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"The Stockholm Programme: State of play regarding police and judicial cooperation in civil and criminal matters"

Session I - Police cooperation

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This session deals with enhancing Europol and how to strengthen its cooperation with national law enforcement authorities under proper parliamentary oversight.

In the current state of EU development, operational police work is a competence of the Member States. However, this task has increasingly a cross border nature. So this implies an increasing need to exchange operational and strategic information with law enforcement authorities in other Member States.

This is where Europol comes in as an EU body. Its main task - in fact a principal reason for its existence - is to provide support to law enforcement authorities in the Member States, by exchanging and examining relevant information and doing criminal analysis. All this includes personal data, and usually quite sensitive personal data.

The Commission's proposal for a new Regulation dealing with Europol, presented in March 2013, is designed to reinforce Europol's roles and functionalities. It is therefore only natural and welcome that the proposal also aims to substantially reinforce the rules on data protection currently applying to Europol.

In the EDPS opinion on the proposal, issued at the end of May, we have used positive language to express this. We emphasized that *strong* data protection rules and practices at Europol are necessary to *improve* the EU's approach to serious crimes. However, we also highlighted the need for further improvements.

The EDPS opinion analyses the general legal context of the proposal. It subsequently focuses on the new information structure, the strengthening of arrangements for supervision, transfers of data to other bodies, including in third countries, and finally discusses various other points. Our recommendations are set out on page 34-38.

Ten days ago, the current joint supervisory body for Europol (JSB Europol), composed of representatives of the national data protection authorities, also issued an opinion on the proposal. That opinion was quite critical, so much so that you might think that we disagree on many points. So, let me use this occasion to first highlight the common ground on which we fully agree:

- We fully agree that Europol now has a strong data protection regime - it has indeed an excellent reputation in this field - and this level of protection should not be lowered.
- We also agree that the Commission proposal needs improvement on different points - it now fails to provide a sufficiently high level of protection to ensure at least continuity.
- We both also emphasize the principle of purpose limitation, and the need to better define specific purposes, fully in line with current practices at Europol.
- We both also emphasize the need for impact assessments before the creation of new information systems.
- We both also see the need for a holistic approach to the supervision of Europol and therefore emphasize the need for a close involvement of national data protection authorities.
- Finally, both opinions see the need for alignment of the proposed Europol Regulation and the new data protection framework, now under discussion and involving both a General Data Protection Regulation and a Directive for criminal law enforcement. In other words,

the requirements for more accountability and Privacy by Design, set out in the new Data Protection Regulation, should eventually also apply to Europol.

Where the two opinions take different approaches is on the structure of supervision. The Commission proposes supervision by the EDPS and we have welcomed this.

The current arrangement for supervision by a JSB, composed of representatives of the national data protection authorities, was developed in the 1990's at a time when cooperation in this field was still mostly intergovernmental, and due to a lack of good alternatives. However, Europol has been an EU body since 2009 and this is now taken a step further in the proposal.

The present arrangement has resulted in a supervisory body with very weak powers, limited resources and insufficient independence - in any case not in conformity with the requirements of the EU Court's recent case law on the matter.

On the other hand, the EDPS will have strong powers, complete independence and adequate resources. We already supervise some 50 EU institutions and bodies, including OLAF and FRONTEX, and there is no reason why this should not apply to Europol, also in view of the obvious interactions with some of those bodies.

At the same time, we have emphasized the need for a close and effective cooperation with national supervisory authorities, acting within their own remit. For instance, if the national units continue to play a key role, this would be subject to supervision by the relevant national supervisory authorities, including as to their interaction with Europol.

The Commission proposal also contains clear rules on cooperation and coordination between national authorities and EDPS. However, a clear attribution of powers is important to ensure operational effectiveness. Doing inspections together is one thing, but taking decisions that might be subject to judicial review at EU level is quite a different matter.

That is why the Commission proposal on this point is not only sound, but also much better in our view, and sufficiently inclusive. All further details of this close and effective cooperation can be developed in practice on the basis of the "coordinated supervision" model also applied in related areas.

Finally: strong enforcement powers - i.e. similar powers as already apply to all other EU institutions and bodies - are both appropriate and welcome. However, it is of course always better if such powers *do not need* to be exercised, because the applicable rules are *complied with* in practice.