National Central Bureau are employed by the domestic state authority – normally a central police authority. Their salaries are paid in full by their domestic authorities and they are both legally and professionally accountable to their domestic authority.

The National Central Bureaus are connected with the General Secretariat and other National Central Bureaus via Interpol's secure global police communications network, I-24/7<sup>21</sup>. This means that the National Central Bureaus can communicate directly with other National Central Bureaus through the Interpol network.

The National Central Bureaus contribute to Interpol's global databases with national crime data in accordance with their respective national laws. The Red Notice system is one example.

### *The Commission for the Control of Files (CCF)*

The Commission for the Control of Files is an independent body, which shall ensure that all personal data processed through Interpol's channels conform to the rules of Interpol. The commission has three

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<sup>19</sup> Cheah, Wui Ling, Policing Interpol: the Commission for the Control of Interpol's Files and the Right to a Remedy", International Organizations Law Review (BRILL), Volume 7.2, 2010. Found at <http://www.legal-tools.org/doc/6cc8f5/>. Last visited on 13/10 2021.

<sup>20</sup> Art. 33 of the Commission's Operating Rules.

<sup>21</sup> See "Who we are" at <https://www.interpol.int/Who-we-are/Member-countries/National-Central-Bureaus-NCBs> last visited on 27/09/2021.

intended roles: A supervisory role, an advisory role, and a processing role in which it handles individuals' requests for access to, correction of or deletion of data in the Interpol Information System<sup>22</sup>.

Despite being independent, the commission directly consults the Interpol General Secretariat, National Central Bureaus and other relevant entities in order to perform its functions<sup>23</sup>.

The commission is divided into two chambers: The Supervisory and Advisory Chamber and the Requests Chamber. The Requests Chamber plays a key role in the commission's function as a remedial body. This chamber examines and decides on requests for access to data and requests for correction and/or deletion of data processed in the Interpol Information System<sup>24</sup>. The commission's members are elected by the General Assembly<sup>25</sup>.

Interpol's rules expressly recognize the commission's independence from the organisation's other organs. For instance, the RCI declares that the commission is "*completely independent in the exercise of its duties*" according to art. 5 (a). The RCI further confirms that the commission members are required to neither 'solicit nor accept instructions from any persons or bodies'<sup>26</sup>.

### 1.1.2. Financial contributions to Interpol

Interpol has three sources of income: statutory contributions from members, voluntary funding, and in-kind contributions for the use of equipment, services and buildings<sup>27</sup>. Statutory contributions total EUR 60 million, which account for 44 % of Interpol's total funding as of December 2020<sup>28</sup>.

Statutory contributions derive from Interpol's member countries each year. It is an obligatory payment, and the amount paid by each country is agreed by the General Assembly each year, according to an adapted scale of United Nations contributions, essentially based on economic weight<sup>29</sup>. The statutory contributions generally fund the running costs of the General Secretariat and some of the core policing activities, such as training and support according to Interpol's strategic priorities. In 2020, statutory contributions totaled EUR 60 million<sup>30</sup>.

Voluntary cash fundings primarily support specific regional and crime initiatives. Interpol manages a wide range of projects with external funding across their global crime programmes; counter-terrorism, cybercrime, and organized and emerging crime<sup>31</sup>. In 2020, voluntary funding (in cash, in-kind and self-

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> See "the CCF" at <https://www.interpol.int/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/About-the-CCF> last visited on 13/10 2021.

<sup>25</sup> Ibid.

<sup>26</sup> Art. 5 (a) and 5 (e) (1) of the RCI.

<sup>27</sup> See "Our funding" at <https://www.interpol.int/Who-we-are/Our-funding> last visited on 20/09/2021.

<sup>28</sup> Idem, last visited on 05/11/2021.

<sup>29</sup> Idem, last visited on 22/09/2021.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

generated) totaled 76 million euros. Contributions can be aligned to a specific activity or can be unearmarked<sup>32</sup>.

In-kind contributions include personnel, office space and equipment<sup>33</sup>. 25 % of Interpol's staff are police officials seconded by member countries<sup>34</sup>. Singapore and France are the two highest in-kind contributors<sup>35</sup>. Currently, the voluntary in-kind contributions total 35 million euros out of 136 million euros as at December 2020<sup>36</sup>. It has not been possible to find statistics on which NCBs are the highest contributors regarding seconded personnel. However, there are 240 seconded officials at the General Secretariat and they represent 80 nationalities.

The total income for the General Secretariat in 2020 was EUR 136 million, which is a decrease of EUR 6 million compared to 2019. The EUR 136 million funded Interpol's policing activities and the corporate services that support them. Only 44 % of this income came from statutory contributions from Interpol's members. Interpol seeks voluntary funding from member countries, and in 2020, voluntary cash contributions accounted for 30 % of Interpol's income, while 26 % was in-kind contributions for the use of equipment, services and buildings<sup>37</sup>. Interpol is a relatively small organisation in terms of funding<sup>38</sup>.

In 2019, the United States of America, Japan, Germany, France and the United Kingdom were the member countries paying the highest statutory contribution. The U.S. accounted for 19 % of the statutory budget and Japan for 12 %<sup>39</sup>. The UAE accounted for 0.425 %<sup>40</sup>.

#### *Who provides voluntary funding?*

The majority of voluntary funding comes from government agencies, notably those responsible for policing, but smaller contributions from international and non-governmental organisations, foundations and private entities are also donated. 95 % of the voluntary funding comes from partnerships with government agencies<sup>41</sup>. Among Interpol's main donors of voluntary (cash) funding in recent years are the European Commission, Global Affairs Canada, and the U.S. Department of State. In regard to in-kind donors, Singapore and France are the two top donors<sup>42</sup>.

Saudi Arabia will officially host the Interpol regional office for the Middle East and North Africa (MENA). The host country is responsible for providing the premises and administrative support costs for the

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> 25 % of Interpol's staff are police officials seconded by member countries.

<sup>35</sup> See "Our funding" at <https://www.interpol.int/Who-we-are/Our-funding> last visited on 05/11 2021.

<sup>36</sup> Ibid.

<sup>37</sup> Interpol Annual Report (2020), p. 25.

<sup>38</sup> Sir David Calvert-Smith, *Undue Influence: The UAE and Interpol*, p. 33.

<sup>39</sup> Interpol member country statutory contributions 2019, p. 1.

<sup>40</sup> Ibid.

<sup>41</sup> See "Our funding" at <https://www.interpol.int/Who-we-are/Our-funding> last visited on 22/09/2021.

<sup>42</sup> Ibid.

Regional Bureau. The countries of the region are responsible for providing seconded personnel and other running costs<sup>43</sup>.

Interpol's top donors in 2020 were the European Union, the United Arab Emirates/Interpol Foundation for a Safer World, the United States, Canada, Norway and Germany<sup>44</sup>.

Interpol publishes the full details of voluntary cash funding received in the past five years on their website<sup>45</sup>.

The top donors when it comes to additional voluntary contributions during 1 January to 31 December 2020<sup>46</sup> were the European Commission with a recognised amount of 7848 thousand euro<sup>47</sup>. Second, Interpol Foundation with a donation of 6115 thousand euro, and the US Department of State with a donation of 4729 thousand euro<sup>48</sup>. The table below shows how contributions from Interpol's top 5 donors have been spent in 2020.

Table 1 Top 5 donors to Interpol in 2020<sup>49</sup>

Rank	Contributor	EUR (in 1000)
1	European Commission	7 848
2	INTERPOL Foundation for a Safer World	6 115
3	US Dept. Of State	4 729
4	Global Affairs Canada	3890
5	NORAD - Norwegian Agency for Development Cooperation	1556
1-5		24,138

Source: Interpol External contributions in 2020, p. 1-2.

### *The Interpol Foundation for a Safer World / Interpol and the United Arab Emirates*

The Interpol Foundation for a Safer World is a non-profit organisation headquartered in Geneva. It is an independent body which does not legally or administratively belong to Interpol<sup>50</sup>, however, it is hard

<sup>43</sup> Interpol, Resolution No. 7, GA-2019-88-RES-07.

<sup>44</sup> Interpol Annual Report (2020), p. 24.

<sup>45</sup> See "Our funding" at <https://www.interpol.int/Who-we-are/Our-funding> last visited on 22/09/2021.

<sup>46</sup> Note that this does not include in-kind contributions, for example secondment of personnel, equipment or office space.

<sup>47</sup> Interpol External contributions in 2020, p. 1.

<sup>48</sup> Idem, p. 1-2.

<sup>49</sup> Ibid.

<sup>50</sup> [https://www.swissinfo.ch/eng/business/swiss-leaks\\_interpol-foundation-shows-hsbc-boss-the-door/41289120](https://www.swissinfo.ch/eng/business/swiss-leaks_interpol-foundation-shows-hsbc-boss-the-door/41289120) last visited on 20/09/2021.

to escape the conclusion that its sole purpose is to support Interpol financially since the foundation does not contribute to non-Interpol related philanthropic work. The President for the Board of Trustees is H.E. Elias Murr, former Deputy Prime Minister, Minister of Interior and Minister of Defence of Lebanon, and HSH Albert II, Sovereign Prince of Monaco, is the President of the Honorary Board. Since May 2016, the Interpol Foundation has donated EUR 50 million as part of a contribution agreement between the Foundation and the Government of the United Arab Emirates. Interpol and the Interpol Foundation collaborate through a cooperation agreement, which entered into force in March 2014<sup>51</sup>. According to art. 7 of the agreement the foundation shall ensure that Interpol's neutrality and independence are respected when carrying out its fundraising activities<sup>52</sup>.

It has been argued by Sir David Calvert-Smith that it is difficult to escape the conclusion that the Interpol Foundation for a Safer World's sole purpose is to be a channel by which to funnel cash from the UAE government into Interpol<sup>53</sup>. In 2017, the UAE donated EUR 50 million to the Interpol Foundation, whereas the UAE's statutory contributions to Interpol were EUR 231,064<sup>54</sup>. The UAE donation to the Interpol Foundation is larger than the entirety of the 2019 voluntary cash contributions to Interpol<sup>55</sup>.

The Interpol Foundation does not engage in any other non-Interpol related philanthropic work, but it is still considered "*legally and administratively independent*" from Interpol despite its sole purpose of supporting Interpol.

Interpol's financial regulations define how Interpol's budget is drafted and implemented, how the assets and funds are managed, and outlines rules on procurement, accounts, management and audit<sup>56</sup>.

### 1.1.3. The system of notices and diffusion orders

Interpol's primary function is the exchange of information. The organisation facilitates the transmission of information between police authorities. For instance, the information may contain a person's criminal record or cross-border requests from one police authority to another. The quickest method to transfer information within Interpol is by the so-called 'diffusion' issued by member countries and circulated without formal review by Interpol. Often, these diffusions are followed up with a 'formal notice' from the system of coloured notices<sup>57</sup>.

Interpol's system of notice consists of "*a set of colour-coded notices published for specific purposes, and special notices published within the framework of specific cooperation not covered by the previous*

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<sup>51</sup> See "Our partners" at <https://www.interpol.int/Our-partners/INTERPOL-Foundation-for-a-Safer-World> last visited on 22/09/2021.

<sup>52</sup> Art. 7 of Cooperation Agreement between The Interpol Foundation for a Safer World and The International Criminal Police Organization - Interpol.

<sup>53</sup> Sir David Calvert-Smith, *Undue Influence: The UAE and Interpol*, p. 37.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> See "Legal documents" at <https://www.interpol.int/Who-we-are/Legal-framework/Legal-documents> last visited on 17/09/2021.

<sup>57</sup> Sheptycki, J. (2017). Transnational Organization, Transnational Law and the Ambiguity of Interpol in a World Ruled with Law, *Brill Research Perspectives in Transnational Crime*, 1(2-3), 65-86. doi: <https://doi-org.ep.fjernadgang.kb.dk/10.1163/24680931-12340005>

*categories of notices*<sup>58</sup>. Particular interest is attached to the Red Notice, which is a request to seek the location and arrest of a person wanted by a national jurisdiction or an international tribunal with a view to his or her extradition. It attracts particular attention because of its serious individual repercussions and because it is ordinarily used as the sole basis for preliminary arrest by many domestic police authorities worldwide.<sup>59</sup>

### *Red Notices*

A Red Notice is based on an arrest warrant or court order issued by the judicial authorities in the country concerned with a view to having that person located, arrested and extradited. The request for a Red Notice is prepared by the National Central Bureau in the requesting authority and sent to the Interpol General Secretariat through the secure Interpol Communication System with a view to circulation worldwide and potential publication. From request to worldwide communication, the process is designed in order that screening takes place both at the domestic level and in the General Secretariat, before the Red Notice is shared worldwide.

The system, from which the notices circulate, is administrated under Interpol's Rules on the Processing of Information. In contrast to diffusions, notices are considered acts of Interpol itself<sup>60</sup>. Before publishing a Red Notice, the General Secretariat must assess whether it is advisable to do so in regard to art. 2 and 3 of the Interpol Constitution. The General Secretariat shall ensure that the conditions attached to the given notice are met, but there is no independent verification by the organisation concerning the actual information contained in a circulated notice<sup>61</sup>.

Red Notices are requests. As such, there is a significant variation between domestic authorities, their regulation and their practices to what extent they act on Red Notices at face value or if authorities require further information before making an arrest.

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<sup>58</sup> Art. 73(1) of Interpol's Rules on the Processing of Data.

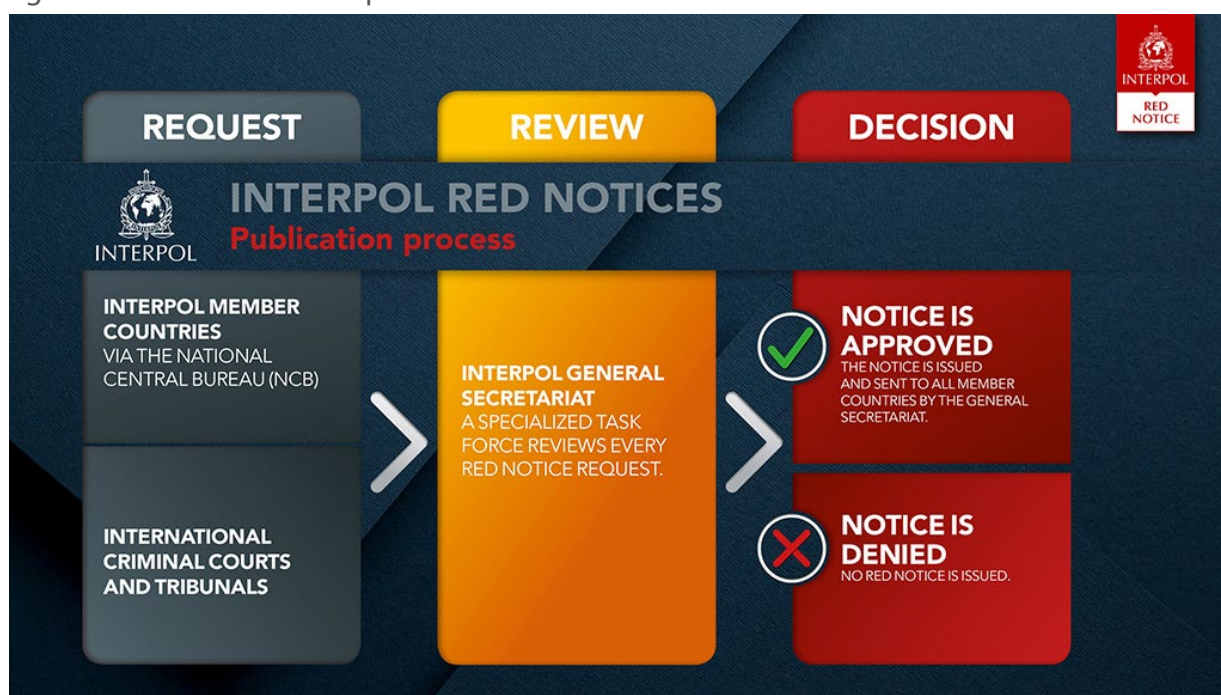
<sup>59</sup> DROI committee. (2019) Misuse of Interpol's Red Notices and impact on human rights - recent developments, p. 10-11.

<sup>60</sup> Sheptycki, J. (2017). Transnational Organization, Transnational Law and the Ambiguity of Interpol in a World Ruled with Law, Brill Research Perspectives in Transnational Crime, 1(2-3), 65-86. doi: <https://doi-org.ep.fjernadgang.kb.dk/10.1163/24680931-12340005> last visited on 05/11 2021.

<sup>61</sup> Ibid.



Figure 1 Red Notice review process



Source: [About Red Notices \(interpol.int\)](https://www.interpol.int/About-Red-Notices). last accessed 20 Oct 2021.

### Diffusion orders

Diffusion orders are to be seen as a direct messages only. They are not formal notices. They are communicated directly among members of the organisation and so do not go through the General Secretariat. While they do take place on the network, Interpol do not take responsibility for the content of them. Nevertheless, they may have the same function as Red Notices<sup>62</sup>.

#### 1.1.4. Statistics

In 2020, Interpol issued 11,094 Red Notices<sup>63</sup> and hold approximately 66,370 valid Red Notices in its database. Of these, 7,669 are public<sup>64</sup>.

The most recently available Interpol Annual Report from 2020 contains no further information on the number of Red Notices or diffusions. On Interpol's website there are no statistics regarding the deletion of unjustified notices.

In 2019, the General Secretariat issued 13,377 Red Notices in its database and had 62,448 Red Notices in circulation.<sup>65</sup> In 2018, 13,516 Red Notices were issued, and 57,347 were in circulation<sup>66</sup>. In 2017,

<sup>62</sup> See Semmelman, J. and Munson, E. S. "Interpol Red Notices and Diffusions: Powerful – and Dangerous – Tools of Global Law Enforcement", Nacdl.org, May 2014.

<sup>63</sup> See "How we work" at <https://www.interpol.int/How-we-work/Notices/Red-Notices> last visited on 27/09/2021.

<sup>64</sup> Ibid.

<sup>65</sup> Interpol Fact Sheet on International Notices system, p. 2.

<sup>66</sup> Interpol Annual Report 2018, p. x.



Table 2 Red Notices and Diffusions.

	2010	2017	2018	2019	2020
Red Notices issued	6344	13048	13516	13377	11094
Red Notices in circulation		52103	57347	62448	66370
Red Notices made public		6620			7669
Diffusions recorded	13005			35689	

Source: See footnote 65-67

### *Lacking statistics*

Compared to other international organisations that work with transnational judicial cooperation, it is noteworthy that very few data are made public by the Interpol. For example, the European Commission has published key statistics on the European Arrest Warrant for 2018 (based on a questionnaire survey) and in this included the number of issued arrest warrants, what categories of offences they concerned, how often they have led to arrest and extradition and how often not. For example, the Commission included in its publication that in 82 cases fundamental rights issues led to refusals reported by five Member States<sup>67</sup>.

In contrast, Interpol's statistics in regard to the Red Notice system does not show:

- the offence categories referred to in Red Notice requests and the ones published,
- how many Red Notices were refused nor which countries sent the requests or the reasons for refusal,
- how much time it takes on average from the Red Notice is issued to the decision on surrender (both with and without consent).

<sup>67</sup> See "Questions to Member States as issuing states" at [https://ec.europa.eu/info/sites/default/files/swd\\_2020\\_127\\_f1\\_v1\\_en.pdf](https://ec.europa.eu/info/sites/default/files/swd_2020_127_f1_v1_en.pdf) last visited on 05/11 2021.

## 2. PROCEDURAL AND SUBSTANTIVE RULES GOVERNING THE SYSTEM OF NOTICES ISSUED BY INTERPOL

### KEY FINDINGS

Interpol is bound by its Constitutional rules and must act consistently with the laws of the jurisdictions engaged by the acts in question. Interpol is obliged not to assist or aid members that act in violation of international human rights law. This includes the right to seek and enjoy asylum from persecution. Art. 3 of the Interpol Constitution also enshrines the principle of neutrality, forbidding the organisation to undertake any intervention or activity of a political, military, religious or racial character.

Further specific conditions apply for Red Notice requests. Most importantly, a Red Notice must concern a serious ordinary-law crime and must pass a specific penalty threshold.

The National Central Bureaus and subsequently the General Secretariat's task force review requests to ensure the proper application of these provisions.

Interpol rules on data protection apply alongside overlapping regional and national data protection rules. In the area of the European Union, the Law Enforcement Directive, EU Fundamental Rights laws and the case-law of the Court of Justice of the EU apply equally in every Member State.

Since 2015, Interpol appointed a Data Protection Officer overseeing and developing data protection practice and organisation of Interpol. Each National Central Bureau equally appoints data protection officers.

### 2.1. Interpol rules governing submission and publication of Red Notices

#### 2.1.1. Legal framework

Interpol's processing of Red Notices is governed by the Interpol Constitution and the rules adopted under its authority, most importantly the Interpol Rules on the Processing of Data (IRPD). Moreover, Interpol must act in accordance with the laws of the jurisdictions engaged by the acts in question.

To be published, Red Notices must meet specific conditions<sup>68</sup>: The crime in question must be a serious ordinary-law crime. With this reference Interpol underlines the need to avoid political persecution through Red Notices<sup>69</sup>. As a consequence, a number of offence categories are exempted from publication<sup>70</sup>:

<sup>68</sup> IRPD, art. 83 (1)(a)(ii) and (1)(a)

<sup>69</sup> DROI committee. (2019) Misuse of Interpol's Red Notices and impact on human rights - recent developments, p. 11.

<sup>70</sup> IRPD, art. 83 (1)(a)(i).

- offences that in various countries raise controversial issues relating to behavioural or cultural norms;
- offences relating to family/private matters;
- offences originating from a violation of laws or regulations of an administrative nature or deriving from private disputes, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime.

Furthermore, a penalty threshold for the crime in question applies:

- if the person is sought for prosecution, the conduct constituting an offence is punishable by a maximum deprivation of liberty of at least two years or a more serious penalty;
- if the person is sought to serve a sentence, he/she is sentenced to at least six months of imprisonment and/or there is at least six months of the sentence remaining to be served;
- The request is of interest for the purposes of international police cooperation.

Even if these criteria are not met, the Interpol General Secretariat has the authority to publish a Red Notice if, following consultation with the requesting entity, it finds that publication is of “*particular importance to international police cooperation*”<sup>71</sup>.

#### 2.1.2. Human rights violations (art. 2)

Art. 2 of the Interpol Constitution stipulates Interpol’s core mandate:

*“(1) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the “Universal Declaration of Human Rights”; (2) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes”*<sup>72</sup>.

The provision provides for Interpol’s mandate to ensure cross-border collaboration and to do so within a framework of human rights. As described in the study ‘Misuse of Interpol’s Red Notices and impact on human rights - recent developments’ the Interpol General Assembly in 2014 invited the General Secretariat to develop a repository of practice on Art. 2, but it is still under construction.

The standard is interpreted in light of evolving international human right standards. See for example decision no. 2019-05 of the Interpol CCF, a case in which the applicant argued that Interpol should delete a Red Notice because of insufficient guarantess of respect of the applicant’s human rights in the event of a transfer, and because the prosecution against him lacked evidentiary basis. In its reasoning, the CCF interpreted the relevant provisions in light of the approach of the ECtHR in two progressive cases, *N v. United Kingdom* and *Paposhvili v. Belgium*<sup>73</sup>.

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<sup>71</sup> IRPD, art. 83 (1)(b)

<sup>72</sup> Art. 2 of the Interpol Constitution.

<sup>73</sup> Martha Rutsel Silvestre J et al., *The Legal Foundation of Interpol* (2020), p. 194.

The phrase “within the limits of the laws existing in the different countries” in Art. 2 (1) means that all acts undertaken by Interpol in pursuance of its aims must be consistent with the laws in the jurisdiction(s) engaged by the act(s)<sup>74</sup>. Interpol is obligated not to assist or aid members that act in violation of international human rights<sup>75</sup>.

A Red Notice cannot be published without reference to a valid ‘arrest warrant or judicial decision having the same effect’<sup>76</sup>. Art. 84 of the IRPD further provides that the requesting authority assures that 1) ‘the authority which issued the arrest warrant or handed down the judicial decision has the necessary power; (2) the red notice request has been coordinated with the relevant authorities responsible for extradition (...), that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties; (3) (...) the laws (...) provide for a mechanism of appeal before a judicial authority’.<sup>77</sup> The effect of these requirements is that Interpol is prohibited from circulating Red Notices based on criminal charges without proper procedural or substantive legal basis.

In AMIA I, which concerned the publication of Red Notices by the Interpol General Secretariat at the request of a NCB in Buenos Aires in 2003 against 12 Iranian nationals for allegedly participating in the bombing of the Asociación Mutual Israelita Argentina (‘AMIA’) building in 1994, Interpol ended up deleting the red notices because it could not ‘validate the arrest warrants signed by a judge removed by Argentine authorities for pervasive misconduct in this very case’ said Mr. Selebi, the Interpol President at that time<sup>78</sup>.

In a case concerning the French national, Djamel Ktiti, it was successfully argued before the CCF that a Red Notice based on evidence obtained by torture and the fact that Ktiti risked being extradited to be tortured was contrary to Interpol’s general obligation under Art. 2 of the Interpol Constitution to refrain knowingly in a potential violation of international law<sup>79</sup>.

In the context of data processing, art. 11 (1) of the IRPD provides that data processing in the Interpol Information System “*should be authorized with due regard for the law applicable to the National Central Bureau [(‘NCB’)], national entity or international entity*”<sup>80</sup>. Interpol cannot require domestic police authorities to act unlawfully, and Interpol equally cannot act in a manner that is inconsistent with local data protection laws or conduct an investigation conjointly with a given police authority in a manner inconsistent with administrative laws in that authority’s jurisdiction.

Three of the most common rights that applicants seek to rely on when challenging a red notice before the CCF are: the right to a fair trial, the prohibition against torture and the right to asylum.

<sup>74</sup> Idem, p. 190.

<sup>75</sup> Idem, p. 191.

<sup>76</sup> Art. 83 (2) (b) (v) of the IRPD.

<sup>77</sup> Art. 84 of the IRPD.

<sup>78</sup> “Argentinian Red Notices for Iranian officials cancelled”, INTERPOL press release (27 September 2005) at <https://www.interpol.int/News-and-Events/News/2005/Argentinean-Red-Notices-for-Iranian-officials-cancelled> Last visited on 08/10/2021.

<sup>79</sup> <https://www.fairtrials.org/node/833> last visited on 08/10 2021.

<sup>80</sup> Art. 11 (1) of the IRPD.

### *The right to asylum*

Art. 14 of the Universal Declaration of Human Rights provides that individuals have the right to seek and enjoy asylum from persecution. The principle of non-refoulement is enshrined in Art. 33 (1) of the 1951 Convention relating to the Status of Refugees. 'Non-refoulement' is a term describing the proscription of returning ('refouler') a refugee *"in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"*<sup>81</sup>. The principle of non-refoulement has the status of customary international law<sup>82</sup>. The principle of non-refoulement also prohibits "indirect refoulement", which is the act of a country extraditing a person to a country known to extradite a given individual to the country where the individual fears persecution<sup>83</sup>.

Interpol cannot - in light of the above - intervene in respect of an individual in any manner which would be incompatible with an individual's right to seek asylum from persecution, or which fails to respect the principle of non-refoulement<sup>84</sup>.

Interpol announced a Refugee Policy<sup>85</sup> in 2015 under which the General Secretariat would delete information in respect of an individual who has been recognised as a refugee (or is an asylum-seeker) under the 1951 Convention. Under the Refugee Policy, the processing of Red Notices and diffusions is not allowed when the following criteria are met<sup>86</sup>:

- the status of refugee or asylum-seeker has been confirmed;
- the notice/diffusion has been requested by the country where the individual risks persecution, and;
- the granting of the refugee status is (not) based on political grounds vis-à-vis the requesting country.

All three conditions must be satisfied before Interpol will refuse to process a red notice or diffusion.

The Refugee Policy further states that, where Interpol denies the processing of a red notice or diffusion against a refugee the consideration will be given to sharing information sent by the requesting state with the country of asylum in order for the latter to reconsider its previous decision of granting the refugee status. The country of asylum can then decide to revoke the refugee status based on the new information, and if they do so, the processing of red notices and diffusions may be allowed if it otherwise complies with Interpol's rules<sup>87</sup>.

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<sup>81</sup> Art. 33 (1) of the 1951 Convention.

<sup>82</sup> Martha Rutsel Silvestre J et al., *The Legal Foundation of Interpol* (2020), p. 200.

<sup>83</sup> <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> last visited on 13/10 2021.

<sup>84</sup> Interpol Constitution, art. 2, IRPD, art. 2 and 11 (1). See also Martha, Rutsel, Silvestre J et al., *The Legal Foundation of Interpol* (2020), p. 200.

<sup>85</sup> Which had been in force since 2014.

<sup>86</sup> Fair Trials International, "Strengthening INTERPOL: An Update", Annex 1 – Excerpts from INTERPOL text on the Refugee Policy (30 May 2017).

<sup>87</sup> Ibid.

The Refugee Policy may raise questions concerning what exactly the three conditions entail<sup>88</sup>. In regards to the second criteria, it can be argued that if it is meant as an absolute requirement that the red notice or diffusion must have been requested by the country where the individual fears prosecution, Interpol, may be complicit in that country's eventual extradition of the individual to his/her country of persecution in violation of the principle of non-refoulement. An interpretation of the second criteria must be consistent with the object and purpose of the prohibition of indirect refoulement<sup>89</sup>.

The third criterion is linked to the prohibition laid down by Art. 3 of the Interpol Constitution, which inter alia, forbids Interpol from undertaking any intervention or activity of a "political character", see below section 2.1.3.

In 2017, the Interpol General Assembly adopted a resolution aimed at preventing the refugee protection system to be abused by "dangerous criminals" and "terrorists"<sup>90</sup>. The resolution urges member states to systematically perform a range of measures in the process of examining asylum applications<sup>91</sup>.

The resolution also endorses the guidelines contained in Report GA-2017-86-REP-10, which encourages its members to provide the General Secretariat and the Commission for the Control of Files with confirmation of the granting of refugee status and information on the outcome of the review of an asylum application<sup>92</sup>.

In CCF decision no. 2018-07 an applicant relied on his past refugee status to have a Red Notice on him deleted. The applicant was a journalist living in an undisclosed country, where he later acquired citizenship. The applicant provided official documents in respect of both his past refugee status and his naturalisation. The Commission took Art. 1 (C) of the 1951 Convention into consideration. The article contains the 'cessation clause', which provides that the Convention shall cease to apply to an individual who has acquired a new nationality and enjoys the protection of the country of his or her new nationality<sup>93</sup>. The Commission stated that the principle of non-refoulement may still be taken into account in the assessment of cases of former refugees who later obtained citizenship in their host country. The most important factor to assess is *"whether the situation which had put the individual at risk and initially justified the protective status has substantially changed"*<sup>94</sup>. In the applicant's case, the Commission concluded that no such substantial change had taken place. The Commission concluded that the data was not compliant with Art. 3 of the Interpol Constitution<sup>95</sup>.

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<sup>88</sup> Martha Rutsel Silvestre J et al., *The Legal Foundation of Interpol* (2020), p. 201-202.

<sup>89</sup> *Idem*, p. 202.

<sup>90</sup> Interpol, Resolution No. 9, GA-2017-86-RES-09 (2017).

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> Decision No. 2018-07, para. 48.

<sup>94</sup> *Idem*, para. 50.

<sup>95</sup> *Idem*, para. 58.

### 2.1.3. Neutrality principle (art. 3)

Interpol cannot process Red Notices in violation of the principle of neutrality as stipulated in the Constitution's art. 3, which forbids the organisation to undertake any intervention or activity of a political, military, religious or racial character<sup>96</sup>. This includes NCBs' requests for Red Notices and it includes the review process, circulation and publication of Red Notices. The provision is also relevant with regard to diffusion orders exchanged directly between Interpol member countries.

The main objectives of this principle are to ensure the independence and neutrality of Interpol as an international organisation, to reflect international extradition law, and to protect individuals from persecution<sup>97</sup>. This was confirmed in Resolution AG-2006-RES-04 ("Statement to reaffirm the independence and political neutrality of Interpol")<sup>98</sup>.

Requests based on art. 3 arguments are subjected to concrete evaluations considering the particular case at hand. The consideration includes:

- assessing if there is a predominance of political, military, religious or racial elements of the case over the ordinary law character of the crime (a predominance test)
- assessing if the case involves terrorism and membership of a terrorist organisation and cases concerning serious international crimes (genocide, crimes against humanity, and war crimes)<sup>99</sup>, which Interpol has expressed a particular interest in.

The following list of factors illustrate the nature of performing the predominance test:

- The nature of the offence, namely the charges and the underlying facts
- The status of the persons concerned
- The identity of the source of the information
- The position expressed by a Member or authorized international entities other than the source of the information
- The obligations under international law
- The implications on the neutrality of the Organisation
- The general context of the case<sup>100</sup>.

A distinction is made between pure and relative offences. Pure offences are considered acts criminalized solely due to their political, military, religious or racial nature, and do not contain any

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<sup>96</sup> Interpol Constitution, art. 3.

<sup>97</sup> Interpol, Repository of Practice: Application of art. 3 of Interpol's Constitution in the context of the processing of information via Interpol's channels (2013), p. 6.

<sup>98</sup> Ibid.

<sup>99</sup> See "FAQ" at <https://www.interpol.int/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/Frequently-Asked-Questions> last visited on 01/10 2021.

<sup>100</sup> Ibid.

ordinary-law element. They are usually directed against the State and affect the public interest and causes public wrong<sup>101</sup>. Examples include espionage, divulging State secrets, treason, and illegal speech against a former President of the requesting State<sup>102</sup>. Relative offences on the other hand are considered acts that contain ordinary-law elements, and therefore also affect private interests and causes, at least in part, a private wrong. These offences are to be subjected to the predominance test<sup>103</sup>.

When conducting the predominance test and determining what elements are predominant, Interpol takes into account the links between the aims of the defendant and their victims, the place where the action was carried out ie, an area of conflict, the status of the victims, and the seriousness of the offence<sup>104</sup>.

Declining interventions with reference to their "political character" has similarities with the political offence exception in extradition law, but is nevertheless argued to have its own characteristics<sup>105</sup>. Reading "political character" in accordance with art. 34 (3) of the IRPD<sup>106</sup>, all relevant elements must be examined to assess whether data comply. This includes:

- "(a) nature of the offence, namely the charges and underlying facts;*
- (b) status of the persons concerned;*
- (c) identity of the source of the data;*
- (d) the position expressed by another National Central Bureau or another international entity;*
- (e) obligations under international law;*
- (f) implications for the neutrality of the Organisation;*
- (g) the general context of the case"*<sup>107</sup>

Pursuant to art. 34 (3) of the IRPD the status of the person concerned and the general context of the case at hand must be examined, especially in cases concerning former politicians<sup>108</sup>. Nevertheless, a case may still be of political character even if the person concerned is not a politician or government official. A strong link between the applicants and a leader of a opposition party in the requesting country could indicate that the case is political<sup>109</sup>. Circumstances surrounding the proceedings against

<sup>101</sup> Interpol, Repository of Practice: Application of art. 3 of Interpol's Constitution in the context of the processing of information via Interpol's channels (2013), p. 7.

<sup>102</sup> Martha Rutsel Silvestre J et al., The Legal Foundation of Interpol (2020), p. 218.

<sup>103</sup> Interpol, Repository of Practice: Application of art. 3 of Interpol's Constitution in the context of the processing of information via Interpol's channels (2013), p. 7.

<sup>104</sup> Martha Rutsel Silvestre J et al., The Legal Foundation of Interpol (2020), p. 217.

<sup>105</sup> Idem, p. 218. These tests in extradition law are: the French "objective" test, the Swiss "proportionality" or "predominance" test, and the Anglo-American "incidence" test.

<sup>106</sup> Interpol's Rules on the Processing of Data.

<sup>107</sup> Art. 34 (3) of IRPD.

<sup>108</sup> Martha Rutsel Silvestre J et al., The Legal Foundation of Interpol (2020), p. 220.

<sup>109</sup> Ibid.



the person in question can be of relevance. This includes earlier misuse of Interpol tools for arrest or other purpose.

#### *Military character*

As to 'military character' all the elements set out in Art. 34 (3) of the IRPD must be considered<sup>110</sup>. At the same time, a military context does not necessarily provoke the application of art. 3<sup>111</sup>. Nevertheless, Interpol will not process data in respect of certain 'pure' military offences<sup>112</sup>. As a general rule, Interpol will not process information through their channels if a case concerns acts committed in an armed conflict. International crimes of certain characteristics warrant exceptions<sup>113</sup>.

#### *Religious character*

Interpol considers religious offences 'pure' if they concern practising a prohibited religion, recruitment or propaganda for particular religions, or a person belonging to a banned religious group<sup>114</sup>. In respect of 'relative' offences Interpol turns to the predominance test also here<sup>115</sup>.

#### *Racial character*

Interpol adopts a broad interpretation of the word 'racial' on the basis of the definition of "racial discrimination" in the International Convention on the Elimination of All Forms of Racial Discrimination<sup>116</sup>. "Membership of a racial organization" is considered a 'pure' offence. Applying this standard Interpol is not concerned with race itself and does not delete data in respect of diffusions for persons wanted for the crime of 'racism, minimization and approval of the genocide committed during the Second World War', because it is an ordinary law crime condemned by numerous international instruments<sup>117</sup>.

Data revealing racial or ethnic origin is also considered "particularly sensitive data" pursuant to Art. 1 (18) of the IRPD. Interpol can only process personal data that reveals 'racial or ethnic origin' if it is "*relevant and of particularly important criminalistic value for achieving the aims of the Organisation and the purposes of the processing (...)*", and if "*described objectively and containing no judgement or discriminatory comments*"<sup>118</sup>.

Interpol does not allow National Central Bureaus to request data through its channels about individuals simply because of their different ethnic origin<sup>119</sup>.

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<sup>110</sup> Martha Rutsel Silvestre J et al., *The Legal Foundation of Interpol* (2020), p. 222.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Idem*, p. 223.

<sup>114</sup> *Idem*, p. 226.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Idem*, p. 228-29.

<sup>117</sup> *Idem*, p. 229.

<sup>118</sup> IRPD, art. 42.

<sup>119</sup> Martha Rutsel Silvestre J et al., *The Legal Foundation of Interpol* (2020), p. 229.

#### 2.1.4. Summary

As the overview shows, there are ample principles, rules and procedures to screen and prevent the circulation of politically motivated Red Notices and diffusion orders through the Interpol notice system. The rules protect both refugees and non-refugees and bind both the General Secretariat and the National Central Bureaus of all member countries. The application of the rules and principles is performed on a case by case basis and thus at all times a concrete consideration, which involves both the substantial facts of a case, the procedural handling of it domestically and internationally, including earlier encounters with the Interpol system, as well as contextual information about the persons involved, the authorities and political system in question as well as the country.

## 2.2. Personal data protection

The Interpol rules governing the handling of personal data are found in the Interpol Constitution, the IRPD, and in the Statute of the Commission for the Control of Interpol's Files. With 194 member countries, there are overlapping legal frameworks in matters of data protection. In the area of the European Union, the Law Enforcement Directive (LED), EU fundamental rights laws and the case-law of the CJEU apply equally in every Member State.

The CJEU has established that the LED *"must be interpreted as not precluding the processing of personal data appearing in a red notice issued by Interpol in the case where it has not been established in a final judicial decision taken in a Contracting State or in a Member State that the ne bis in idem principle applies in respect of the acts on which that notice is based"*<sup>120</sup>. The principle implies that processing and communication of personal data in Red Notices is allowed as long as there is legal foundation for the processing and it has not been sufficiently established that EU citizens' rights have been violated.

#### *Interpol Data Protection Officer*

The National Central Bureaus and the General Secretariat designate data protection officers in accordance with art. 121 and art.121 A of the Interpol's Rules on the Processing of Data (IRPD). Since 2015, Interpol has a specially designated Interpol Data Protection Officer (IDPO)<sup>121</sup>. This IDPO has free and unlimited access to all the data processed by Interpol and is formally independent and reports only to the Secretary General<sup>122</sup>. The main functions of the IDPO are defined in the IRPD. Interpol informs that these functions include:

- *"auditing implementation of the Rules on the Processing of Data (RPD) in the INTERPOL Information System and strengthening internal controls;*
- *providing advice on processing operations which may implicate the rights of individuals;*
- *ensuring coordination with all data protection officers designated at National Central Bureaus (NCBs), including the provision of training;*
- *ensuring liaison with the Commission of Control of INTERPOL's Files (CCF) on data protection matters;*
- *strengthening the Organisation's data protection culture; and*

<sup>120</sup> Judgement of 12.5..2021 - Case of C-505/19

<sup>121</sup> DROI Committee, Misuse of Interpol's Red Notices and impact on human rights - recent developments, 2019, p. 26.

<sup>122</sup> Idem.

- *engaging with international partners and cooperating with data protection officers of other institutions to exchange best practices.*<sup>123</sup>

If a National Central Bureau encounters difficulties with regard to data protection, or does not observe its data protection obligations, the IDPO may recommend corrective measures to the General Secretariat. The possible measures extend to the suspension of access rights to users<sup>124</sup>. There is no available data suggesting that such recommendations have been made.

Besides connecting with the CCF, the IDPO also liaises with the data protection officers of the National Central Bureaus<sup>125</sup>. It is up to these bureaus' Data Protection Officers to ensure the implementation of processing procedures, supervision through "spot checks" and when necessary, update the data protection procedures and mechanisms, and organizing trainings<sup>126</sup>. The IDPO oversees the bureaus' Data Protection Officers through their annual reports, liaises with them and organizes internal Interpol training at the domestic level. There is also an online platform available for the Data Protection Officers, which assists them in communicating and sharing best practices globally<sup>127</sup>.

#### *Personal Data Protection Legal Framework*

Data protection as a legal field is relatively new. Building consensus internationally has been slow. Early on, individual non-binding texts were issued. For example, the OECD Guidelines on the protection of Privacy and Transborder Flows of Personal Data from 1980. In 1990 the United Nations General Assembly adopted Resolution 45/95 of 14 December 1990 on guidelines for regulating computer-based information containing personal data<sup>128</sup>. In the context of the Council of Europe, all 47 member states have ratified the Convention for the protection of individuals with regard to Automatic Processing of Personal Data (Convention 108)<sup>129</sup>. The 1987 Council of Europe Recommendation (87) 15 on the use of personal data in the police sector established principles for personal data processing<sup>130</sup>. The Council of Europe later published a Practical Guide on the use of personal data in the police sector in order to further assist law enforcement authorities in their activities of data processing and to ensure that the right to private life and data protection provided by art. 8 of the European Convention on Human Rights are observed<sup>131</sup>. The provisions of Convention 108 have been updated through the adoption of a Protocol (CETS no. 223) on 18 May 2018<sup>132</sup>. The Council of Europe law applies to activities related to national security, whereas the EU law on data protection does not cover this area<sup>133</sup>.

The EU framework on data protection in law enforcement has been updated through the Law Enforcement Data Protection Directive EU 2016/680 (LED). The LED applies to natural persons with

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<sup>123</sup> INTERPOL FAQ - Personal Data Safeguards, p. 3.

<sup>124</sup> Art. 121 A (6) of the RPD.

<sup>125</sup> DROI Committee, Misuse of Interpol's Red Notices and impact on human rights - recent developments, 2019, p. 26.

<sup>126</sup> Art. 121 (2) of the RPD.

<sup>127</sup> Idem.

<sup>128</sup> Can be accessed at <https://www.refworld.org/pdfid/3ddcafaac.pdf> visited on 19/10 2021.

<sup>129</sup> Can be accessed at <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=108> visited on 19/10 2021.

<sup>130</sup> Can be accessed at <https://polis.osce.org/node/4656> last visited 19/10 2021.

<sup>131</sup> Can be accessed at <https://www.coe.int/en/web/data-protection/-/newly-adopted-practical-guide-on-the-use-of-personal-data-in-the-police-sector-how-to-protect-personal-data-while-combatting-crime> last visited 19/10 2021.

<sup>132</sup> Can be accessed at <https://rm.coe.int/16808ac918> last visited 19/10 2021.

<sup>133</sup> European Union Agency for Fundamental Rights and Council of Europe, Handbook on European data protection law, 2018.

regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. It became fully applicable as of 6 May 2018.

#### *Law Enforcement Data Protection Directive (LED)*

LED art. 1 (2) requires Member States to *"respect fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data"*. The LED does not apply to the processing of data by *"the Union institutions, bodies, offices and agencies"*, art. 2 (3). When processing personal data relevant authorities in EU Member States must respect the principles laid down in LED art. 4 (1). This includes lawfulness, legitimate purpose, data not excessive in relation to the purpose of the processing, keeping data up to date and erase and rectify without delay when required, and ensuring security of data<sup>134</sup>. Member States must ensure that data subjects have access to the personal data, provided some limitations, art. 14 and 15. Accordingly it follows that limitations may apply when adopted by legislation, when necessary and proportionate measure in a democratic society in order to *"avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties"*, art. 15 (1) (b).

Relevant authorities in EU Member States may transfer personal data to third countries or international organisations, provided additional conditions are met, art. 35. Transfers have to be necessary for the purposes of the *"the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security."*, art. 1 and 35 (1).

The LED only governs transfers to data controllers outside of the EU, not the data processors outside the EU. It is discussed if this was intentional or not<sup>135</sup>.

If personal data is originating from a EU Member State other than the one carrying out the transfer to a third country or international organisation, the latter Member State has to obtain prior authorization of the former Member State, art. 35 (1) (c)<sup>136</sup>: *'where personal data are transmitted or made available from another Member State, that Member State has given its prior authorization to the transfer in accordance with its national law'*. Furthermore, in the event of onward transfer of personal data to another third country or international organisation, an authorisation from the authority in the Member State that initiated the transfer needs to be obtained<sup>137</sup>.

Finally, each transfer outside of the EU must be based on at least one of the three available transfer mechanisms: Adequacy decisions, appropriate safeguards or derogations<sup>138</sup>. It is the Commission which adopts an adequacy decision pursuant to art. 36<sup>139</sup>. Even considering CJEU decisions invalidating earlier adequacy decisions under data protection laws, such a decision has still not been made. In the absence, the National Central Bureaus have to rely on providing appropriate safeguards pursuant to

<sup>134</sup> See further art. 12-17.

<sup>135</sup> Drechsler, Laura, *The Achilles Heel of EU data protection in a law enforcement context*, p. 5.

<sup>136</sup> This does not apply to exceptional cases. See art. 35 (2).

<sup>137</sup> Art. 35 (1) (e).

<sup>138</sup> Art. 35 (1) (d).

<sup>139</sup> Art. 35 (1) (d).

art. 37, which means that the data protection rules of Interpol have to be compliant with EU law, or alternatively – in absence of appropriate safeguards – the National Central Bureaus can rely on derogations for specific situations pursuant to art. 38<sup>140</sup>. Art. 38 states that in the absence of an adequacy decision or appropriate safeguards, Member States must ensure that a transfer of personal data to an international organisation only takes place if the transfer is necessary. Necessity is defined in art. 38 (1) (a-e): *“(a) in order to protect the vital interests of the data subject or another person; (b) to safeguard legitimate interests of the data subject, where the law of the Member State transferring the personal data so provides; (c) for the prevention of an immediate and serious threat to public security of a Member State or a third country; (d) in individual cases for the purposes set out in art. 1(1); or (e) in an individual case for the establishment, exercise or defence of legal claims relating to the purposes set out in art. 1 (1)”*<sup>141</sup>.

The rules in the LED applies to all National Central Bureaus established within the EU, when processing personal data.

If a LED adequacy decision did exist, the international organisation receiving the personal data would be considered to be protecting the fundamental rights protected in the LED and the Charter in a manner equivalent with the Member State of transfer<sup>142</sup>. In absence of such adequacy decision, appropriate safeguards with regard to the protection of personal data must be presented in a legally binding instrument, or the controller assesses all the circumstances surrounding the transfer of personal data and concludes that appropriate safeguards exist with regard to the protection of personal data, art. 37.

The transmission of data by Interpol itself does not constitute processing of data covered by the LED because Interpol is not a *“competent authority”* within the meaning of art. 3 (7) of the LED<sup>143</sup>.

When processing data in alerts between Schengen Member States, the Schengen Information System II (SIS II) have priority over Interpol. Parallel alerts should be avoided in the exchange of data among Schengen states. The result is that diffusions are communicated through SIS II rather than through Interpol channels<sup>144</sup>.

Based on Schengen good practices<sup>145</sup>, it is recommended that Interpol and all other offices responsible for international police cooperation (such as SIRENE and Europol) are accessed through a single point of contact that would be integrated within the same management structure and site in the relevant domestic authority.

Art. 55 of the Council Decision 2007/533/JHA (Council decision to establish SIS II) introduces a limitation to the application of the LED Directive. It provides some derogatory conditions for data exchanges of specific information with Interpol in the case of stolen, misappropriated, lost or invalidated passports,

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<sup>140</sup> Art. 35 (1) (d).

<sup>141</sup> Art. 38 (1) (a-e).

<sup>142</sup> Drechsler, Laura, The Achilles Heel of EU data protection in a law enforcement context, p. 6.

<sup>143</sup> Judgement of 12.05.2021, Case C-505/19, Bundesrepublik Deutschland (Interpol Red Notice), pr. 117.

<sup>144</sup> SIRENE manual 1.8.3.

<sup>145</sup> EU Schengen catalogue, Police Co-operation, Recommendations and Best Practices, vol. 4, 2003, p. 8. Accessible at <https://pdfcoffee.com/catalog-4-schengen-eng-pdf-free.html> last visited 19/10 2021.

provided that the information is only accessible to states with an adequate level of protection for personal data and that the EU member states entering the information into this system has given its consent<sup>146</sup>.

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<sup>146</sup> Art. 55 of the Council Decision 2007/533/JHA. Accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0533&from=EN> last visited 19/10 2021.

### 3. THE EVOLUTION OF THE CHALLENGES IDENTIFIED IN THE SYSTEM OF NOTICES

#### KEY FINDINGS

Politically motivated Red Notices allow governments to persecute political and other opponents abroad with significant consequences for those affected. Despite the clear rights-based limitations of Interpol's mandate to communicate Red Notices, the risk of politically motivated requests for Red Notices exists. Considering that an authoritarian development can be observed in many countries, there is strong argument that the risk has increased.

Interpol has undertaken serious reforms since 2013. The review process has been strengthened, Interpol has commenced a review of all Red Notices currently in circulation and has enforced a complaint mechanism under the Commission of the Control of Files. Furthermore, it has assigned a Data Protection Officer and implemented learning and knowledge sharing programs.

The European Parliament has previously made significant recommendations for reform. Some of these reforms have been addressed. Others have yet to be addressed and implemented. A number of legal tools are still missing and there continues to be a lack of transparency in the handling of notice requests.

Moreover, a number of more fundamental problems persist. First, considering the increasing number of notices in circulation and considering the current setup with decentralised submission of requests to be reviewed centrally – each request given concrete consideration – it is difficult to assess how proper legal safeguards can be practiced going forward. Second, the problem presented with decentralised National Central Bureaus under the control of domestic authorities equally represents a structural problem that is not addressed with knowledge management reforms. Third, Red Notice data are stored in national databases, which means that Interpol updates are practically ineffective on a global scale, leaving inaccurate notice information in circulation on an unknown level.

#### 3.1. The problem

Despite the limitations of the mandate to communicate Red Notices in the Interpol Constitution and other sets of rules, Red Notices that are politically motivated continue to be requested, put forward and communicated through the global Interpol Communication system. On a daily basis, law enforcement officers and judicial authorities globally need to take active steps to ensure that fundamental rights are not violated.



The criticism of Interpol and its handling of politically motivated Red Notices and diffusion orders for arrest have been voiced consistently for more than two decades. An important element of the criticism is that Interpol is being manipulated and strategically used to push the agenda of authoritarian regimes to persecute political and other opponents to the government in question<sup>147</sup>. It is not only in European legislative and political fora that the criticism has been voiced. See for example the 2019 United States Congress hearing on *"Tools of transnational Repression: How Autocrats Punish Dissent Overseas"*, in which these particular problems were addressed<sup>148</sup>.

Interpol has 194 member countries of which less than half are commonly described as strong democracies. Rather than a development towards democratic standards, there is, in recent years, observed a development in an authoritarian direction<sup>149</sup>. Refugees are at particular risk<sup>150</sup>. It is especially under authoritarian rule, where the political control or influence of law enforcement, security apparatus and judicial institutions is decisively stronger than in strong democracies, that the risk of political motivation is high. On all accounts, the risk of politically motivated requests for Red Notices is real and can be considered as increasing.

The consequences of politically motivated Red Notices and diffusion orders to arrest can be most significant to those individuals subjected to them. Fair Trials and other civil society organisations continue to investigate, document and communicate concrete examples of instances<sup>151</sup>. To begin with, one will often not know if there is or is not a Red Notice issued. Furthermore, if there is, there is an actual and expected arbitrariness as to how different countries and authorities respect and act on a Red Notice. This lack of knowledge, unpredictability and this arbitrariness is a serious intrusion into one's life. Those traveling across borders risk arrest, sometimes for a long time, it may be impossible to obtain travel documents, and the opening of bank accounts can be hindered. Depending on the country of transit or visit and its bilateral relations with the country, which has issued the request for a Red Notice, a preliminary arrest and detention can lead to extradition to the very country from which the person has fled to obtain protection elsewhere. Shorter and longer prison confinements are often involved. This is the particular concern for refugees fleeing persecution.

In the 2019 DROI study of abuse of Interpol Red Notices, a number of individual case studies was provided in Annex B. Those individual cases have been reprinted in the present Annex to this paper to illustrate how red notices affect those individuals affected.

Reference should also be made to the most recent case of Yevhen (Eugene) Lavrenchuk, the Ukrainian opera director who was arrested and imprisoned in Naples, Italy while on a stopover. The arrest was

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<sup>147</sup> See for example Lemon, E. "Weaponizing Interpol", *Journal of Democracy*, Vol. 30 (2), 15-29 (<https://www.journalofdemocracy.org/articles/weaponizing-interpol/>); Farivar, M, "How Authoritarian Governments are Exploiting Interpol to Harass Political Enemies", VOA, 3 October 2019 (<https://www.voanews.com/usa/how-authoritarian-governments-are-exploiting-interpol-harass-political-enemies>); Financial Times, "Is Interpol being manipulated by authoritarian regimes?" (<https://www.ft.com/content/6f6f7074-e8e1-11e8-a34c-663b3f553b35>).

<sup>148</sup> The official report of the hearing of 12 September 2019 is available at: <https://www.govinfo.gov/content/pkg/CHRG-116hhrg37829/html/CHRG-116hhrg37829.htm>.

<sup>149</sup> See above, section 1.

<sup>150</sup> See for example letter of 16. November 2021, addressed to Interpol Secretary General and signed by Fair Trials and Syrian Center for Media and Freedom of Expression and co-signed by 19 NGOs addressing the concern with Syrian refugees in Europe as Syria has been granted renewed access to the Interpol Communication Platform. <https://www.fairtrials.org/news/syrian-refugee-organisations-call-interpol-protect-them-red-notice-abuse>, last visited 8 December 2021

<sup>151</sup> See <https://www.fairtrials.org/campaign/interpol> and <https://www.fairtrials.org/campaign/extradition-reform> last visited on 5 December 2021.



made at the request of Russia arguing financial crimes committed in Moscow, Russia. Lavrenchuk claims that he is being persecuted because of his vocal criticism of the Russian government and its activities in Ukraine<sup>152</sup>.

In sum, the consequences associated with Red Notices allow authoritarian regimes to persecute individuals also outside of their jurisdictions and subject these individuals to real, practical, and invasive restrictions of their lives and fundamental rights.

### 3.2. Reforms undertaken

Interpol has pushed for and implemented a number of reforms since 2013. Many of them significant, and several of them very recent to the extent that it is not possible to empirically evaluate the effect.

Of the significant reforms focusing on a better review of Red Notices and diffusion orders and safeguarding fundamental rights of citizens the adoption of the refugee policy in 2015, already described above, and the processing of the data policy finally endorsed in 2017 must be emphasized. So must the reform of the review process of Red Notices in 2016 and again in 2019, the increasing support of National Central Bureaus following 2016 and again in 2018 and 2019. The support of a taskforce for reviewing Red Notices and diffusions in circulation has been crucial and the establishment of the Commission for the Control of Files and the subsequent strengthening of its independence and individuals' access to it have established the beginning of a more reliable complaint system without which the General Secretariat otherwise operates under limited accountability and without which individuals globally are deprived of a legitimate access to appeal. The Interpol Data Protection Officer was introduced and has established a knowledge management framework that encompass all National Central Bureaus and their designated data protection officers.

Civil society organisations have continuously put forward documentation, criticism and recommendations on how to reform and improve Interpol and its notice system<sup>153</sup>, most recently on leading up to the General Assembly held in November 2021.<sup>154</sup> The DROI Committee study of 2019 and the PACE resolution of 2019 identified areas of necessary reform in Interpol and possible ways to address them.

### 3.3. The European Parliament and the LIBE Committee

The European Parliament has actively engaged in the pursuit of better solutions both in Interpol and in European countries, to ensure citizens' rights respected by Interpol and the EU Member States.

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<sup>152</sup> See The Guardian, January 7, 2022, "[Arrested Ukrainian opera director vows to fight Putin 'oppression'](#)" | Italy | The Guardian.

<sup>153</sup> See for example the Fair Trial report "Dismantling the tools of oppression", 2018.

[https://www.fairtrials.org/sites/default/files/publication\\_pdf/Dismantling the tools of oppression.pdf](https://www.fairtrials.org/sites/default/files/publication_pdf/Dismantling%20the%20tools%20of%20oppression.pdf). Last visited 4 December 2021.

<sup>154</sup> See for example "Civil Society Resolution on the Forthcoming 89th General Assembly of INTERPOL that will take place in Istanbul on 23-25 November 2021", signed by 64 Civil Society Organisations.

<https://www.statewatch.org/media/2928/interpol-ga-civil-society-resolution-16-11-21.pdf>. Last visited on 4 December 2021.

Already in 2014, the European Parliament issued a resolution drawing attention to the lack of regular review of Interpol alerts among others. The Parliament already then called for a regular review of circulating arrest warrants that have not been executed, for withdrawal of arrest warrants refused on mandatory grounds, and for Interpol alerts (and SIS II alerts) to be mandatorily updated with information on the grounds for refusal.

Following the Council of Europe resolution 2161 (2017), the European Parliament pushed further the agenda, raising questions to the Council and taking the matter under debate in parliament<sup>155</sup>.

Accordingly, already at this time, the European Parliament asked the very questions which are on the table today:

- *"What is the Council doing to ensure that the rights of EU and third-country citizens are not breached through the use of Interpol data by the EU Member States?"*
- *Is the Council aware of any mechanism in place to ensure an automatic exchange of information between Member States when at least one Member State expresses strong doubts about the legitimacy, necessity and proportionality of an Interpol notice?*
- *Is the Council planning to harmonise the norms and practices at national level regarding how police authorities should react when receiving an Interpol notice, such as a mandatory judicial review before a detention is carried out on the basis of an Interpol notice?"*

Following the Russian Federation's politically motivated investigation of Lithuanian judges, prosecutors and investigators looking into the events in Vilnius on the 13th of January 1991, the LIBE Committee on 12 November 2019 put the problem and possible reactions to the floor. Possible means to desist Russian authorities from pursuing the investigation, Interpol from being used for this purpose and EU Member States from assisting in the investigation, were put forward<sup>156</sup>. With regard to the views exchanged in the LIBE Committee, the European Parliament on 28 November 2019 to this end passed a resolution (2019/2938(RSP)), among others calling on

*"... Member States, if requests for mutual legal assistance are received from the Russian Federation in connection with the criminal prosecution in the Russian Federation of the Lithuanian prosecutors and judges involved in the 13 January case, to treat this case as politically motivated, to cooperate closely with the Lithuanian authorities, and to refuse legal assistance to the Russian Federation in this case;*

*... the Commission for the Control of Interpol's Files (CCF), in charge of preventing abusive arrest warrants of a political nature, to be alert to any international arrest warrant requested against the accused Lithuanian officials; calls on all Member States and other signatories of the ICPO-Interpol Constitution to ignore all international arrest warrants against the accused Lithuanian officials; calls on Interpol to ignore all Russian requests for warrants related to the 13 January case;*

<sup>155</sup> 2017/2873(RSP) Interpol Arrest Warrants (Red Notices), October 2017; Question for oral answer O-000072/2017 to the Council tabled September 8, 2017.

<sup>156</sup> Committee on Civil Liberties, Justice and Home Affairs, LIBE(2019)1111\_1, Meeting Monday 11 November 2019 & Tuesday 12 November 2019, Brussels, Room: József Antall (4Q2)

*... all Member States to refrain from transferring any personal data to Russia that could be used in criminal proceedings against Lithuanian judges, prosecutors and investigators;*

*... the Member States to fully cooperate at European level with regard to their policies towards Russia, as more consistency and better coordination is essential in order to achieve more effective EU policy, and to make greater efforts to build resilience and work towards practical solutions that support and strengthen democratic processes and an independent judiciary;*<sup>157</sup>

Most recently, the European Parliament also addressed the European Commission to inquire about its knowledge and position on the candidates for the Interpol Presidency in November 2021<sup>158</sup>. This issue, and specifically the candidacy for the presidency of the former United Arab Emirates' senior police officer and the candidacy for the Executive Committee of a Chinese senior public security official, has garnered significant criticism also from civil society<sup>159</sup>.

### 3.4. DROI Committee

In a 2019 study of the misuse of Interpol's Red Notices, requested by the DROI committee under the European Parliament, twelve recommendations were presented with a view to strengthening legal safeguards in the screening process of the submission and communication of Red Notices and diffusion orders:

*"First, there is room to further develop the legal framework and its applicability for GS, CCF and NCBs to ensure a consistent handling of Red Notices and Diffusions in accordance with art. 2 and art. 3 of the Interpol Constitution. Delivering the repository of practices on art. 2 and updating the repository of practices on art. 3 are two practical steps towards that end. Further- and wider-reaching efforts are necessary too. In particular, considering the asymmetrical structure of authority between the GS and the NCBs, legal knowledge management as well as compliance mechanisms should be key priorities to ensure consistent handling of cases across NCBs in compliance with Interpol rules in handling Red Notices and Diffusions.*

*Second, it is necessary to take further steps towards fully implementing the reforms since 2015: the continuing increase of the case load of both Red Notices and Diffusions with the GS and the CCF requires further resources for Interpol to ensure a proper and consistent review prior to publications and continuous updates of issued Red Notices and Diffusions. Further steps should be taken towards ensuring a high capacity with all NCBs to vet Red Notices and Diffusions as well as handling updates in the Criminal Information System. Furthermore, Interpol should take steps to hold the NCBs accountable for their misapplication of Interpol*

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<sup>157</sup> See [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0081\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0081_EN.html). Last visited 2 December 2021.

<sup>158</sup> Question for written answer E-002094/2021/rev.1 to the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy. See also the Commission response in E-002094/2021 Answer given by High Representative/Vice-President Borrell on behalf of the European Commission

<sup>159</sup> The Norwegian Helsinki Committee, the Italian Federation for Human Rights and the Arrested Lawyers Initiative, Statement on integrity issues of Interpol's leaders, 15 November 21, available at <https://www.nhc.no/en/statement-on-integrity-issues-of-interpols-leaders/>, last visited 20/11 2021. See also *Statewatch*, "Interpol must change its practices to protect human rights", 16 November 2021, available at <https://www.statewatch.org/news/2021/november/interpol-must-change-its-practices-to-protect-human-rights/>, last visited 20/11 2021. See also Letter of November 15, 2021 on the candidacy of Hu Binchen, available at <https://www.uyghurcongress.org/en/wp-content/uploads/2021/11/Activist-Letter-Interpol-Elections-Nov-21-1.pdf>. Also reported at <https://www.washingtonpost.com/world/2021/11/15/interpol-china-hu-binchen/> last visited on November 20, 2021.

*rules and regulations, applying art. 130 and art. 131 of the RPD. This includes taking further steps to ensure effective enforcement of CCF decisions with NCBs.*

*Third, it is necessary to ensure that Interpol has effective control over the information, which Interpol allows to flow through its communication system. This means that Interpol must be able to update notices and diffusions effectively. As the system operates today, it is the national authorities that update the information in their own databases, resulting in flawed updates.*

*Fourth, specifically regarding the refugee policy, Interpol should take appropriate steps to ensure full implementation of the policy. A procedure for member countries is necessary to communicate and prove refugee status of an individual and those granted a subsidiary form of protection, or those who have been naturalized as citizens in the previous country of asylum and are subject to a Red Notice or Diffusion. Communication of this process (along with publication of the refugee policy) should be considered to the appropriate national bodies and published on Interpol's public website. A possible proactive measure could be for the GS (if the GS has notice of the possible refugee status of an individual and those granted a subsidiary form of protection or those who have been naturalized as citizens in the previous country of asylum) to proactively confirm the status, and in the absence of clarification, refuse to issue the Red Notice or accept a Diffusion to the database.*

*Fifth, Interpol should provide access to independent redress of CCF decisions. This could be an ombudsman or equivalent oversight body to review any complaints of the CCF and to recommend reforms based on monitoring of compliance.*

*Sixth, in relation to data protection, Interpol should liaise with data protection agencies in EU MSs to educate and inform that the NCBs are subject to national data protection laws and regulations and not only those of Interpol. It must be a mandatory requirement for each NCB to have a Data Protection Officer. It is also possible for Interpol to request the NCBs to delete data following a CCF or GS decision to delete data. It could be made an obligation for the NCBs to provide confirmation from the NCB Data Protection Officer of deletion of data within a prescribed time-limit. Failure to do so could make art. 130 and art. 131 of the RPD applicable.*

*Seventh, to ensure a uniform interpretation, the European Data Protection Board should be requested to provide an opinion regarding the interplay between all instruments and agreements for data exchange between national authorities and Interpol in line with the LED. Furthermore, Interpol should consider a new review after the 2011 CRID report following the EU developments on data protection in light of the GDPR, LED and the modernized Convention 108 of the CoE.*

*Eighth, the EU could facilitate the development of a collection of best practices between EU MSs on how to act on Red Notices and Diffusions to test their reliability and to act thereupon. This could include practical steps to conduct risk assessments upon receipt of Red Notices and Diffusions and the application of consistent human rights standards for processing Red Notices and Diffusions. This would represent a simple and practical effort to limit the consequences of the reported abuses.*

*Ninth, the EU is already a donor for several Interpol capacity building projects. The EU could consider funding projects specifically aimed to improve the clarity and transparency of the processing and screening of Red Notices and Diffusions in order to avoid human rights violations. This project could also ensure a wider dialogue with stakeholders and NGOs.*

*Tenth, the EU could engage in bilateral initiatives with the member countries outside of the EU that cause the biggest problems to an accountable Interpol system. Either in collaboration with Interpol or independently, the EU could run new EU cooperation projects to raise the human rights and Rule of Law capacity in relation to international cooperation in criminal matters. The issue could also be integrated in current relevant development projects.*

*Eleventh, next to focusing on the member countries, the EU could also focus on those individuals affected by wrongful Notices and Diffusions, to get them deleted. This could be facilitated by supporting the NGOs that already have built a substantial capacity to assist in these cases. Faster channels of communication could be secured for these NGOs to signal abuses and to allow for faster responses to alerts.*

*Finally, the EU Institutions, bodies and MSs should ensure that transparency concerning the activities of police authorities in MSs and their relationships with international organisations and third countries in dealing with Red Notices and Diffusions is further increased. The Commission should continue to monitor the compliance of MSs of the principle of non-refoulement and EU data protection rules, and, to make use of its powers under the TFEU to ensure their respect."*

### **3.5. PACE Resolution**

In October 2019, the Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly, the Council of Europe, presented a report on *"Interpol reform and extradition proceedings"*. The report and its draft resolution lead to the PACE resolution 2315 (2019), which called on Interpol to:

*"10.1.1. further improve transparency by disclosing data that would help to assess how effective its review mechanisms are, including yearly statistics on Red Notice requests received and refused, appeals to the CCF introduced and decided in favour or against the applicants, with a breakdown by country; and by publishing a "repository of practice" on the interpretation of art. 2 of Interpol's constitution;*

*10.1.2. further improve preventive and subsequent scrutiny of Red Notices and wanted person diffusions, by examining with particular care any repetitive requests, those that have not given rise to extraditions or extradition requests within a reasonable period of time and those submitted by NCBs which have previously submitted a high number of abusive requests; and by charging the countries responsible for the extra cost involved;*

*10.1.3. ensure more effective control over the information which flows through its communication system by requiring NCBs to delete data from national databases following a CCF or General Secretariat decision to delete a notice or wanted person diffusion and to provide confirmation of the deletion within a prescribed time limit;*

*10.1.4. further strengthen the appeals procedure before the CCF by making it speedier, more interactive and more transparent;*

*10.1.5. consider setting up an independent appeals body against the decisions of the CCF, such as an ombudsperson, who could also make recommendations for any further improvements of Interpol's working methods;*

*10.1.6. set up a compensation fund for victims of unjustified Red Notices and wanted person diffusions financed by member States in proportion to the number of such notices and diffusions emanating from their NCBs;"*

Furthermore, the resolution called upon all Council of Europe member states to set an example of good cooperation by:

*"10.2.1. making available to Interpol the human and financial resources necessary to improve the quality and timeliness of both preventive compliance checks and the subsequent review by the CCF; in particular, to provide increased, ring-fenced, dedicated funding to the Notices and Diffusions Task Force and the CCF;*

*10.2.2. ensuring that the Red Notice requests and wanted person diffusions they submit to Interpol fulfil high standards of clarity in terms of the identification of the targeted person, the description of the facts and their legal qualification, and the elements of proof linking the targeted person to the alleged crime;*

*10.2.3. swiftly informing Interpol of any relevant facts concerning a targeted person, such as the granting of refugee status, provided the person concerned agrees;*

*10.2.4. following up Red Notices by extradition requests in due course and withdrawing Red Notices when extradition is not possible within a reasonable time;*

*10.2.5. respecting the decisions by the CCF by ensuring that all copies of Red Notices or wanted person diffusions found unjustified by the CCF are also deleted in their national databases;*

*10.2.6. facilitating, in co-operation with the European Union, the development of a collection of best practices between member States on how to act on Red Notices and diffusions, including practical steps to conduct risk assessments and to apply consistent human rights standards;*

*10.2.7. making use of their influence within Interpol to support the implementation of further improvements so that Interpol fully respects human rights and the rule of law whilst remaining an effective tool for international police co-operation;*

*10.2.8. taking into account conclusions and recommendations provided by civil society watchdogs dealing with the matter of misuse of Interpol, extraditions and other forms of interstate legal assistance;*

*10.2.9. duly probing all instances of misuse of Interpol, extraditions and other forms of interstate legal assistance by the requesting States for political or corrupt purposes."*

Since 2019, the General Assembly of Interpol has approved Resolution no 3 on a standing committee on the Processing of Data and has approved Resolution no 5 requesting the SG to continue to explore ways to strengthen Interpol's cooperation with the EU. This includes authorization of the Secretary General to negotiate cooperation agreements, which may include, inter alia, *"the exchange of information, granting EU access to the INTERPOL Information System, and cooperation with EU agencies within the European Union and in non-EU regions."*



### 3.6. Critical analysis of the current system

There is no doubt that Interpol has pushed through significant reforms since 2019, most importantly the capacity to review Red Notices and the legal knowledge management of Interpol entities. In this capacity, National Central Bureaus have been targeted for capacity building and for inclusion in better knowledge management. While there are no studies that can confirm any effect of these efforts, there is ample grounds for assuming that the reforms have improved both the screening process in domestic authorities and the General Secretariat review process. Given the simultaneous increase in the total numbers of notices, we cannot conclude as to the overall effect on the notices in circulation.

While recognising the reforms made, it is vital to note that both governmental and non-governmental organisations point to significant reforms that continue to be left unaddressed. The above described calls for better legal tools and transparency continue to be vitally important, as do the calls for transparency of the handling of notices and diffusions. Even rudimentary statistical information continues to be unavailable.

A number of the challenges identified are more fundamental – structural – problems in Interpol that need to be highlighted and addressed on a more strategic and institutional level.

These more fundamental problems are visibly problematic for any future reform because the number of Red Notices and diffusion orders continue to increase. There is nothing to suggest that this will not continue in the future and the current institutional setup does not respond appropriately.

In 2020 a total of 66,370 Red Notices were in circulation, compared to 57,347 in 2018 – an increase of 16 % in only two years. Since 2016 the increase is 40 %. The increase in the number of diffusion orders is much more significant. 85,918 diffusions were in circulation in 2016 compared to 48,451 in 2010. Also, in 2019 35,689 new diffusions were recorded compared to 26,645 in 2016 and 13,005 in 2010, an increase of 174 % of newly issued diffusions in only 9 years. In all respects these numbers underline the constantly growing pressure on the current organisation and institutional setup, in which requests are made and a central review process is performed – one case at a time.

It is difficult to see how reforms of the screening and review practices by addressing capacity and working process only can be implemented effectively under these conditions. It is legitimate to pose the question how a future and effective screening process that account for increasing case loads, may look like.

Second, regardless of any reform of the process and regardless of any knowledge sharing initiative by Interpol to create stronger ties with the National Central Bureaus, the latter continue to be staffed with domestic officers employed by state authorities. As a consequence, the screening process that takes place at this local level cannot effectively be relied upon to bolster against politically motivated notices, without significant transparency and a highly efficient sanctioning regime. Even then it remains doubtful as a reliable institution. There is an endemic problem with ensuring fundamental rights of individuals and implementing the principle of neutrality associated to this decentralized setup.

A third fundamental problem that persists regardless of current reforms, is the fact that Interpol does not have effective control over updates and deletion of notices and diffusions, because they are often stored in national databases and consequently exist outside of Interpol control. The increased numbers of notices and diffusions also increase the risk associated with this lack of control.

Each of these issues represent a considerable weakness in the current setup in the notice system. In my view, there is no – to my knowledge – current presented scenario in which Interpol is able to ensure an effective and consistent screening of Red Notice requests in National Central Bureaus or effective follow-up reviews in national databases to safeguard citizens' fundamental rights.

Given these conditions – and given the condition of a constant pressure on Interpol to have countries globally be members of the system – it is evident that the European Union cannot expect Interpol reforms to deliver required solutions to singularly safeguard EU citizens' rights.

In such a situation it is only natural that countries in the European Union will be able to push the standard further and, using their own institutional setups, may gather and share information on both legal standards, processing of data and relevant case related information that would prevent politically motivated Red Notices and diffusions from having any effect in Member States.



## 4. POSSIBILITIES FOR AN EU-PLATFORM TO EXCHANGE INFORMATION BETWEEN THE EU AND EU MEMBER STATES

### KEY FINDINGS

Under the framework of the European Arrest Warrant, the CJEU has developed legal rights-based boundaries of the EU Member States' use of arrest warrants and extraditions inside the union area and to third countries. The Council of the EU has affirmed initiatives to enforce these boundaries.

Accordingly, EU Member States must consider fundamental rights as grounds for refusing arrest warrants and extraditions. Verifying that there is a **real risk**, the executing authority must find that the person in question is in such real risk considering **the specific circumstances** of the case. This must prompt the authority to defer a decision to extradite. Where the risk cannot be discounted, the authority must reach a decision itself or terminate the proceedings.

In making the risk evaluation, the authority should rely on information that is "*objective, reliable, specific and properly updated*". According to the CJEU, this information may be obtained from judgments from international courts, Member State courts, decisions, reports, and other documents produced by bodies of the Council of Europe or under protection of the UN.

In C-505/19, the CJEU addressed the protection of EU citizens regarding arrest warrants based on Interpol Red Notices from third countries. In a case concerning a ne bis in idem violation, the CJEU held that the mere possibility of a violation of the ne bis in idem principle is not enough to bar a preliminary arrest of the person in question. Only if it has been **established** "*in a final judicial decision taken in a Contracting State or in a Member State*" arrest and extradition are prohibited.

The Court also held that it is not unlawful to process data in a Red Notice if the ne bis in idem principle **may** apply. If, however, it is **established** that the principle does apply and there are no grounds for a criminal process against the person, there is no longer basis for data processing and the person can legitimately require the Member State to erase the data on the Red Notice. On all accounts, the Member State must effectively communicate in a note or in another way that the person cannot be arrested in violation of the ne bis in idem principle.

It is left for EU Member States and the EU-institutions to ensure access to the necessary information and data to ensure respect for the fundamental rights of citizens. There needs to be effective access to a) final judicial decisions in other EU Member States in cases concerning a Red Notice, b) data on prior decisions to deny arrest/extradition in other Member States, c) updated and reliable information on human rights conditions in the requesting state.

Technically, European Union institutions have established digital software platforms to facilitate effective exchange of general and case-specific information in the area of justice and security. Several professional and citizen-based platforms have been developed on these platforms.

**KEY FINDINGS (Continued)**

The expected European Search Platform, which is designed to give instant access to a number of different law enforcement databases simultaneously, provides a partial solution to the need for specific data to better ensure fundamental rights. However, further legal and institutional frameworks are required for domestic authorities to get the data they need through the search portal and for citizens to have access to assert their rights through the portal.

It must also be recalled that effective exchange of information continues to require support of professional human-based networks. In the European area, the European Judicial Network has developed into becoming the most important one, establishing contact points in each Member State and integrating digital platforms for cross-border exchange of information.

## **4.1. The limits to warrants and extraditions**

### **4.1.1. Developing rights-based boundaries within the EU**

Prior to 2020, the European Union bodies' principal strategy to safeguarding EU citizens' rights against the risk of politically motivated Interpol Red Notices has been by funding and pushing for reform of Interpol itself. As described above in section 1, EU is one of the largest funders of Interpol. Despite the reforms that have followed including the serious reform of the review and communication processes in the notice system in Interpol, and despite serious reform of the CCF, the problems of misuse of Red Notices and diffusions persist. Furthermore, there are significant civil society voices that continue to draw attention to the leadership constellation in Interpol, present and future, as a challenge to further rights-based reform of the notice system.

Simultaneously with this development, the European Union has developed an institutional framework for handling arrest warrants and extradition requests. With this framework the foundation for a necessary and secondary strategy has been introduced.

The Council Framework Decision 2002/854/HA of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States laid the foundation for cross-border collaboration with regard to arrests in Europe. It developed procedures on how to share information and process requests and created the framework to enforce common standards.

The Schengen Information System (SIS II) was established and developed to provide an information platform for European arrest warrants and other limited collaboration issues<sup>160</sup>.

Furthermore, addressing an apparent inconsistency in the application of the European arrest warrants across Member States, a Handbook on how to issue and execute European arrest warrants was

<sup>160</sup> Most recently Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II),

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0533&from=EN>, last visited 20/11 2021.

developed in 2008<sup>161</sup>. It was revised in 2010 and most recently, the European Commission issued a revised version in 2017<sup>162</sup>. A new version is currently being prepared by the European Commission.

As an integral part of this framework, the executing judicial authority in a Member State is expected to consider fundamental human rights as a ground for declining arrest warrants, preliminary arrests and extraditions. The CJEU has developed the case-law to guide this rights-based approach.

In the CJEU judgment in the joined cases C-404/15 and C-659/15 PPU (*Aranyosi and Căldăraru*), the Court ruled on the grounds for refusal of extradition requests within the EU. In the case, the CJEU ruled on whether art. 1 (3) of the Framework Decision on the European arrest warrant should be interpreted as meaning that a strong indication that detention conditions in the issuing member state infringe art. 4 of the Charter. The CJEU ruled that it means that the executing judicial authority must refuse to surrender the person against whom an European arrest warrant is issued. The CJEU applied a two-stage assessment, which the executing judicial authority must carry out. First, the executing authority must verify if there is a real risk of inhuman and degrading treatment of the requested person due to the general detention conditions<sup>163</sup>. Second, it is not sufficient to prove a general and systematic failure of the detention system in the issuing member state, but it has to be proven that the requested person under the specific circumstances of the case risks inhuman or degrading treatment. The assessment should be based on substantial grounds. If it is found that there is a real risk of an art. 4 violation of the requested person once surrendered, the execution of the European arrest warrant must initially be deferred. Where such a risk cannot be discounted, the executing judicial authority must decide for itself whether or not to terminate the surrender procedure. In and of itself, the rules profoundly challenged and inserted an exception to the principle of mutual recognition<sup>164</sup>.

In 2016, the CJEU ruled in the *Petruhhin*-case (C-182/15) to extend this principle in cases concerning extradition to third countries and for citizens of other Member States. The case concerned the Estonian national, Aleksei Petruhhin, who was a long-term resident of Latvia and requested by Russia for charges on drug trafficking offences. One of the key questions was if extradition of Petruhhin to Russia was lawful in light of European Union law given that the extradition of a European Union citizen residing in a Member State other than his own could be “contrary to the essence of the citizenship of the Union”<sup>165</sup>. On this point, the Court ruled that if a requested Member State has a “nationality exception”, it must provide other European Union citizens with equal rights and consult the home Member State of the person, allowing that Member State to request extradition of its citizen, before going forward with extraditing the person to a third country. As a consequence, the relevant authority is obliged to reach out directly to the relevant authorities of the home Member State.

In the *Petruhhin*-case, the Court also examined whether the executing Member State may or must refuse to execute a European arrest warrant if there is solid evidence that detention conditions in the requesting Member State are incompatible with fundamental rights, in particular art. 4 of the Charter<sup>166</sup>. While principles of mutual trust and of mutual recognition between the Member States are of

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<sup>161</sup> 8219/2/08 REV 2 COPEN 70 EJM 26 EUROJUST 31.

<sup>162</sup> 17195/1/10 REV 1 COPEN 275 EJM 72 EUROJUST 139 and 2017/C 335/1.

<sup>163</sup> *Aranyosi*, para. 88.

<sup>164</sup> Bovend'Eerd, K., 2016. The Joined Cases *Aranyosi and Căldăraru*: A New Limit to the Mutual Trust Presumption in the Area of Freedom, Security, and Justice?. *Utrecht Journal of International and European Law*, 32(83), pp.112–121. DOI: <http://doi.org/10.5334/ujel.337>

<sup>165</sup> C-182/15, *Petruhhin*, para. 16.

<sup>166</sup> Joined cases C-404/15 and C-659/15, para. 74.

fundamental importance within the Union, the Court recognized that limitations to these principles do exist in “*exceptional circumstances*”<sup>167</sup>. The Court stated that the prohibition against inhuman or degrading treatment or punishment “*is absolute in that it is closely linked to respect for human dignity, the subject of art. 1 of the Charter*”<sup>168</sup>. The fundamental rights are given priority over mutual recognition in this case.

To perform this assessment, the executing authority should rely on information that is “*objective, reliable, specific and properly updated*” on the detention conditions prevailing in the issuing state<sup>169</sup>. According to the CJEU, such information may be obtained from:

- Judgments from international courts (the ECtHR)
- Judgements from the courts of the issuing Member State
- Decisions, reports and other documents produced by bodies of the Council of Europe or under the protection of the UN<sup>170</sup>.

The Petruhhin-judgment has been further developed and nuanced in ensuing case-law<sup>171</sup>.

Moreover, the CJEU has also ruled that general deficiencies of judicial independence do not justify non-execution of an European arrest warrant in and of itself. Instead, the executing member state has to assess whether there are substantial grounds for believing that the person concerned will run a concrete risk of infringement of his or her right to a fair trial if surrendered to the issuing state on account of these general deficiencies<sup>172</sup>.

Eurojust has provided an overview of the case-law.<sup>173</sup> Furthermore, The European Commission has consistently followed up on the developing case-law<sup>174</sup>.

There are significant variations among Member States as to how the fundamental rights limitations apply in practice. On the back of the *Petruhhin*-judgment, the Council of the European Union requested Eurojust and the European Judicial Network to carry out a study of how cases of “*requests for the extradition of EU citizens by third countries are handled in practice*”. The report, published in November 2020, found numerous variations. It revealed major differences among Member States’ application of limitations, as well as when and how they consult their home Member State. Moreover, they found variations in the awareness of which authorities are relevant and competent to receive these communications and make the required decisions on behalf of the home Member State. The timing of the required consultation also varies. Requested Member States use different channels to exchange relevant information with the home Member State. Channels include central authorities under the framework decision on the European arrest warrant and extradition, European Judicial Network

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<sup>167</sup> Joined cases C-404/15 and C-659/15, para. 82.

<sup>168</sup> *Idem*, para 85.

<sup>169</sup> *Idem*, para. 89.

<sup>170</sup> *Idem*, para. 89.

<sup>171</sup> Cases of *Pisciotti* (C-191/16); *Ruska Federaija* (C-897/19 PPU); *Raugevicius* (C-247/17).

<sup>172</sup> Case C-216/18 PPU LM, para. 68.

<sup>173</sup> See reference to its significance C-419/23 para 10.

<sup>174</sup> See for example JAI 610 COPEN 206 EUROJUST 95 EJM 43.

contact points, Eurojust, diplomatic channels, police channels (such as Interpol and Sirene Bureaux) and liaison magistrates<sup>175</sup>.

Also subsequent to the *Petruhhin*-rule, the Council of the European Union has confirmed the limitations to the use of arrest warrants and the need to strengthen the setup for further safeguarding the fundamental rights of European Union citizens. In a Council conclusion concerning the way forward for the European arrest warrant, the Council concluded in November 2020:

*"1. [...] Cooperation in criminal matters and the exchange of information should reflect these ambitions and the application of common instruments must be further improved and developed.*

*2. The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA, EAW Framework Decision), which is the key instrument of judicial cooperation in criminal matters, has simplified and accelerated cooperation between Member States. It continues to make an essential contribution to meeting the Union's objective of providing its citizens with an area of freedom, security and justice.*

*[...]*

*5. The Council agrees that there is scope for improvement in the following areas:*

*[...]*

*B. Supporting executing authorities in dealing with fundamental rights evaluations,*

*C. Addressing certain aspects of the procedure in the issuing and in the executing Member State,*

*D. Handling requests to extradite EU citizens to third countries,*

*[...]"*

Despite the significant human rights challenges described, despite the calls for reforms, despite the emerging framework and proclaimed aspirations to ensure fundamental rights, and despite the continuing and well-documented concrete cases of political abuse of extradition instruments, the focus on supporting executing authorities in actually dealing with fundamental rights evaluations has received little attention and is not part of the mandate the Council has granted the EU Commission to open negotiations with Interpol. See further about the negotiations as part of the possible solutions below in section 4.2.1.

#### 4.1.2. C-505/19 on Interpol Red Notices

In 2020, the European Court of Justice explicitly addressed the question of how Member State authorities should handle Interpol Red Notices with a view to extraditing European Union citizens to third countries. In the case C-505/19, a German citizen sued the German Federal State to make them take the necessary steps to have a United States of America requested Red Notice for his arrest withdrawn and the Red Notice deleted. He argued that the subject matter of the notice had already

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<sup>175</sup> Eurojust and European Judicial Network, "Joint report of Eurojust and the European Judicial Network on the extradition of EU citizens to third countries", 2020; Committee on Civil Liberties, Justice and Home Affairs, European Parliament, (Rapporteur: Javier Zarzalejo) "REPORT on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI))", 2020.

been decided upon in Germany and that the notice violated the principle of ne bis in idem, CISA art 54 and CFR art. 50. Furthermore, the Red Notice, which had been implemented in other (also European) countries, effectively violated his right to free movement, TFEU art. 21.

On the matter of arrest and extradition, the Court distinguished between two situations: 1) when it has *not* been established that the Red Notice concerned the same acts as those in which the trial of the person concerned had been finally disposed of, and 2) when it has been established that the principle of ne bis in idem applies. The Court ruled that the mere possibility of the principle applying is not enough to prohibit a provisional arrest of a person, who is the subject of a Red Notice published by Interpol at the request of a National Central Bureau, due to the legitimate objective of preventing impunity. The continued arrest of a person is only precluded when it has been established that the ne bis in idem principle applies<sup>176</sup>. The Court stated that

*“the provisional arrest, by the authorities of a Contracting State or by those of a Member State, of a person in respect of whom Interpol has published a red notice, at the request of a third state” is not precluded, unless “it is established, in a final judicial decision taken in a Contracting State or in a Member State, that the trial of that person in respect of the same acts as those on which that red notice is based has already been finally disposed of by a Contracting State or by a Member State respectively”<sup>177</sup>.*

Until the executing authority has obtained information that establishes a final judicial decision taken in a Member State of the EU or Schengen that the trial, in respect of the same acts as those contained in the Red Notice, has already been finally disposed of, the authority is not prevented from making and upholding the preliminary arrest.

The Court did not consider the fact that Member State authorities do not have effective access to necessary information establishing that final judicial decisions have disposed of a trial against the subject person in another EU Member State, nor did it consider how authorities can get access to such information. Effectively, the Court sustained the primacy of mutual trust in collaboration with Interpol and third countries over individual fundamental rights of EU citizens.

Accordingly, even though the Court introduces the application of EU established limitations to the use of Red Notices and to communicating data in Red Notices, the Court does not solve the problem of how fundamental rights can be effectively ensured. Instead, it leaves it to EU Member States and EU institutions to take the responsibility to provide the necessary tools to make available required information to EU Member States for EU citizens to have their rights effectively enforced.

#### 4.1.3. The required information

It remains unclear what constitutes “final judicial decisions”, what it takes to “establish” a condition when a risk is real, and what fundamental rights provide for exceptions to the principle of mutual recognition. These examples of the lack of clarity are all grounds for expecting significant variation among EU Member States in the way Red Notices are handled.

Nevertheless, this does not prevent the EU or Member States from identifying categories of information that are necessary for Member States' authorities to properly consider and give effect to the fundamental rights limitations as ruled by the CJEU.

<sup>176</sup> C-505/19, para. 104.

<sup>177</sup> Idem, para. 106.



First, it is necessary for relevant authorities to be able to identify and effectively access information about final judicial decisions – be they prosecutorial or judicial – in other Member States – most acutely the home Member State of the individual subjected to a Red Notice request.

Second, it is necessary for relevant authorities to be able to identify and effectively access information about prior decisions to deny arrest/extradition in other Member States for the subject of a Red Notice request.

Third, it is necessary for relevant authorities to have access to updated and reliable information on human rights conditions in the requesting state – Member States and third countries alike – as well as case-law rulings on those conditions to be able to assess the concrete risk faced by the individual subject. This is a necessity that has been aired several times before.<sup>178</sup> As described above, this information could be communicated by way of judgments from international courts and from the courts of the issuing Member State, and by way of decisions, reports and other documents produced by bodies of the Council of Europe or under the protection of the UN.

These three categories of information would be useful on the level of Interpol National Central Bureaus as well as in the Interpol General Secretariat reviews. But for EU Member States to fulfil their obligations to safeguard European Union citizens' rights, the information needs to be accessible for the relevant authorities in EU Member States.

The question remains how EU Member States and European Union institutions can support a platform for the identification and communication of these categories of information.

## **4.2. Examples of platforms for exchange of information and their functionality**

### **4.2.1. Digital Platforms**

For more than a decade, the European Union has included the use of information technologies to facilitate the exchange of information effectively and securely between Member States. Both on the level of law enforcement, allowing police and other authorities to assist and collaborate across borders, and on the level of judicial procedures ensuring that judiciaries can assist across borders, the Council of the European Union, the Parliament and the Commission have pushed for furthering the digital initiatives both on EU and on Member State level. The most recent Covid-19 pandemic has accelerated the demand, the initiatives, and the implementation. The initiatives especially focus on the ability to transport information and documents from one Member State authority to another securely and effectively and on creating digital platforms that make available data and information unionwide for the purpose of enforcing common rules and standards.

The most important digital platform currently used is the e-CODEX (e-Justice Communication via Online Data Exchange). It is a collection of software products that allow Member States' judicial authorities, citizens and companies to exchange information securely and efficiently.<sup>179</sup> The platform is

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<sup>178</sup> See for example Council of Europe, 10429/17, *Comments and questions by the Commission on recent case-law of the Court of Justice of the European Union regarding the Framework Decision on the European arrest warrant*.

<sup>179</sup> About the platform, see <https://www.e-codex.eu/about> (last visited 2 December 2021)

constructed as a decentralised platform, which connects existing digital systems at national level. The platform is currently run by a consortium, but the Council for the European Union has called for a more permanent solution to the platform. The Commission has presented a proposal for an e-CODEX regulation with *"the potential to become the main digital solution for a secure transmission of electronic data in cross-border civil and criminal proceedings in the Union"*<sup>180</sup>.

e-CODEX is used by the e-evidence digital exchange system (eEDES), the e-Justice Portal, and a number of pilot projects. The Commission Communication informs that these include the voluntary digital exchange of claims under the European order for payment and the small claims procedure, the iSupport (an electronic case management and secure communication system for the cross-border recovery of maintenance obligations)<sup>181</sup>. E-Codex is also supposed to support the IT system to be established in the context of the new Service of Documents and Taking of Evidence Regulations.

The eEDES (e-evidence digital exchange system), which is operated on the E-Codex, is used by some Member States to digitally exchange investigation orders and mutual legal assistance requests. It was *"designed to directly improve the efficiency and speed of existing cooperation procedures, while ensuring the security of exchanges and enabling verification of the authenticity and integrity of transmitted documents. It is also designed to be interoperable with national case management systems"*<sup>182</sup>. The Commission recommends that all Member States connect to eEDES.

The SIS II, the second generation Schengen Information System platform, is built and managed by EU-Lisa<sup>183</sup>. The system is designed to support Member States' and selected EU agencies' exchange of information on people and objects in the fields of law enforcement, border control and vehicle registration. The system allows relevant Member State authorities to communicate and to inquire about alerts on persons and objects. Among others, it is on this platform that EU Member States communicate arrest alerts under the European arrest warrant system. As such the SIS II is with all likelihood the most often applied platform in the cross-border field of arrest warrants in Europe. Each Member State has a single point of contact (SIRENE Bureaus) to back up the digital system with supplementary information and coordination of necessary communication and other activities. With the reforms of the Schengen information system in Reg (UE) 2018/1860, 2018/1861 and 2018/1862, the system will contain further ID information, including biometrics, and Europol has increased operational access to the system. Ultimo 2020 the EU Commission issued a final proposal to allow Europol enter alerts into the system on the basis of third country information<sup>184</sup>.

The plans have only intensified in recent years. In its Security Union Strategy (2020) the EU Commission communicated an intention to ensure that law enforcement and justice practitioners have access to

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<sup>180</sup> Proposal for a Regulation of the European Parliament and of the Council on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1726, COM(2020) 712 final.

<sup>181</sup> Communication from the European Commission "Digitalisation of justice in the European Union A toolbox of opportunities" 2 December 2020, COM(2020) 710 final, p. 15.

<sup>182</sup> Idem, p. 16.

<sup>183</sup> European Union Agency for the Operational Assistance of Large-Scale IT Systems in the Area of Freedom, Security and Justice. See further [eu-LISA - SIS II \(europa.eu\)](https://europa.eu/eu-lisa).

<sup>184</sup> COM(2020) 791 final, 2020/0350 (COD), *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol*.



new tools for them to be able to cooperate between Member States and EU institutions in the field of justice<sup>185</sup>.

Both the EU Council and EU Commission have now framed plans to push for the necessary framework and platforms for digital communication among Member States and EU institutions in order for digital communication to be used as the default tool of cooperation in both law enforcement and judicial matters<sup>186</sup>. Among others, the Commission has proposed a toolbox with *“Legislative initiatives, to set the requirements for digitalisation in order to promote better access to justice and improved cross-border cooperation, including in the field of Artificial Intelligence.”*<sup>187</sup>

The EU Commission states that the eEDES should be developed further to enable secure communication also in light of the European Commission proposed e-Evidence Regulation, thus also encompassing interfaces with internet service providers<sup>188</sup>. Moreover, it is stressed that *“the technical components developed for eEDES could evolve into reusable tools for the digitalisation of EU cross-border civil, commercial and criminal legal acts. In this regard, the future scope of eEDES will be laid down in the legislative proposal on the digitalisation of judicial cooperation procedures.”*<sup>189</sup> Effectively, it is considered that the eEDES is also developed to be used for other judicial cooperation instruments in criminal matters than evidence<sup>190</sup>.

Also on the topic of access to information, the Commission recognises the challenges of ensuring individuals’ proper access to documents and information both domestically and cross-border wise. The Commission has put forward plans for further development of existing tools and available national systems. EUR-Lex and the European e-Justice portal already ensure some level of access to European documents, but access to individual case information continues to be problematic as does access to judicial information including case-law.

#### *A framework for interoperability of EU information systems*

On the back of previous digitalisation developments in the area of justice and security there is currently a strong focus building a framework for interoperability of the many digital platforms in the justice and security area. Most notably, Reg (EU) 2019/817 and 2019/818 establishing frameworks for interoperability among EU information systems in the fields of police and judicial cooperation, asylum and migration as well as borders and visa, now provide a pivotal legislative framework for future developments and the strategies and plans being developed in the EU to this end<sup>191</sup>. The framework

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<sup>185</sup> European Commission, “The EU Security Union Strategy”, COM(2020)605 final.

<sup>186</sup> Council Conclusions (11599/20) “Access to Justice – Seizing the Opportunities of Digitalisation” 8 October 2020; Communication from the European Commission “Digitalisation of justice in the European Union A toolbox of opportunities” 2 December 2020, COM(2020) 710 final.

<sup>187</sup> Communication from the European Commission “Digitalisation of justice in the European Union A toolbox of opportunities” 2 December 2020, COM(2020) 710 final.

<sup>188</sup> See Communication from the European Commission “Digitalisation of justice in the European Union A toolbox of opportunities” 2 December 2020, COM(2020) 710 final, p. 16 with reference to Regulation of the European Parliament and of the Council of on European Production and Preservation Orders for electronic evidence in criminal matters (COM(2018)225 final 2018/0108 (COD)).

<sup>189</sup> Ibid.

<sup>190</sup> Council Conclusions (11599/20) “Access to Justice – Seizing the Opportunities of Digitalisation” 8 October 2020.

<sup>191</sup> Regulation 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008,

brings together a number of information systems under a single point of entry – the European Search Portal (ESP). Put simply, with a single search, a Member State authority would be able to search in all the information systems simultaneously. The preamble para. 13 of Reg. 2019/818 states:

*“The ESP should be established to facilitate technically the fast, seamless, efficient, systematic and controlled access by Member State authorities and Union agencies to the EU information systems, to Europol data and to the International Criminal Police Organization (Interpol) databases, insofar as this is needed to perform their tasks in accordance with their access rights. The ESP should also be established to support the objectives of the EES, VIS, ETIAS, Eurodac, SIS, ECRIS-TCN and Europol data. By enabling all relevant EU information systems, Europol data and the Interpol databases to be queried in parallel, the ESP should act as a single window or ‘message broker’ to search the various central systems and retrieve the necessary information seamlessly and in full respect of the access control and data protection requirements of the underlying systems.”*

About this “single window”, article 6 of Reg 2019/818 provides:

***“European search portal***

1. *A European search portal (ESP) is established for the purposes of facilitating the fast, seamless, efficient, systematic and controlled access of Member State authorities and Union agencies to the EU information systems, to Europol data and to the Interpol databases for the performance of their tasks and in accordance with their access rights and the objectives and purposes of the EES, VIS, ETIAS, Eurodac, SIS and ECRIS-TCN.*
2. *The ESP shall be composed of:*
  - (a) a central infrastructure, including a search portal enabling the simultaneous querying of the EES, VIS, ETIAS, Eurodac, SIS, ECRIS-TCN as well as of Europol data and the Interpol databases;*
  - (b) a secure communication channel between the ESP, Member States and Union agencies that are entitled to use the ESP;*
  - (c) a secure communication infrastructure between the ESP and the EES, VIS, ETIAS, Eurodac, Central SIS, ECRIS-TCN, Europol data and the Interpol databases as well as between the ESP and the central infrastructures of the CIR and the MID.*
3. *eu-LISA shall develop the ESP and ensure its technical management.”*

The information systems among others include the Schengen Information System, Europol Data, the Visa Information System, and EU's Asylum fingerprint database, Eurodac. The framework allows for sharing biometric matching service and allows for “multiple identity detector”, enabling identification of persons operating with multiple identities. The main bulk of information systems described in the regulation as accessible through the search portal are EU information systems. However, the frameworks allow access to selected Interpol databases. These are the SLTD – the database for stolen and lost travel documents and the TDAWN – the database for Interpol travel documents associated with Interpol notices. The latter provides information on possible Red Notices.

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(EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA; Regulation 2019/818 of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.

As an important tool to facilitate the interoperability, the framework provides for a “Uniform message format (UMF)”. Article 38 further describes:

1. *The universal message format (UMF) standard is hereby established. The UMF defines standards for certain content elements of cross-border information exchange between information systems, authorities or organisations in the field of Justice and Home Affairs.*
2. *The UMF standard shall be used in the development of Eurodac, ECRIS-TCN, the ESP, the CIR, the MID and, if appropriate, in the development by eu-LISA or by any other Union agency of new information exchange models and information systems in the area of Justice and Home Affairs.*
3. *The Commission shall adopt an implementing act to lay down and develop the UMF standard referred to in paragraph 1 of this Article. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 70(2).*

The universal message format allows the framework to standardise how information is shared across information systems. Of significance is also the central repository to support the interoperability and use of the individual information systems. Article 39 stipulates:

*“A central repository for reporting and statistics (CRRS) is established for the purposes of supporting the objectives of the SIS, Eurodac and ECRIS\_TCEN, in accordance with the respective legal instruments governing those systems, and to provide cross-system statistical data and analytical reporting for policy, operational and data quality purposes”.*

The central repository contains only anonymous data. Tools necessary for anonymising data must be ensured together with a secure communication infrastructure to connect the repository to the individual information systems.

In line with the EU Parliament’s comments to earlier proposals the regulation makes explicit reference to quality of data and data protection as essential aspects of the framework for the European Search Portal. The regulation provides specific rules on the management of data, and gives competence to the eu-LISA to develop the institutional framework for ensuring quality of data. Member State authorities and EU agencies with access may use “at least one of the EU information systems in accordance with the legal instruments governing those EU information systems,” article 7 (1). The authority collecting the personal data is accountable to the persons registered. Furthermore, any person has the right to “address himself or herself to the competent authority of any Member State, which shall examine and reply to the request”. Moreover, a web portal is to be established to facilitate the “exercise of the rights of access to, rectification, erasure or restriction of processing of personal data,” article 49. Among others, the provision stipulates that the portal shall provide citizens with contact details and template e-mails to the authorities competent to handle their requests.

The regulation makes standardised references to the need to adhere to the “principles recognised in particular by the Charter of Fundamental Rights of the European Union”. Enforcing fundamental rights is referenced in the preamble and in article 5 of the regulation:

*“Processing of personal data for the purposes of this Regulation shall not result in discrimination against persons on any grounds such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It shall fully respect human dignity and integrity and fundamental rights, including the right to respect for one’s private life and to the protection of personal data. Particular attention shall be paid to children, the elderly, persons with*

*a disability and persons in need of international protection. The best interests of the child shall be a primary consideration."*

At the same time, the regulation does not define what information needs to be exchanged to enforce these fundamental rights. The regulation does not provide for an institutional responsibility to this end nor does it prescribe necessary procedures to enforce fundamental rights of EU citizens. There is no reference to the risk of politically motivated Red Notices despite continuous calls from the European Parliament on this matter.

### *Negotiating agreement with Interpol*

In its EU Union Security Strategy, the Commission stated that it would *"look at possible ways of reinforcing cooperation with Interpol, including possible access to Interpol databases and the strengthening of operational and strategic cooperation."*<sup>192</sup> It is with this in mind that the EU Council authorised the Commission to open negotiations for a cooperation agreement between the European Union and Interpol<sup>193</sup>. Any negotiated agreement relies on the respective parties' legal mandate to enter into agreement. It should be borne in mind that each of the EU Member States' police authorities are also members of Interpol. Even though Interpol does have the standing as an international organisation, it cannot escape attention that Interpol members are also European Member State authorities and that European police authorities in this regard have structural ties to both negotiating parties.

The authorisation for the EU Commission to negotiate carries three objectives. First, *"to provide safeguards and guarantees needed to give controlled access by Member States and EU agencies to Interpol databases via the European Search Portal"* (the e-Justice Portal). Second, to *"regulate cooperation between Europol and Interpol"*. Third, to give Frontex and EPPO access to Interpol databases and *"allow Eurojust to exchange operational information with Interpol"*. Among other things, the objectives include securing the legal foundation for exchange of operational information between Eurojust, EPPO and Interpol.

The preamble as well as the Annex to the Council Decision giving the EU Commission mandate to negotiate the agreement with Interpol make references to the required respect for fundamental rights in reaching collaborative solutions with Interpol. It does not make specific rights-based boundaries for the negotiation.

It is noteworthy that despite the multiple observations made by the European Parliament on the reliability problems with Interpol Red Notices, despite the continuous documentation of politically motivated Red Notices and the significant negative impact they have on the lives of those affected, the mandate to the Commission does not make such reference and does not invite the Commission to let such problems be part of the negotiations.

The negotiations for the cooperation agreement with Interpol have commenced ultimo 2021.

<sup>192</sup> European Commission, "The EU Security Union Strategy", COM(2020)605 final, p. 23.

<sup>193</sup> Council Decision authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organisation (ICPO-INTERPOL) (10407/21) 6 July 2021. See also the Recommendation for Council Decision authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organisation (ICPO-INTERPOL) 14 April 2021, COM (2021) 177 final.

#### 4.2.2. Human-based network support

In the context of how transnational platforms perform, it is necessary to touch upon the role of human-based networks. Within domestic systems, in regional systems and in global setups, the existence of human-based reliable contact-points continues to be indispensable for the effective operation of the exchange of information.

In the European sphere, the European Judicial Network (EJN) is the best-known network assisting Member State authorities in exchanging relevant information<sup>194</sup>. The network functions by establishing contact points, which are active *“intermediaries with the task of facilitating judicial cooperation between Member States”*. The contact points are developed and maintained by the EJN secretariat. Since 2016, a digital exchange system (eEDES Portal) has been under development to allow domestic authorities identify and reach out to authorities in other Member States, thereby also integrating network-based and digital platforms. The EJN Atlas guides users to relevant sources, offices and contact points in other Member States.

The EJN secretariat also develops and maintains working relationships with other networks and authorities in third countries. This ensures that contacts are updated and that a working relationship has already been established when the practical need arises. EJN has operational capacity to maintain working relationships with Iceland, Lichtenstein, Norway and Switzerland and with European Union candidate countries. Furthermore, the EJN maintains partnerships with other judicial networks and third countries<sup>195</sup>.

The EJN does not establish a legal foundation of information sharing of its own but relies on existing legal and procedural frameworks. The EJN is already a key player in the facilitation of effective execution of European arrest warrants and securing of evidence (and e-evidence) among others.

Another platform, also secondary in its reliance on primary legal frameworks of judicial cooperation, is the EuroMed Justice platform and network. It began as a capacity building programme to further judicial collaboration in the Mediterranean region and has by now incrementally developed solid contact points (Crimex Contact Points) for judicial and law enforcement authorities in all cross-regional countries. It sets itself apart from the EJN by its strong reliance on the development of standardised tools and procedures. It is funded by the European Commission and currently managed through Eurojust.

Examples from other regions serve to illustrate important strengths and weaknesses. The Greater Horn of Africa International Cooperation Network (GHAICN) is a capacity building platform that aims to enable efficient judicial cooperation in the greater region of the Horn of Africa. It is secondary and relies on already existing legal and procedural frameworks of the authorities in its partner countries. Its principal tools are connecting points of contact and making available the relevant legal framework and developed standard protocols on a confidential digital platform. The network has limited support assistance. The region is characterised by authorities with high frequencies of staff changes and limited institutional memory.

Established in 2013, the West African Network of Central Authorities and Prosecutors in Africa (WACAP) is designed to strengthen capacity and operational cooperation among authorities responsible for international cooperation in criminal matters and supporting prosecutors/magistrates. It is a secondary network. Like the GHAICN the focus is to establish reliable contact points and effective knowledge

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<sup>194</sup> Council Decision 2008/976/JHA on the European Judicial Network.

<sup>195</sup> European Judicial Network report on activities and management 2019-2020, p. 32.

sharing among jurisdictions. Like the GHACN it is characterised by comparatively limited secretarial assistance.

The Great Lakes Judicial Cooperation Network (GLJCN) allows for contact points for regional judicial cooperation. The network seeks to facilitate cooperation in cases with cross-border impact on peace and security. The network seeks to apply the ICGLR protocols on judicial cooperation to facilitate effective case handling even in the absence of formal agreements on mutual legal assistance<sup>196</sup>. With the Nairobi Declaration on Justice and Good Governance (adopted on 15 May 2019), ICGLR countries have committed to the effective application of its resources to enforce the network.

These examples of networks for sharing information all facilitate contact points to ensure effective (or at least better) exchange of case-related information as well as secondary information and knowledge sharing in general. There is a significant variation as to what resources go into supporting and maintaining these contact points and to facilitating the actual exchange of information.

Furthermore, the networks are used as means to develop legal and practical standards, protocols and guidelines – creating a consistent legal and practical framework for judicial collaboration. As such they represent a growing tendency to develop shared standards horizontally, rather than top-down. Also in this respect there is a wide disparity between the networks. Euromed Justice stands out as the one providing both integrated development of standards involving the contact points and by following up with relevant and targeted training programmes.

Third, the networks themselves do not establish a legal framework for information sharing, but rely fully on existing legal and procedural frameworks.

Fourth, only few of these networks invest in strong secretariats to develop and support effective contact points within the region and outside of the region. The reality is that it is only from these networks access to case-based information in other jurisdictions is accessible. Furthermore, only in these networks, updated legal and procedural guidance and tools for CPs and relevant authorities are possible.

Fifth, there is a significant variation as to the involvement of authorities and their access to the network. EuroMed Justice appears to be the only one which involves all three for each domestic party. For other networks there is a significant variation and to what extent they involve judicial, prosecutorial and/or police authorities.

Finally, some networks provide for a confidential collaborative digital space. This is the case, for example, with the Council of Europe's PC-OC – the Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters, as it is with the GHACN platform. Their website contains a confidential forum in which members may log on to view relevant information and to discuss directly with each other. This is also a space for shared working documents.

### **4.3. Selected models for platforms to exchange required information?**

Based on the above descriptions there are several possible frameworks through which the EU can facilitate EU Member States' exchange of necessary information to address the problem of politically motivated Interpol Red Notices.

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<sup>196</sup> See [www.icglr.org - Protocols](http://www.icglr.org - Protocols). Last visited on November 21, 2021.



#### 4.3.1. Digital platforms and information systems

Comparatively, digital platforms have the advantage that they make data instantly accessible to officials in all Member States. The official in a Member State would be able to access data – or at least be informed that data exists (hit/no hit) – instantly. Moreover, the data is consistent and the same regardless of access point and does not rely on an official's will or resources to contact another official in another state.

In the field of arrest warrants, the Schengen Information System II has become the most important digital platform for these purposes. It gives access to both Member State authorities and to Europol and Eurojust. Both technically and institutionally, the platform is useful. It is already applied to exchange information on arrest warrants in the Schengen area and to communicate notes, flags, corrections and deletions to warrants in that system. However, the legal framework to apply the Schengen system for the present purposes is questionable. There is no legal mandate to extend the Schengen Information System to harbour Interpol notices or notes, flags or other comments to Interpol notices. Moreover, the scope of application of SIS II and Interpol, while similar, is not identical.

The Eurodac – the EU's asylum fingerprint database – contains important information for present purposes. However, only border officials and asylum officials have direct access to the database, leaving several groups of relevant officials without such access.

To sum up, the current digital solutions provide for selected databases that are of some interest. They are not coordinated and access is not consistent across professional groups. Most importantly, none of the databases contain significant parts of the required information to allow officials to evaluate the risk that a Red Notice is politically motivated.

#### 4.3.2. Human-based network support systems

There is substantial experience with establishing and maintaining contact points in all EU Member States to ensure effective and reliable access to information about earlier judicial decisions and/or earlier denials of arrests and extraditions. Under the Schengen system there is already a system in operation and the European Judicial Network similarly supports a network – in many jurisdictions the same contact points.

The human-based network support system functions by allowing officers of authorities in requested Member States to immediately contact authorities in other Member States with a view to ascertain information and to acquire necessary information about earlier judicial and prosecutorial decisions as well as information on refugee status. Furthermore, as we have seen in the EuroMed Justice project, the network functions to develop guidelines and other tools horizontally rather than vertically, reflecting actual working procedures.

The existing Law Enforcement Directive (LED) provides the necessary legal data protection framework to request and communicate concrete case-related data for inquiries about Red Notices and possible fundamental rights infringements or other questions concerning the legitimacy of an arrest warrant and extradition between Member States. Furthermore, the same legal framework requires Member States to correct and delete data when there is no longer basis for arrest and prosecution. There is currently no foundation for transfer of this data to Interpol.

For these networks to function effectively and reliably, they require support from a central office. The European Judicial Network has such support. However, in its current setup, the European Judicial

Network does not provide a 24/7 service. As such the network would only be able to operate 24/7 to the extent the domestic authorities in question would allow it. This is a serious limitation.

Relying on a human-based network alone has the serious disadvantage that it only provides a possibility – perhaps backed by regulatory requirements – to reach out to authorities in other Member States – it does not confront the officer in the requested Member State with information *that* an earlier judicial decision has or may have been reached, *that* other Member States have already denied extradition, *or* that other important information is available. It leaves it in the hands of the officer to find out and decide how to proceed based on the practical and organisational realities of that particular authority and Member State. Network-based support systems perform better in combination with other primary platforms for the exchange of information. The substantial responsibility left in the hands of the officer invites for significant variation between Member States. Recognising this significant variation between Member States, substantial support to the Member States in handling arrest warrant information is required at the very least. Shared knowledge platforms, case-law collections, standards and protocols, digital or analogue, are possible tools. The EU Commission's already published and soon to be updated handbook on the arrest warrants is one example.

In practice, one of the significant weaknesses in effective cross-border exchange of information is not knowing who to contact or not having an established communication channel through which to follow up. Limitations not regarded, professional networks are solutions to this weakness.

#### 4.3.3. The European Search Portal

Even though the legal framework for the European Search Portal is in place, there are legitimate concerns as to whether the search portal will be operational by 2023 as planned<sup>197</sup>. Too many required parts are still not ready. As such it does not address the immediate fundamental rights problems. Nevertheless, there is good reason to ask if the European Search Portal could address the problem of politically motivated Red Notices going forward<sup>198</sup>.

First, as to the data made available through the portal as designed, it gives officials in the requested Member State direct access to data in the Schengen Information System and simultaneously a hit/no hit on information in the asylum fingerprint database. Simultaneous to the available information on a possible Red Notice request on the person in question, the official will also be informed of relevant notes or flags in the Schengen Information System, and through the Common Identity Repository will be informed if there is a hit/no hit in the Eurodac database.

In and of itself, this can be a most relevant tool that can prove significant against politically motivated Red Notice requests in some situations. Making the many different results available simultaneously

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<sup>197</sup> See e.g. Opinion of the European Economic and Social Committee on Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226, 10 August 2018, page 54.

<sup>198</sup> This does not deal with the discussions if the portal as designed sufficiently respects data protection rules and fundamental rights of EU-citizens and third country citizens alike. See Casagran, Cristina Blasi, "Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU" in Human Rights Law Review, 2021, 21, pp. 433–457.



provides a tool to challenge wrong, conflicting or limited data in the Interpol Red Notice. As such, in and of itself, the search portal could be an advantage<sup>199</sup>.

However, as designed the European Search Portal does not provide data on other information needed to allow Member States to enforce fundamental rights of EU-citizens. The missing data includes data on earlier denials of Red Notices in EU Member States, data on final judicial decisions in the case in question, data on human rights conditions in the requesting state, as well as data on how the specific requesting state's earlier requests for arrest with a view to extradition have been dealt with by EU Member States.

It can be argued that the central repository for reporting and statistics referenced in article 39 of regulation 2019/818 provides a sufficient legal framework for managing data on requesting states and statistical data on earlier requests for arrests. But there is no support for an argument that the current legal framework similarly allows for access to Member States' data on earlier and final judicial decisions nor earlier denials of extradition apart from data already made available through the Schengen Information System.

If we consider what *could* be made possible through the European Search Portal, the first observation is that technically it would be possible to allow all above-mentioned categories of data to be accessed through the search portal. Second, there is a legal framework in place to produce the necessary procedural infrastructures to address the personal data rights of EU-citizens involved on the level of the search portal.

On the other hand, a number of necessary structures are *not* in place and would need to be developed. First, an institutional framework is required to ensure production of the data on the requesting state in the central repository. Depending on the data collected on requesting states and how critical that data is, an office or agency with sufficient degree of institutional authority is necessary.

Second, as to the other categories of data, there is an overarching legal framework allowing the European Search Portal to make data available, to provide suitable access points for EU-citizens and to bind several EU-institutions as well as Interpol to the platform. However, there is *not* a legal or institutional framework for the necessary underlying databases accessed through the platform. This is the case for data on final judicial decisions in cases with a Red Notice pending, and it is the case with data on earlier denials of arrest and extraditions, where these are not already accessible through in the Schengen Information System. For the European Search Portal to provide data on these categories of data, it would be necessary to expand the legal framework of the portal in art. 6 of Reg (EU) 2019/818 to allow for new databases or information systems to be included.

Furthermore, it would be necessary to create the necessary institutional and procedural framework for new databases to secure access to the relevant information, to secure and manage it and to ensure that EU-citizens can exercise their rights to their personal data. The new databases would need to be organised centrally, but could work so to make data available to Member States and authorised EU agencies only.

For the information on earlier denials of arrest and/or extraditions based on Red Notice requests, the information could be submitted by the relevant Member States on a routine basis. Necessary procedures would need to be developed to this end within existing legal framework. For the information on earlier judicial decisions concerning a case in a Red Notice request, there could be made

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<sup>199</sup> European Union Agency for Fundamental Rights, *"Fundamental rights and the interoperability of EU information systems: borders and security"*, 2017, at 30.

an optional access for Member States to submit final judicial decisions. There could also be made a possibility for individual EU-citizens to submit – through their Member State – data on final judicial decisions. To respect a principle of limitation of personal data, information on final judicial decisions from Member States could be made hit/no hit result through the European Search Portal.

As the search portal has yet to function, currently these categories of data on earlier decisions in Member States can only be accessed by relying on human-based networks and contact-points in EU Member States. This could be in the shape of Sirene contact points or European Judicial Network contact points (often the same). This also means that it can only be accessed with a time delay depending on the Member States in question.

The strength of relying on the European Search Portal in the future as a tool to ensure access to the necessary data is first and foremost that it would become part of the interface that officials in Member State authorities will be using in their daily operations. Data would be made available in the relevant context. Furthermore, the particular strength would be that there is a real-time access to possible information next to the hit/no-hit data on other information in the European Search Portal 24/7.

The European Union Agency for Fundamental Rights describes in its report on the interoperability of EU information systems that surveys show significant proportion of wrong matches and inaccurate data in both the Visa Information System (VIS) and the Schengen Information System (SIS II)<sup>200</sup>. This problem of data quality is recognised and addressed accordingly in the regulations 2019/818 and 2019/817. Nevertheless, it remains a considerable concern how the integrity and correctness of data will be ensured in the practice of the European Search Portal. The fact that it is different institutions responsible for the underlying databases, and the fact that there is no access of Member States or EU agencies to correct Interpol data, puts emphasis on this concern. Moreover, based on earlier cases in the contexts of the Schengen Information System, the European Union Agency for Fundamental Rights also observes that there is a risk of unlawful use of personal data both directly and indirectly<sup>201</sup>. Furthermore, it remains doubtful to what extent individual EU-citizens would have an effective access to address their rights through the European Search Portal. Except for a platform and the legal provision stipulating the rights of citizens, the current design has yet to present effective institutions or procedures to this end.

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<sup>200</sup> European Union Agency for Fundamental Rights, *"Fundamental rights and the interoperability of EU information systems: borders and security"*, 2017, at 30.

<sup>201</sup> *Idem*, at 25-28.

## 5. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

### KEY RECOMMENDATIONS

With regard to modelling an effective review and redress mechanism in Interpol for the future

*The European Parliament should call on the EU Commission to include the production of a forecast analysis and modelling of review processes that account for high volume cases and decentralised review/update processes in the negotiations with Interpol as an area of collaboration.*

With regard to procedural and substantive improvements (in prioritised order)

*(1) the European Parliament could call on the EU Commission to include in the legal tools currently under development to support the European arrest warrant system, the processing of arrests and warrants requested by Red Notices.*

*(2) the European Parliament could call on the Commission to include in the negotiations with Interpol an item to have Interpol produce, update and make available procedural tools on the legal handling – including rights-based boundaries – of Red Notices.*

*(3) the European Parliament could call on the Commission to include in the negotiations with Interpol an item to have Interpol produce yearly statistical data on processing of requests for Red Notices with data on country of request, criminal offence category, review outcome, reason for denials, and use of available sanctions against member countries. If this is not achieved, the European Parliament could call on the EU Commission to ensure that statistical data on Member States' handling of requests for Red Notice arrests are developed for all European Union Member States.*

*(4) based on the statistical data, the European Parliament could call on the Commission to include in the negotiations with Interpol an item to have Interpol develop public risk profiles of Red Notice requesting countries.*

*(5) the European Parliament could call on the EU Commission to include a mechanism for EU to formulate and monitor the agenda of reform initiatives with regard to Red Notices, in the current negotiations for a collaboration agreement with Interpol.*

With regard to institutional support of platforms for exchange of relevant information:

*(1) the European Parliament could call on the EU Commission to take initiative to further develop the legal and institutional framework of the European Search Portal to include a database on final judicial decisions related to existing Red Notices, a database on prior decisions on arrest and extraditions related to an existing Red Notice, and a repository with relevant and updated human rights information on requesting countries.*

*(2) the European Parliament could call on the EU Commission to take initiative to develop and administrate databases on final judicial decisions related to existing Red Notices, a database on prior decisions on arrest and extraditions related to an existing Red Notice, and a database with relevant and updated human rights information on requesting countries.*

**KEY RECOMMENDATIONS (continued)**

(...)

*(3) to support access and exchange of data, the European Parliament could call on the EU Commission to involve the European Judicial Network in the design of best practices when connecting to other authorities in Member States and when exchanging information concerning Red Notice warrants.*

*(4) the European Parliament could call on the EU Commission to establish an office to support the update of relevant data, the administration of the databases, and to coordinate the update and prepare procedural and legal guidelines to ensure fundamental rights of citizens going forward.*

## **5.1. Summary and conclusions**

The European Parliament, together with other international institutions, have addressed the misuse of Interpol Red Notices and diffusion orders and in particular the politically motivated misuse on a continuous basis.

Based on significant funding contributions from the European Union among others, Interpol has reformed its review processes, strengthened its support systems for the NCBs in member countries and has reformed the setup and functioning of the Commission for the Control of Files, giving individuals subjected to notices an easier way to complain over decisions by the Interpol's General Secretariat. Most recently, a Data Protection Officer has been appointed spearheading a focus on the proper handling of personal data in both the General Secretariat and the National Central Bureaus of Interpol.

Even taking these and similar significant reforms into account, reports of misuse continue to be detected. Moreover, many of the calls for reform since 2014 have yet to be addressed. For example, a substandard set of legal and procedural tools for the proper review of Red Notices continues to be the only one available. There are no available updated case collections on the application of art. 2 and art. 3 concerning fundamental rights and the principle of neutrality. There is no available step-by-step handbook comparable to the European Arrest Warrant Handbook, which is soon to be published in an updated version. Also, despite earlier calls, a lack of even rudimentary transparency in the operations of the Interpol notice system persists, a fact which resonates poorly with the significance of Interpol in an increasingly globalised world of policing, increasing funding contributions from major donors, and the significant impact notices have on individuals.

The number of notices in circulation has increased significantly. From 2016 to 2020, the number of Red Notices increased by 40 %. The number of diffusion orders in circulation increased by 77 % between 2010 and 2016<sup>202</sup>. Later figures are not available. Interpol has responded to these increasing numbers with more human resources for reviewing notice requests and diffusion orders. It is questionable to what extent these resource increases sufficiently address the fundamental challenge that flows from the increasing numbers of Red Notice requests and diffusion orders, and questionable if reforms and

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<sup>202</sup> The difference in years applied is due to the lack of statistical data.

resource support of the current setup can provide a long-term solution that prevents politically motivated Red Notices and diffusion orders to arrest.

National Central Bureaus operating locally in every Interpol member country play a central role in the notice system making the initial review when submitting requests for notices. It is the NCBs that update their domestic databases with notices. Considering the high number of National Central Bureaus globally, the strong diversity of resources that go into supporting and updating these functions domestically, and considering that all bureaus are operated by staff that are under the hierarchical and financial control of the domestic authority, it is unlikely that National Central Bureaus will function as a sufficient and effective review mechanism against domestic politically motivated Red Notice requests, and it is unlikely that they will serve effectively to update Interpol data on a local level without significant inconsistency globally as a result. Increasing numbers of notices will only exacerbate these problems.

With these structural problems in mind, it is an important conclusion of this paper that currently there is no public plan for how Interpol can maintain a solid review to prevent human rights violations and ensure effective updates and continuous reviews of Red Notices and diffusion orders in circulation as we move into the future.

It is noteworthy that leading up to the 89<sup>th</sup> General Assembly in November 2021, many civil society organisations have focused on the seeming contradiction between the need to further the safeguard of human rights in the processing of Red Notices and the candidates for the Interpol Presidency, among others, including the United Arab Emirates (Presidency) and the People's Republic of China (Executive Committee).

Already for this reason, it is important that the European Union not only pushes for further reform of Interpol, but also takes necessary actions within the European Union to ensure the rights of European Union citizens against the risk of politically motivated Red Notices within the Union.

Since 2016 the Court of Justice of the European Union has developed case-law on restricting arrests and extraditions to third countries in the realm of the European arrest warrant system and most recently also ruled on restrictions to arrest and warrants based on Interpol Red Notices from third countries.

The case law leaves some uncertainty as to which fundamental rights bar arrest and extradition and under what conditions. However, the case law does provide guidance as to what information is relevant for domestic authorities to fully apply the rights-based legal limits to extradition under the Red Notice system. The Court also makes it clear that Member States have an obligation to ensure that citizens have access to erase and correct information in Red Notices if there is no legal basis for processing the notice. However, the case law effectively leaves it to the EU and domestic authorities to ensure that the necessary information and data is made available to domestic authorities for them to enforce fundamental rights.

It is to this end that the European Union institutions and Member States have a possibility to ensure facilities for the cross-border exchange of information required. Practically speaking, all Member State authorities handling Red Notice requests for arrest need to be able to effectively receive reliable information on:

- Final judicial decisions in other Member States covering the area of a specific Red Notice request
- Previous denials of Red Notice requests for arrest based on mandatory or fundamental rights grounds from any other European Union Member State

- Objective, reliable, specific and properly updated information on the human rights issues in question in the requesting third country relevant to the case

Technically, the European Union has developed digital software platforms in the area of security and justice that enable information exchange between Member State authorities, EU Institutions and for some also EU citizens. The European Search Portal is designed to give access to the numerous individual databases through a single portal.

Legally, the EU Member States may exchange information within the framework of the LED and, thus, within the framework of already existing legal boundaries. This is already possible to do through existing human-based professional networks.

The Schengen Information System provides a framework for exchanging information about arrest warrants within the Schengen system. This includes an access to communicate secondary information, notes and flags. However, the framework does not extend to Interpol Red Notices.

The information that needs to be exchanged to ensure proper safeguards has to be exchanged directly and fast between EU Member States. To this end, the legal framework for the European Search Portal provides a general framework. However specific mandates for including new databases with final judicial decisions and databases with earlier arrest- and extradition decisions need to be developed and included.

Procedurally, the EU Commission has already produced general case-law collections and handbooks in the field of European arrest warrants. The planned updated handbook could also include guidance on Red Notices and the specific information required to enforce EU-based rights, how effectively to exchange information to this end, and how to ensure citizens their data protection rights. There is a strong argument to maintain the Commission as the provider of this procedural tool.

Furthermore, support of human-based networks is required. In the European area, the European Judicial Network has developed into becoming the most important one, establishing contact points in each Member State and integrating digital platform for secure exchange of information.

## 5.2. Recommendations

### 5.2.1. Recommendations with regard to modelling an effective review and redress mechanism for the future

The continuing increase in total numbers of Red Notices and diffusion orders in circulation pushes the current notice system to its limits. Combined with a system through which requests are made in National Central Bureaus and, thus, under the authority of member countries' authorities, and a complaint system that is bound to continue to experience significant delays in processing time, Interpol's notice system will face systemic problems going forward. Addressing these problems will likely be the most important contribution to addressing the risk of politically motivated Red Notices. How can an effective review process of high volume case loads that allows notices to be circulated and still ensure fundamental rights to be observed in the frontend be designed? How can routine screening of notices take place? What can an effective complaint mechanism look like?

To address these systemic problems, an analysis containing a number of forecast models for effective review and complaint mechanisms handling large number of notices needs to be carried out. A part of this analysis should be to consider redesigning the current setup. The analysis must be carried out by Interpol, but could have the EU Commission as close collaborator.



To this end, the European Parliament should call on the EU Commission to include the production of a forecast analysis and modelling taking into account the high volume case loads in the negotiations with Interpol as an area of collaboration.

### 5.2.2. Recommendations with regard to current procedural and substantive enforcement of legal standards

A lack of practically available and standardised legal tools to help practitioners in all relevant institutions distinguish between legitimate Red Notices from those that are politically motivated continue to prevail. In this paper five ways – in order of prioritisation – to address this issue are recommended.

First, the European Parliament could call on the EU Commission to include in the handbook and other legal tools currently under preparation in support of the European Arrest warrant system, the processing of arrests and warrants requested through Red Notices. This would be a significant contribution to the ability of Member States' authorities to implement the rights-based restrictions more consistently and to ensure for EU citizens the right to free movement among others. It should include step-by-step guidelines for all Member States on how to handle Red Notice requests (deciding on, communicating, updating, erasing, inserting notes), and on how to exchange relevant information through preferred digital platforms and professional network-based platform.

Second, the European Parliament could call on the Commission to include in the negotiations with Interpol an item to have Interpol produce, update and make available procedural tools on the handling – including rights-based boundaries – of Red Notices ensuring consistent and transparent processing of requests, reviews, challenges, corrections, and deletions. This would also include individuals' access to redress, corrections and deletions. A handbook could be developed in the shape of a step-by-step tool, a procedural guideline or a more traditional handbook. On all accounts, it must serve as basis for future accountable digital support in a review process.

Third, the European Parliament could call on the Commission to include in the negotiations with Interpol an item to have Interpol publish yearly statistical data on processing of requests for Red Notices with data on country of request, criminal offence category, review outcome, reason for denials, and use of available sanctions against member countries.

Fourth, if this is not achieved, the European Parliament could call on the EU Commission to ensure that statistical data on Member States' handling of requests for Red Notices are developed for all European Union Member States.

Fifth, based on the statistical data, the European Parliament could call on the Commission to include in the negotiations with Interpol an item to have Interpol develop public risk profiles of Red Notice requesting countries. These profiles are necessary to evaluate the risk of abuse associated with the requesting countries. Furthermore, they can serve as tools to evaluate the effectiveness of the enforcement mechanisms of Interpol.

Six, in connection with the ongoing negotiations for a collaboration agreement between the EU Commission and Interpol, the European Parliament could call on the EU Commission to include a mechanism for EU to formulate and monitor the agenda of reform initiatives with regard to Red Notices. This could be in the form of reporting progress of implementation but could also include statistical measures of impact (number of submissions and denied requests).

While reiterating earlier recommendations from the European Parliament and the Council of Europe, it is also stressed that the European Parliament could call on Interpol to make use of its oversight mechanisms to enforce that its National Central Bureaus abide by data protection legislation and good practice, including updating and erasing personal data when required. Accordingly, the current setup with data protection officers in National Central Bureaus globally, each under their respective authority, is insufficient to ensure consistent and effective implementation of the organisation's personal data protection rules.

### 5.2.3. Recommendations with regard to institutional support of platforms to facilitate the exchange of information between the EU and EU Member States to avoid politically motivated Red Notices

The evidence suggests that Interpol will not be in a position to effectively implement current standards to prevent the circulation of politically motivated Red Notices and diffusion orders.

With recent case law from the Court of Justice of the European Union, EU Member States have an obligation to ensure that processing of Red Notices, including both communicating requests for warrants, performing preliminary arrests and finally extraditing EU-citizens to third countries, take place within the EU rights-based legal boundaries. To this end, each EU Member State has to have an effective access to data on prior decisions on arrest and extraditions in other EU Member States, associated with a Red Notice, to data on final judicial decisions relevant to a Red Notice and to data on the human rights standards in requesting countries.

Both digital platforms and human-based networks to facilitate the information exchange already exist. As such, the most important actions are to ensure the proper functioning and further development and synergies of these platforms and tools. The European Search Portal is the most promising means to ensure proper access to data.

First, the European Parliament could call on the EU Commission to further develop the legal and institutional framework of the European Search Portal to include a database on final judicial decisions related to existing Red Notices, a database on prior decisions on arrest and extraditions related to an existing Red Notice, and a repository with relevant and updated human rights information on requesting countries.

Second, the European Parliament could call on the EU Commission to develop and administrate databases on final judicial decisions related to existing Red Notices, a database on prior decisions on arrest and extraditions related to an existing Red Notice, and a repository with relevant and updated human rights information on requesting countries.

Third, to support access and exchange of data, the European Parliament could call on the EU Commission to involve the European Judicial Network in the design of best practices when connecting to other authorities in Member States and when exchanging information concerning Red Notice warrants.

Fourth, the European Parliament could call on the EU Commission to establish an office to support the update of relevant data, the administration of the databases, and to coordinate the update and prepare procedural and legal guidelines to ensure fundamental rights of citizens going forward.



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## ANNEX A

The following examples of cases are taken from the 2019 DROI study.<sup>203</sup> As described in that study, each of the cases have been documented in reports from governmental and non-governmental organisations:

### “1. Individual cases relating to Interpol’s refugee policy

#### *Refugee policy applied*

In 2015, **Pavel Zabelin** was charged, following the investigation of YUKOS (the oil company **Mikhail Khodorkovsky** previously headed) with fraud and embezzlement. **Zabelin** had his Red Notice removed by Interpol when he was granted political asylum in Estonia<sup>204</sup>.

**Nadejda Ataeva**, following her father’s disagreement with President Islam Karimov, was charged with embezzlement in her home country of Uzbekistan. After colleagues and family members gave evidence against Ataeva, allegedly after torture, she was convicted and sentenced *in absentia* to six years imprisonment. A Red Notice was issued and as she was a refugee in France it was subsequently deleted in 2015 by Interpol<sup>205</sup>.

**Ochoa Urioste**, who formerly held the position of legal director at a Bolivian owned oil and gas company, faced oppression after he decided not to sign contracts he believed were illegal. Urioste published critical articles about President Morales in 2009 and in September that year was charged with corruption. Urioste sought asylum in Uruguay in 2009, after Bolivia requested a Red Notice and in 2012 Urioste was sentenced to nine years imprisonment *in absentia*. In 2015 Interpol deleted the Red Notice on the basis of the refugee policy<sup>206</sup>.

**Azer Samadov**, a political activist, was the subject of a Red Notice following a request from Azerbaijan. In 2008 Samadov was given protection in the Netherlands by the United Nations High Commissioner for Refugees (UNHCR) as a refugee. Following his detention at Schiphol Airport in 2009, Samadov submitted an application to the CCF to delete the Red Notice. After no response was received from Interpol, a senior Dutch Police officer contacted the CCF in 2014 to confirm Samadov’s refugee status in the Netherlands. In 2015 the Red Notice was deleted in accordance with the refugee policy<sup>207</sup>.

**Paramjeet Singh** was tortured by the Indian police for his support to self-determination for the Sikhs and granted asylum in the United Kingdom in 2000. Singh was arrested when he arrived in Portugal for a family holiday in 2015 on the basis of a Red Notice request from India, related to alleged murder and terrorism offences. British and Indian police officers had investigated these matters in 2011 and concluded there was insufficient evidence to charge Singh. On the basis of the refugee policy, Fair Trials

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<sup>203</sup> Wandall R.H. et al, *Misuse of Interpol’s Red Notices and impact on human rights – recent developments*, Publication for the Committee on Civil Liberties, Justice and Home Affairs, Policy Department for Citizens’ Rights and Constitutional Affairs, European Parliament, Luxembourg.

<sup>204</sup> Open Dialog Foundation, Koj, A. (2016), ‘ODE addresses the new UNHCR on issue of political refugees’, at <https://en.odfoundation.eu/a/7216.odf-addresses-the-new-unhcr-on-issue-of-political-refugees>, last visited 1/11/2018.

<sup>205</sup> Fair Trials (2018), ‘Dismantling the Tools of Oppression’, 54.

<sup>206</sup> Fair Trials (2018), ‘Dismantling the Tools of Oppression’, 55.

<sup>207</sup> Fair Trials (2018), ‘Dismantling the Tools of Oppression’, 54.



notified the CCF, which blocked the Red Notice and subsequently deleted all data on 12 February 2016<sup>208</sup>.

**Nikita Kulachenkov**, a Russian opposition activist with links to Alexei Navalny a prominent Russian anti-corruption campaigner, was accused of theft of street-art worth \$1.55. Lithuania granted him refugee status in December 2015. Russia circulated a Diffusion and in January 2016 Kulachenkov was detained in Cyprus but was soon released. The Diffusion was deleted on the basis of the refugee policy in March 2016<sup>209</sup>.

**Rachid Mesli**, a prominent Algerian human rights lawyer, was declared a prisoner of conscience by Amnesty International for abuse of his right to a fair trial following his conviction by an Algerian Court in 2000. Mesli left Algeria in 2000, fearing risk of harm to his family. Mesli was subsequently charged by Algeria in 2002, after two men were allegedly tortured to make statements associating Mesli with a terrorist group. In 2012 Fair Trials failed in their request for deletion of data related to the Red Notice. In 2015, Mesli was released after four weeks under house arrest in Italy, after the Algerian authorities failed to submit information necessary for an extradition. The Red Notice was deleted in 2016 after a request to apply the refugee policy<sup>210</sup>.

In 2014 the Czech Republic refused to extradite **Tatiana Paraskevich**, a former colleague of [Mukhtar Ablyazov](#)<sup>211</sup>, following requests from Ukraine and Russia. In 2016 further extradition requests for Paraskevich were made by Ukraine and Russia. In March 2017 Interpol deleted the Russian and Ukrainian Red Notices for Paraskevich<sup>212</sup>. Whilst the Red Notices were still extant, Germany describing her as an 'undesirable alien' put Paraskevich into the Schengen Information System (SIS). This prevented Paraskevich from receiving residence and travel documents for over a year<sup>213</sup>.

**Vicdan Ozerdem**, a journalist, fled Turkey and was recognised as a refugee by Germany in 2006. Ozerdem was arrested in 2012 in Croatia on a Red Notice. Ozerdem was unaware of the Red Notice, which stated she had been convicted *in absentia* of 'armed struggle' and 'membership of a terrorist organisation' and sentenced to 30 years imprisonment. After six months in detention she was released and the Red Notice deleted in 2017, on the basis of the refugee policy<sup>214</sup>.

In 2008 **Ferid Yusub** had a disagreement with Emin Shekinskiy from the Ministry of Internal Affairs of Azerbaijan, believed to be a friend of the President and the former husband of Mr Yusub's sister. After being a victim of domestic violence, Yusub's sister and her children left Azerbaijan<sup>215</sup>. Wanting to locate his former wife and children, Shekinskiy demanded that Yusub informed him of her location, threatening him with criminal prosecution if he failed to do so. The Azerbaijani authorities accused

<sup>208</sup> Fair Trials (2018), 'Dismantling the Tools of Oppression', 55.

<sup>209</sup> Fair Trials (2018), 'Dismantling the Tools of Oppression', 32.

<sup>210</sup> Fair Trials (2018), 'Dismantling the Tools of Oppression', 54.

<sup>211</sup> See individual cases at Annex B.3.

<sup>212</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', 22.

<sup>213</sup> European Parliament (2015), Parliamentary question to the Commission by Judith Sargentini (Verts/ALE), Ska Keller (Verts/ALE), 'Impact of Interpol Red Notice on Schengen Information System', at <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2015-009196&format=XML&language=EN>, last visited 01/11/2018.

<sup>214</sup> Fair Trials (2018), 'Dismantling the Tools of Oppression', 55.

<sup>215</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

Yusub and his sister of theft, illegal crossing of the border and forgery of documents. On 6 January 2013, Yusub fled Azerbaijan and was granted refugee status in Egypt. On 13 May 2015 Yusub was detained in Russia at the request of Azerbaijan on the basis of an 'Interpol alert'<sup>216</sup>. As of 2017, and according to the last available open source information, a Russian court authorised Yusub's extradition and the proceedings were before the Russian Supreme Court. On 23 January 2017 Interpol removed Yusub's name from the Criminal Information System.

**Dolkun Isa** is an award-winning activist and Secretary General of the World Uyghur Congress, whom Germany granted refugee status and subsequently citizenship. A Red Notice request was issued by China in 1999 and as a result Isa has faced difficulties travelling abroad to carry out his advocacy activities to promote Uyghur self-determination. Fair Trials reported on 23 February 2018 that Interpol had deleted the Red Notice<sup>217</sup>.

A Red Notice was issued against **Muhiddin Kabiri**, the leader of Tajikistan's leading opposition party, the Islamic Renaissance Party, in September 2016<sup>218</sup>. Kabiri's party was classified as a terrorist organisation by the Tajik government in 2015, and the government accused Kabiri of corruption, charges that Human Rights Watch called 'politically motivated'<sup>219</sup>. In early 2018 Interpol removed Kabiri's Red Notice based on his having been granted asylum in a European country<sup>220</sup>.

#### *Refugee policy not applied*

**Sayed Abdellatif** fled Egypt in 1992 following arrest and torture by the State Security Intelligence. In 1999 Abdellatif was tried *in absentia* and convicted by the Egyptian military courts, which received evidence obtained by torture. A Red Notice was requested by Egypt (albeit for offences he had not been tried for). The Australian authorities have determined that Abdellatif has a *prima facie* claim to refugee status, but he remains in immigration detention due to the Red Notice and separated from his family.<sup>221</sup>

**Natalya Bushueva** was stopped in transit at an airport in Moscow on the basis of a Red Notice requested by Uzbekistan in July 2016. She had previously been a correspondent for the German international radio service Deutsche Welle and fled Uzbekistan after covering the events of the Andjian massacre in 2005. She was subsequently granted refugee status in Sweden, where she was naturalised. As of 2017 Bushueva remained at risk of arrest and extradition to Uzbekistan due to the Red Notice<sup>222</sup>.

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<sup>216</sup> Unclear if a Red Notice or Diffusion.

<sup>217</sup> Fair Trials, 'INTERPOL deletes Red Notice against persecuted Uyghur dissident Dolkun Isa' <https://www.fairtrials.org/news/interpol-deletes-red-notice-against-persecuted-uyghur-dissident-dolkun-isa>, last visited 01/11/2018.

<sup>218</sup> Radio Free Europe, 'Tajikistan's Islamic Party Leader Added To Interpol Wanted List', 5 September 2016, <https://www.rferl.org/a/tajikistan-islamic-party-chief-interpol-list/27968735.html>, last visited 01/11/2018.

<sup>219</sup> Human Rights Watch, 'Tajikistan: Severe Crackdown on Political Opposition US, EU Should Urgently Raise Abuses', 17 February 2016, at <https://www.hrw.org/news/2016/02/17/tajikistan-severe-crackdown-political-opposition>, last visited 01/11/2018.

<sup>220</sup> Radio Free Europe, 'Rare Triumph For Tajikistan's IRPT, As Leader Removed From Interpol's "Red Notice"', 3 March 2018, at <https://www.rferl.org/a/tajikistan-islamic-renaissance-party-leader-kabiri-interpol/29076658.html>, last visited 01/11/2018.

<sup>221</sup> Fair Trials (2018), 'Dismantling the Tools of Oppression', 59.

<sup>222</sup> PACE (2017), Fabritius Report, 13.

**Hamza Yalçın** was arrested in 1979 on terror charges in Turkey and escaped from prison after six months, seeking asylum in Sweden. After returning to Turkey in 1990 Yalçın was again indicted on terror charges and spent three years in prison. In 1994 Yalçın left Turkey and gained Swedish citizenship. Yalçın was indicted on charges of insulting Turkish President Erdoğan in April 2017. Following a Red Notice issued by Turkey, Yalçın was detained at Barcelona's El Prat airport on 3 August 2017. After criticism of the arrest, including from Swedish member of the European Parliament Cecilia Wikström<sup>223</sup> and from The European Centre for Press and Media Freedom (ECPMF)<sup>224</sup>, Yalçın was released in October 2017 and returned to Sweden<sup>225</sup>.

**Roman Solodchenko**, a former colleague of the chairman of the BTA Bank in Kazakhstan ([Mukhtar Ablyazov](#))<sup>226</sup> accused of a billion-dollar fraud, was granted refugee status in 2012 by the United Kingdom. A subsequent extradition request by Ukraine and Russia were refused by the United Kingdom. The Open Dialog Foundation reported in 2017 that 'Interpol removed Kazakhstan's and Ukraine's request for an international alert for Mr Solodchenko but left Russia's request in force'<sup>227</sup>.

## 2. Individual cases relating to Article 2 of the Interpol constitution (risk of human rights violations)<sup>228</sup>

Following a Red Notice issued by Turkey, **Abdullah Büyük** was arrested in Bulgaria on 10 August 2016 and transferred to Turkish authorities<sup>229</sup>. The Sofia City Court and the Bulgarian Court of Appeals in Sofia refused Büyük's extradition in March 2016, deciding the charges were politically motivated<sup>230</sup> and that he was unlikely to have a fair trial in Turkey<sup>231</sup>. Despite these rulings, Büyük was extradited, and it is alleged this followed a political bargain between the Turkish and Bulgarian governments.

<sup>223</sup> Swedish Radio, 'EU parliamentarians demand release of Hamza Yalcin, Sveriges Radio', 30 August 2017, at <http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6766667>, last visited 01/11/2018.

<sup>224</sup> New York Times, 'Germany Condemns Detention of Turkish-Born Writer in Spain', New York Times, 21 August 2017 <https://www.nytimes.com/2017/08/21/world/europe/turkey-germany-spain-writer-detained-erdogan.html?mcubz=1>, last visited 01/11/2018.

<sup>225</sup> The Local, 'Swedish-Turkish writer held in Spain returns home to Sweden', 6 October 2017, at <https://www.thelocal.se/20171006/swedish-author-held-in-spain-returns-home-to-sweden>, last visited 01/11/2018.

<sup>226</sup> See individual cases at Annex B.3.

<sup>227</sup> Savchenko, I. et al (2017) 'The report: The reform of Interpol: Don't let it be stopped halfway'.

<sup>228</sup> It is to be noted that some individual cases will be relevant to both human rights violations and the neutrality principle.

<sup>229</sup> Fair Trials International, 'Outrage in Bulgaria over secretive transfer of Turkish citizen to Ankara', 19 August 2016, <https://www.fairtrials.org/guest-post-outrage-in-bulgaria-over-secretive-transfer-of-turkish-citizen-to-ankara/>, last visited 01/11/2018.

<sup>230</sup> Fair Trials, 'Guest post: Outrage in Bulgaria over secretive transfer of Turkish citizen to Ankara', 19 August 2016 at <https://www.fairtrials.org/node/883/>, last visited 01/11/2018.

<sup>231</sup> SCF (2017), 'Abuse of Interpol System by Turkey', 13-14 and Balkan Insight 'Strasbourg Court Quizzes Bulgaria over Gulenist's Extradition', 25 April 2018, <http://www.balkaninsight.com/en/article/strasbourg-court-questions-bulgaria-on-the-extradition-of-gulen-supporter-04-24-2018/>, last visited 01/11/2018.

**Anatoliy Pogorelov**, is a Kazakh wanted on a Red Notice issued by Kazakhstan, as an accused in the prosecution of [Mukhtar Ablyazov](#)<sup>232</sup>. Pogorelov is referred to in a written declaration on human rights violations in Kazakhstan, issued by PACE and signed by 25 MPs from 18 countries on 27 April 2017<sup>233</sup>.

**Aysen Furhoff** a Turkish national, naturalised as a Swedish citizen<sup>234</sup>, was arrested in Georgia in 2015 on the basis of a Red Notice requested by Turkey on a charge of 'separatism'<sup>235</sup>. Furhoff remained in Georgia for over a year due to delays in her extradition proceedings. In December 2016, Furhoff left Georgia and returned to Sweden before any conclusion of the extradition proceedings<sup>236</sup>. It is believed her Red Notice remains extant.

**Murcat Acar**, a Turkish national, was transferred to Turkish authorities by the Interpol section of the Bahraini police following the issuance of a Red Notice by Turkey<sup>237</sup>. Before his first appearance on 26 October 2016 in a Turkish court, Acar was allegedly tortured and suffered ill-treatment. Subsequently, Acar petitioned the Turkish Constitutional Court alleging the Turkish government violated the European Convention on Human Rights (ECHR), by breaching Article 5 on deprivation of liberty, Article 6 on the right to a fair trial, Article 7 on no punishment without law and Article 3, which bans torture and inhuman or degrading treatment<sup>238</sup>.

3. Individual cases relating to Article 3 of the Interpol constitution (neutrality principle)<sup>239</sup>

**Alexey Torubarov** advocated against corruption by Russian law enforcement agencies, following which he was accused of fraud by Russia and a Red Notice issued. Torubarov was arrested on the Red Notice in Austria but his extradition was refused. Subsequently, Torubarov was arrested and detained in the Czech Republic for fourteen months. In May 2013, Torubarov's extradition to Russia was approved by the Czech Republic's Minister of Justice, despite Torubarov's request for asylum being under consideration<sup>240</sup>. In 2014 the Czech Republic's Constitutional Court ruled Torubarov's extradition was illegal<sup>241</sup>. Torubarov alleges he was subject to cruel treatment in Russia<sup>242</sup>. In July 2013 he was

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<sup>232</sup> See individual cases at Annex B.3.

<sup>233</sup> PACE, Declaration No. 630, Document 14306, 27 April 2017.

<sup>234</sup> The PACE (2017) Fabritius Report, page 14 states Furhoff 'was naturalised as a Swedish citizen after having been granted human rights protection on the basis of the risk that she could be tortured if she returned to Turkey'.

<sup>235</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', 21.

<sup>236</sup> SCF (2017), 25.

<sup>237</sup> SCF, 'Interpol Helped Harvard Educated Professor Get Tortured In Turkish Prison', 30 August 2017, <https://stockholmcf.org/inter-pol-helped-harvard-educated-professor-get-tortured-in-turkish-prison/>, last visited 01/11/2018.

<sup>238</sup> 'Abuse of Interpol System by Turkey', 13-14, SCF (2017).

<sup>239</sup> It is to be noted that some individual cases will be relevant to both human rights violations and the neutrality principle.

<sup>240</sup> Telegraph, 'Fuel tanker 'ordered to block Russian plane from taking off at Czech airport'', 30 May 2013, <https://www.telegraph.co.uk/news/worldnews/europe/czechrepublic/10090013/Fuel-tanker-ordered-to-block-Russian-plane-from-taking-off-at-Czech-airport.html>, last visited 01/11/2018.

<sup>241</sup> Radio Praha, 'Constitutional Court rules Torubarov's extradition was wrong', 26 June 2014, <https://www.radio.cz/en/section/news/constitutional-court-rules-torubarovs-extradition-was-wrong>, last visited 01/11/2018.

<sup>242</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

released from detention and placed under house arrest, whereupon he fled to Hungary, where he is requesting asylum<sup>243</sup>.

**Andrey Nekrasov**, a Russian journalist and activist was detained in Cyprus following an Interpol alert<sup>244</sup> launched by Russia. However, Russia was denied his extradition. Moreover, Lithuania subsequently granted Nekrasov refugee status<sup>245</sup>.

Fair Trials reports that **Bahar Kimyongur**, a Belgian activist and journalist who Turkey accuses of being a member of an EU proscribed terrorist organisation, the Revolutionary People's Liberation Party/Front (DHKP/C), has been the subject of an Interpol alert<sup>246</sup> since 2006. The Turkish allegations include Bahar's attendance at an open court hearing of the trial of a member of DHKP/C and participation in a peaceful demonstration at a European Parliament event. Kimyongur was arrested in three different countries and spent 100 days in detention as a result of the alert<sup>247</sup>. Interpol 'blocked' the alert in February 2014, four months after being notified of the case by Fair Trials and removed his data from the Criminal Information system.<sup>248</sup> Kimyongur was detained in Greece after being on a national register of wanted persons and was only released after the Greek authorities clarified with Interpol if their national data was correct<sup>249</sup>.

In 2017 **Dogan Akhanli**, a German-Turkish writer, was arrested on the basis of a Red Notice in Spain but was subsequently released. Dogan had fled Turkey in 1991 to live in Germany and wrote about the killing of Turkish-Armenian journalist Hrant Dink in 2007, and the killing of Armenians by Ottoman Turks in 1915. Turkey charged Akhanli with an armed robbery dating from 1989. After he was acquitted in 2011 the Turkish Supreme Court of Appeals overturned his acquittal and a re-trial began. Two weeks after his arrest in Spain in 2017 Interpol removed the Red Notice and Akhanli was released. After Akhanli's release, German chancellor Angela Merkel denounced the abuse of Interpol, stating 'it is not right and I'm very glad that Spain has now released him. We must not misuse international organisations like Interpol for such purposes'<sup>250</sup>. Merkel claimed Turkey's use of the Interpol for political purposes was 'unacceptable'<sup>251</sup>.

**Fikret Huseynli**, an Azerbaijani journalist, was granted political asylum in the Netherlands in 2010 and was subsequently granted Dutch citizenship. Huseynli was detained at Kiev airport on 14 October 2017, following an Azerbaijan issued Red Notice, for allegedly 'illegally crossing the border', fraud and

<sup>243</sup> BBC 'Fraudster or victim? The case of Russian fugitive Torubarov', 9 March 2016, <https://www.bbc.co.uk/news/world-europe-35747081>, last visited 01/11/2018.

<sup>244</sup> From the referenced source, it is unclear if a Diffusion or Red Notice. Fair Trials refers in their reports to an '*Interpol alert*' as a generic term for both Diffusions or a Red Notice.

<sup>245</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

<sup>246</sup> See explanation at FN 146 above.

<sup>247</sup> SCF (2017), Abuse of Interpol System by Turkey, 25-26.

<sup>248</sup> Fair Trials, 'Bahar Kimyongür Case Study' <https://www.fairtrials.org/case-study/bahar-kimyongur>.

<sup>249</sup> Fair Trials, 'Bahar Kimyongür Case Study'.

<sup>250</sup> SCF, 'Germany in communication with Interpol to protect refugees from Turkey', 19 November 2017, <https://stockholmcf.org/germany-in-communication-with-interpol-to-protect-refugees-from-turkey/>, last visited 01/11/2018.

<sup>251</sup> Reuters, "Merkel attacks Turkey's 'misuse' of Interpol warrants", 20 August 2017, at <https://www.reuters.com/article/us-eu-turkey-election/merkel-attacks-turkeys-misuse-of-interpol-warrants-idUSKCN1B00IP>, last visited 01/11/2018.

forgery. Huseynli was detained for two weeks and upon release was subjected to an abduction attempt<sup>252</sup>. The Red Notice was reportedly removed by Interpol in November 2017. To support the extradition, the Azerbaijan Prosecutor General sent a letter on 18 January 2018 to his Ukrainian counterpart Yuri Lutsenko, citing political grounds for Ukraine to collaborate with Azerbaijan in forcibly returning Huseynli. The letter claims that Huseynli had come to Ukraine to destabilize the country and that he was taking part in political rallies, which were supposedly against Ukraine's national interests. Huseynli returned to the Netherlands on 17 April 2018 after restrictions were lifted on his movement<sup>253</sup>.

**Halis Aydogan**, a member of the Marxist Leninist Communist Party in Turkey, was charged in Turkey with 'attempting to change the constitutional order' and throwing 'molotov cocktails' at the Direction of Taxes in 1996. The Open Dialog Foundation reports that Aydogan was forced to sign all accusatory statements under torture before he escaped to France and was granted political asylum<sup>254</sup>. Following a Red Notice issued at the request of Turkey, Aydogan (with **Aysen Furhoff**<sup>255</sup>) was detained in Georgia in 2015<sup>256</sup> and subsequently released. It is believed the Red Notice remains extant.

**Mukhtar Ablyazov**, founder of the political party the Democratic Choice of Kazakhstan, was granted political asylum in the United Kingdom in 2011. Although Interpol was notified, Red Notices were issued following requests by Kazakhstan, the Russian Federation and Ukraine (on Kazakhstan's request, between 2010 and 2013) in relation to an alleged fraud of the BTA Bank<sup>257</sup>. Ablyazov was arrested in France in July 2013, and on 9 December 2016 the *Conseil d'Etat* in France denied his extradition to Russia and Ukraine on the grounds that the request was made for political reasons<sup>258</sup>. Interpol removed the Red Notice in July 2017.

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<sup>252</sup> Human Rights in Ukraine, 'Ukraine is putting persecuted journalist's life in danger', 15 March 2018, <http://khpg.org/en/index.php?id=1521037354>, last visited 01/11/2018.

<sup>253</sup> Kyiv Post, 'Azerbaijani dissident who fought extradition leaves Ukraine a free man', 19 April, 2018 <https://www.kyivpost.com/ukraine-politics/azerbaijani-dissident-fought-extradition-leaves-ukraine-free-man.html>, last visited 01/11/2018.

<sup>254</sup> Kyiv Post, 'Azerbaijani dissident who fought extradition leaves Ukraine a free man', 19 April, 2018.

<sup>255</sup> See individual cases at Annex B.2.

<sup>256</sup> Georgia, Ministry of Internal Affairs, News, 'Central National Bureau of Interpol detained person wanted by Law Enforcers of the Turkish Republic', 23 January 2015, at <http://police.ge/en/shss-s-interpolis-erovnuli-tsentruri-biuros-tanamshromlebma-turgetis-respublikis-samartaldamtsavi-organoebis-mier-dzebnili-piri-daakaves/7686>, last visited 01/11/2018.

<sup>257</sup> Bloomberg, 'Bank's \$4 Billion Fraud Allegations Return to London Courtroom', 20 November 2017, <https://www.bloomberg.com/news/articles/2017-11-20/bank-s-4-billion-fraud-allegations-return-to-london-courtroom>, last visited 01/11/2018.

<sup>258</sup> Reuters, 'French court cancels Kazakh tycoon Ablyazov's extradition to Russia', 9 December 2016, at <https://www.reuters.com/article/us-bta-ablyazov-extradition/french-court-cancels-kazakh-tycoon-ablyazovs-extradition-to-russia-idUSKBN13Y2FC>, last visited 01/11/2018.



In late February 2018 Czech police arrested **Salih Muslim**<sup>259</sup>, former co-chair of the Syrian Kurdish Democratic Union Party. Muslim was accused of terrorism by the Turkish government. He was detained based on a Red Notice and was released after two days in detention by a Czech court<sup>260</sup>.

**Victor Khrapunov**, the former Minister of Energy of Kazakhstan and his son **Ilyas Khrapunov** are reported as subject to Red Notices on the public website of Interpol<sup>261</sup>. The Khrapunovs report, that after they refused to testify against **Mukhtar Ablyazov**<sup>262</sup> more than 20 criminal cases have been initiated against their family (seven persons in total). One of these charges alleges that Ilyas Khrapunov 'headed a criminal group in Kazakhstan' in 1997, when he was only 14 years old and at a Swiss school. In 2011 and 2014 Switzerland refused to extradite Victor Khrapunov to Kazakhstan<sup>263</sup>.

**Victor Topa** (the former Minister of Transport of Moldova), **Viorel Topa** and **Vladimir Morari** reported in 2010 that the powerful oligarch Vladimir Plahotniuc had committed a 'seizure' of their business. After complaining that relevant law enforcement bodies were under the control of Plahotniuc<sup>264</sup>, Victor Topa and Vladimir Morari were accused of 'blackmailing', and Viorel Topa of 'embezzlement' and 'forgery of documents'. All three left Moldova and in October 2011 Victa Topa was sentenced *in absentia* to ten years' imprisonment. Viorel Topa was sentenced *in absentia* to eight and nine years imprisonment in January 2012 and September 2016. Viorel Topa, Victor Topa and Vladimir Morari had their data removed from the Criminal Information System in 2013 by Interpol, after their convictions were recognized as politically motivated. In December 2015, Interpol rejected further requests for Red Notices for all three<sup>265</sup>.

**William Browder**, a British citizen who successfully campaigned for asset freezes against Russian officials involved in the 'Magnitsky case', was convicted *in absentia* of tax related crimes in Russia in 2013 and 2017. In 2013, Interpol rejected on two occasions Russian requests to place Browder's name on the Criminal Information System, on the ground of it being politically motivated. In February 2017, Russia sent a further request and Interpol deleted a Diffusion circulated through its networks by Russian authorities asking member countries to track the movements of Browder. More recently, in May 2018, Browder was briefly arrested in Spain and subsequently released<sup>266</sup>.

**Yan Andreev**, an opposition politician in Russia, was acquitted on corruption charges, following a demand by the ruling leadership that he resigned. He fled to Israel and another prosecution commenced, leading to Russia issuing a request for an Interpol alert<sup>267</sup>. Andreev has a residence permit

<sup>259</sup> Ahval, 'Former PYD co-chair Salih Muslim detained in Prague', 25 February 2018, <https://ahvalnews.com/pyd/former-pyd-co-chair-salih-muslim-detained-prague>, last visited 01/11/2018.

<sup>260</sup> Daily Sabah, 'Czech court releases terrorist PKK/PYD former co-chair Salih Muslum', 27 February 2018 at <https://www.dailysabah.com/war-on-terror/2018/02/27/czech-court-releases-terrorist-pkppyd-former-co-chair-salih-muslum>, last visited 01/11/2018.

<sup>261</sup> As of 23 October 2018.

<sup>262</sup> See individual cases at Annex B.2.

<sup>263</sup> Savchenko, I. et al (2017) 'The report: The reform of Interpol: Don't let it be stopped halfway'.

<sup>264</sup> Infotag, <http://www.infotag.md/reports/763470/>, last visited 01/11/2018.

<sup>265</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

<sup>266</sup> BBC, 'Putin critic Bill Browder freed after brief arrest in Spain', 30 May 2018, <https://www.bbc.co.uk/news/world-europe-44301072https://www.bbc.co.uk/news/world-europe-44301072>, last visited 01/11/2018.

<sup>267</sup> Unclear if a Red Notice or Diffusion.



in Israel and the Open Dialog Foundation reports that he believes he was denied citizenship as his name is on Interpol's Criminal Information System<sup>268</sup>.

**Zhaksylyk Zharimbetov** is the former manager of the BTA Bank of Kazakhstan. The Open Dialog Foundation reports that he is on the Interpol 'wanted list'. Following his detention at Istanbul Airport in 2017 he was 'transferred' back to Kazakhstan. It is unclear on what basis he was 'transferred'. Zharimbetov then gave evidence against [Mukhtar Ablyazov](#)<sup>269</sup> and wrote to the OSCE that he had not been kidnapped and returned to Kazakhstan of his own volition<sup>270</sup>.

On 21 October 2017, journalist and blogger **Zhanara Akhmet** from Kazakhstan was detained in Ukraine<sup>271</sup> on a Red Notice. Akhmet worked for a Kazakh opposition newspaper, the Tribune, and documented human rights violations by the Kazakh authorities on a blog.

#### 4. Individual cases relating to the functioning of the CCF

**Djamel Ktiti**, a French national, was arrested first in Morocco and then in Spain on the basis of a Red Notice issued at the request of Algeria. He spent a total of two and a half years in detention. On both occasions his extradition was refused after a finding by the United Nations Committee against Torture (UNCAT) in 2011, that his extradition would present an unacceptable risk of him being exposed to torture and prosecuted on the basis of evidence obtained by torture<sup>272</sup>. An application to the CCF by Fair Trials in January 2015 led to the deletion of the Red Notice<sup>273</sup>.

**Mehdi Khosravi** was arrested in northern Italy in August 2016 on the basis of an Iranian Red Notice. Khosravi had fled Iran following political protests in 2009 and had successfully claimed asylum in the United Kingdom. Khosravi's arrest was subject to intense international criticism, including from Reza Pahlavi (Crown Prince of Iran), before he was released and his Red Notice was deleted further to a request made by his lawyer to the CCF in 2016<sup>274</sup>.

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<sup>268</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

<sup>269</sup> See individual case at above.

<sup>270</sup> Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

<sup>271</sup> Mapping Media Freedom, at <https://mappingmediafreedom.org/#/4699>, last visited 01/11/2018.

<sup>272</sup> Redress, Djamel Ktiti, at <https://redress.org/casework/interpol-2015/>, last visited 01/11/2018.

<sup>273</sup> Fair Trials, 'INTERPOL agrees to remove Algerian wanted person alert against French national, given real risks of torture', 7 December 2015, <https://www.fairtrials.org/node/833/>, last visited 01/11/2018.

<sup>274</sup> PACE (2017), Fabritius Report, paragraph 55.

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This paper, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Civil Liberties, Justice and Home Affairs, analyses Interpol's system of Red Notices and the EU-based mechanisms to safeguard citizens against political abuse of Interpol's system. Recent reforms of Interpol are significant but many problems remain unaddressed. The paper discusses existing and possible platforms, including the European Search Portal, as ways to ensure a more effective enforcement of EU-based legal limits and fundamental rights on a European level.

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