

STUDY

Requested by the DROI committee



Misuse of Interpol's Red Notices and impact on human rights – recent developments



Policy Department for External Relations
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STUDY

Misuse of Interpol's Red Notices and impact on human rights – recent developments

ABSTRACT

International organisations continue to report the abuse by some states of Interpol's Notice System to persecute national human rights defenders, civil society activists and critical journalists in violation of international standards of human rights. Available case studies, written reports and interviews with organisations working in the field confirm the reported abuses. Recent Interpol reforms have made significant impact on safeguarding individuals both substantially and procedurally. Nevertheless, and especially considering the significant increase in the number of Notices and Diffusions in the Interpol system, reforms remain to be fully implemented and transparency and enforcement mechanisms continue to leave room for improvement. Taking as a point of departure the responses from the EU institutions and bodies, and EU Member States, the study recommends taking further steps for Interpol to ensure full implementation of recent reforms, a fully transparent system and consistent legal and procedural safeguards for individuals in the Interpol Notice System.

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Acronyms and abbreviations

CCF	Commission for the Control of Interpol's Files
CRIDS	University of Namur's Information Society Centre
CRIMLEA	Critical Maritime Routes Law Enforcement Capacity Building in East Africa
DPO	Data Protection Officer
DROI	European Parliament's Subcommittee on Human Rights
EEAS	European Union External Action Service
ECHR	European Convention on Human Rights
ECOSOC	(United Nations) Economic and Social Council
EU	European Union
GDPR	General Data Protection Regulation EU 2016/679
GS	General Secretariat of Interpol
ICSE	International Child Sexual Exploitation Database
IDPO	Interpol Data Protection Officer
LED	Law Enforcement Data Protection Directive EU 2016/680
MEP	Member of the European Parliament
NCB	National Central Bureau
ODF	Open Dialog Foundation
OSCE	Organization for Security and Co-operation in Europe
MEP	Member of the European Parliament
MS	Member State
NGO	Non-governmental organisation
PACE	Parliamentary Assembly of the Council of Europe
RFE	Radio Free Europe
RCI	Rules on the Control of Information and Access to Interpol's Files
(I)RPD	(Interpol) Rules on the Processing of Data
SCF	Stockholm Center for Freedom
SIS	Schengen Information System
SRIEU	Special Representative of Interpol to the European Union
SLTD	Stolen and Lost Travel Documents
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCAT	United Nations Committee against Torture
UNHCR	United Nations Refugee Agency
UNODC	United Nations Office on Drugs and Crime
WAPIS	West African Police Information System

Executive summary

Both governmental and non-governmental organisations have reported a trend by some countries to abuse Interpol's system of police cooperation to persecute human rights defenders, critical journalists and political opponents in violation of international human rights standards. The abuse of Interpol Red Notices and Diffusions have been highlighted.

Through reforms since 2015, Interpol has introduced initiatives to improve the legal and procedural framework of the pre-publication vetting of Red Notices and Diffusions, and to improve access to redress for individuals. The reforms included a new policy for recognised refugees, a strengthened review process of requests for Red Notices and Diffusions in the General Secretariat (GS), and setting up rules to govern the new mandates of the Commission for the Control of Interpol's Files (CCF).

The Council of Europe's Parliamentary Assembly, as well as international non-governmental organisations, recognised the reforms and their contribution to confront the reported abuses, yet have continued to emphasise the need for more legal safeguards and for better implementation of the reforms. The European Parliament has taken up the issue on several occasions and the Commission, the Council and EU Member States (MS) have engaged in the matter.

The current study for the European Parliament's Subcommittee on Human Rights (DROI) describes and assesses the current situation and recent trends in the practice of abuse of Red Notices and Diffusions. The study:

- provides an overview of reported abuses and assesses their nature;
- describes the recent reforms undertaken by Interpol and assesses their implementation so far;
- looks at the responses of EU and Member States, and on this basis,
- identifies practices that are still in need of reform and recommends strategic activities, which the EU and Member States could advocate to prevent the abuse of Interpol and its mechanisms.

The study is based on available literature and written sources from Interpol and from other governmental and non-governmental organisations operating in the field. Furthermore, interviews have been carried out with Interpol, with the European Commission, and with relevant organisations.

There is solid basis for the conclusion that Interpol's vetting process, as well as the redress mechanism through the CCF, have improved significantly with the reforms since 2015. There is also proof that the refugee policy has made an impact. Furthermore, Interpol's GS now performs a vetting of requests for Red Notices before publication in the Criminal Information System, and the processing time for handling cases before the CCF has improved markedly.

At the same time, both written sources and interviews with governmental and non-governmental organisations suggest that Interpol's vetting process remains inconsistent. Abuses continue to be observed in high-profile cases and ordinary cases alike. For example, individuals with refugee status continue to appear in databases with Red Notices and Diffusions. Further, organisations describe a lack of established rules and procedures to govern the vetting process and the adherence to Interpol Constitution Articles 2 and 3.

There are significant challenges with the mechanisms to update information about Red Notices and Diffusions. Most importantly, Red Notices and Diffusions sometimes remain in effect in national databases despite having been updated and removed by the Interpol GS. The explanation is that the national authorities, while subjected to Interpol rules and procedures, are under national jurisdiction. Interpol has no mandate to update the national databases, only to inform the national authorities of the need to update. There is currently no long-term solution to this problem, except for training the more than 190

National Central Bureaus (NCBs) globally to consistently apply Interpol rules and procedures, and to provide them a shared network and platform to exchange experiences and practices.

Despite reforms, transparency remains a challenge at both the individual and the organisational level. Individuals have limited access to the rules and procedures Interpol GS and the CCF apply in the process of evaluating cases. Member countries and other international organisations have little access to information about the overall handling of Red Notices and Diffusions. This is exemplified by the fact that basic information about the number of Red Notices and Diffusion requests submitted annually does exist, but no information exists about:

1. the countries making these requests;
2. how many requests are accepted and refused;
3. the grounds for refusal;
4. which countries perform better or worse in terms of acceptance or refusal of their requests;
5. the development of these practices over time.

Accordingly, it is not possible to evaluate, even on the simplest level, the quality of the vetting process by the GS, the work of the NCBs, or the countries submitting requests.

The study recommends the European Parliament to encourage EU institutions and EU Member States to take further actions to ensure that Interpol further develops the legal framework and its applicability for the GS, the CCF and the NCBs. This is essential to ensure a fully consistent handling of requests for Red Notices and Diffusions in accordance with Articles 2 and 3 of the Interpol Constitution. In particular, the relationship between the GS and the NCBs, which are not under the direct authority of Interpol, warrants further legal knowledge management and compliance mechanisms. Second, it is recommended that the European Parliament encourages the EU Member States to ensure that Interpol fully implements the reforms commenced in 2015. The increase of the case load of both Red Notices and Diffusions with the GS and the CCF mandates further resources for Interpol to ensure a proper and consistent vetting of requests prior to publication and for monitoring of compliance and quality control. Third, it is necessary to strengthen the pressure on the EU Member States to take further actions to ensure that Interpol holds accountable the GS, CCF, and NCBs alike, to control the content and updates of Red Notices and Diffusions. Fourth, specifically as to the refugee policy, appropriate steps are required to ensure full implementation of the policy. Fifth, Interpol needs to 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 member countries to take active steps to ensure NCBs comply with the Rules on the Processing of Data (RPD). This should include Interpol requesting affirmative action from the NCBs for deletion of data following any CCF decision or GS decision to delete data. 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 European developments on data protection. 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, EU could consider funding further 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. 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 development programmes to raise the human rights and Rule of Law capacity in relation to international cooperation in criminal matters. Eleventh, next to focusing on the member countries, the EU could also focus on those individuals affected by wrongful Red 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 ensure faster responses to alerts. Finally, the EU Institutions, bodies and MSs should ensure that further transparency concerning the activities of police authorities in MSs and their relationship with international organisations and third countries in dealing with Red Notices be ensured. 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.

Data and methodology

The study is based on a survey of available written material that focuses on practices after the reforms of Interpol in 2015. Secondly, to verify written sources and to further investigate questions not covered in the written material, interviews have been carried out with:

- Interpol General Secretariat, Office of Legal Affairs;
- Interpol Data Protection Officer;
- Fair Trials;
- Open Dialog Foundation;
- Civil Rights Defenders;
- Legal Defense Group, Turkey;
- EU Commission, Police Cooperation Unit, Directorate General Migration and Home Affairs.

Thirdly, through written sources, individual communications and interviews, we have compiled a collection of individual cases (see Annex B). The collection provides a strong insight into the foundations of the observations given by governmental and non-governmental organisations.

Specifically, as to this collection of individual cases, it must be emphasised that it is beyond the scope of this study to verify the individual cases. Their reproduction in this report is solely based on the descriptions in reports from governmental and non-governmental organisations.

A part of the study concerns the reform efforts of Interpol. The descriptions thereof are based on a review of Interpol publications and on interviews with staff from the Office of Legal Affairs in the General Secretariat of Interpol, including the Data Protection Officer of Interpol. We are thankful for their cooperation.

1. Overview of Interpol and the Notice System

To understand any misuse of Interpol Red Notices, this opening section explains how Interpol Red Notices operate and the regulatory foundation of Interpol's operations.

1.1 The structure and rules of Interpol

The International Criminal Police Organization, more commonly known as 'Interpol'¹ is the international organisation that facilitates international police cooperation with a global membership of 194 countries². Founded as a *sui generis* network for cooperation among law enforcement professionals around 1914 and featuring characteristics of non-governmental organisations, Interpol's status has evolved over time. Interpol was designated as an intergovernmental organisation in 1975 under ECOSOC Rules and its status was confirmed by the UN Office of Legal Affairs in 1982³. Nevertheless, Interpol's cross-border network structure adds a transnational character to its functions⁴.

The organisation is governed by a General Assembly and Executive Committee and managed by a General Secretariat (GS), based in Lyon, France, and its regional offices⁵. Each member country maintains a National Central Bureau (NCB), staffed by national law enforcement officers. The NCB forms the link with Interpol's global network, enabling member countries to work together on cross-border investigations and for Interpol to maintain its global reach with its Notice System⁶. Interpol membership enlists NCBs as key agencies in the Notice System, but NCBs remain under the authority of the domestic police authority in every aspect⁷. To monitor and mitigate the risks of infringing individuals' fundamental rights that flow from the increasing processing of data, Interpol has a Data Protection Officer, based within the GS.

The regulatory basis of Interpol's organs and functions is found in its Constitution and a set of regulations with appendices, adopted in accordance with Article 44 of the Constitution⁸. The Constitution and regulations establish the organs of Interpol, define the scope of their functions and establish the legal framework for their mandate. These regulations relate to several essential aspects of Interpol including⁹:

1. the different bodies of the organisation;
2. the role of each body;

¹ In French: 'Organisation internationale de police criminelle' (ICPO-INTERPOL).

² For further details on the establishment and legal analysis of Interpol see, generally, Anderson, M. (1989), *Policing the World: Interpol and the Politics of International Police Cooperation*, Oxford: Clarendon; Andreas, P. and Nadelmann, E. (2006), *Policing the Globe, Criminalization and Crime Control in International Relations*, Oxford University Press, 90; Gless, S. (2007), *Interpol*, Max Planck Encyclopaedia of Public International Law, Oxford University Press; Martha, R.S.J. (2010), *The Legal Foundations of Interpol*. Oxford: Hart Publishing; Savino, M. (2011), *Global Administrative Law Meets Soft Powers: The Uncomfortable Case of Interpol Red Notices*, New York University Journal of International Law and Politics, 43: 263-336; Sheptycki, J. (2017a) 'Brand Interpol' in *Trust in International Police and Justice Cooperation*, Saskia Hufnagel and Carol McCartney (eds.) Oxford: Hart Publishing; Sheptycki, J. (2017b) 'Transnational Organization, Transnational Law and the Ambiguity of Interpol in a World Ruled with Law.' *Brill Research Perspectives in Transnational Crime*, 2-3: 65-86.

³ Gless, S. (2007).

⁴ Sheptycki, J. (2017b), 74.

⁵ Buenos Aires, Argentina, San Salvador, El Salvador, Yaoundé, Cameroon, Abidjan, Côte d'Ivoire, Nairobi, Kenya, Harare, Zimbabwe, Bangkok, Thailand and Brussels, Belgium (EU Liaison Office), Vienna, Austria (UNODC Liaison Office) and New York, United States of America (UN Liaison Office)- Interpol Annual Report 2017.

⁶ For the list of Interpol member countries see <https://www.interpol.int/Member-countries/World>, last visited on 01/11/2018, last visited on 01/11/2018.

⁷ Sheptycki, J. (2017b), 74.

⁸ See the text of the Constitution, reference documents section, at <https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>, last visited on 01/11/2018. (hereafter Interpol Constitution)

⁹ Reference documents at <https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>, last visited on 01/11/2018.

3. internal procedures for voting and selecting members;
4. financial regulations;
5. the processing of information and confidentiality.

Also relevant are the Headquarters Agreements, concluded between Interpol and the government of France and other governments on whose territory Interpol has premises¹⁰. The agreements set out Interpol's rights as recognised by the host country, particularly with regard to the extent of Interpol's right to adopt its own regulations and rules for application within its installations, and the privileges and immunities which the host country grants Interpol to fulfil its mission¹¹. Immunity means that no national court or other tribunal may attempt to exercise jurisdiction, or otherwise intervene in cases related to Notices, Diffusions or other data processed via Interpol's channels¹². Instead, the Commission for the Control of Interpol's Files (CCF) is responsible for adjudicating requests from individuals seeking access to correction or deletion of information about them in Interpol's Criminal Information System.

The processing of data within Interpol is further regulated by the Rules on the Processing of Data (RPD)¹³. These rules govern Interpol and member countries' processing of information, including the publishing, modification and retainment of information, as well as rules on confidentiality and security, monitoring and control.

1.2 The Notice System

One of Interpol's core functions is to help police in its member countries to share critical crime-related information using a system of international Notices (Notice System). Police can use these Notices to alert law enforcement in other countries of potential threats, or to ask for assistance in solving crimes¹⁴.

The Notice System allows member countries and authorised international organisations to circulate Notices concerning individuals wanted for serious crime, missing persons, unidentified bodies, possible threats, prison escapes and criminal *modi operandi*¹⁵.

For the present purposes, 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 extradition¹⁶.

1.2.1 Red Notices

The legal basis for a Red Notice is an arrest warrant or court order issued by the judicial authorities in the country concerned. Many of Interpol's member countries consider a Red Notice to be a legally valid request

¹⁰ Agreement between The International Criminal Police Organization – Interpol and the Government of the French Republic Regarding Interpol's headquarters in France, April 24, 2008 and Decree No. 2016-326 of 17 March 2016 promulgating the additional protocol in the form of an exchange of letters between the Government of the French Republic and the International Criminal Police Organization – INTERPOL on the interpretation and application of Article 24 of the Agreement of 14 and 24 April 2008 regarding INTERPOL's headquarters in France, signed in Paris on 9 February 2016 and in Lyon on 12 February 2016.

¹¹ Fundamental texts, Official Documents at <https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>, last visited on 01/11/2018.

¹² Report 'Abusive use of the Interpol system: the need for more stringent legal safeguards', Doc 14277, 29 March 2017, Parliamentary Assembly of the Council of Europe, Rapporteur Mr Bernd Fabritius, 9. (hereafter PACE, Fabritius Report)

¹³ Interpol's Rules on the Processing of Data (2016), III/IRPD/GA/2011, last amended by the General Assembly resolution AG-2016-RES-06. (hereafter IRPD).

¹⁴ See Interpol fact sheet on International Notices system https://www.interpol.int/content/download/786/6291/version/32/file/02_GI02_02_2017_EN_web.pdf, last visited on 01/11/2018.

¹⁵ For further analysis on the Notice System and characteristics, see also Savino, M. (2011), 287.

¹⁶ IRPD, Article 82.

for provisional arrest, pending the transmission of an extradition request by a requesting country¹⁷. Minimum criteria must be met for a Red Notice to be published¹⁸:

'(a)

(i) The offence concerned is a serious ordinary-law crime.

Red notices may not be published for the following categories of offences:

- 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.

[...]

(ii) Penalty threshold:

- 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.

(b) The General Secretariat may decide to publish a red notice where the criteria in (i) or (ii) above are not met if, following consultation with the requesting National Central Bureau or international entity, it considers that publication of the requested red notice would be of particular importance to international police cooperation.'

The meaning of 'ordinary-law crime' in (a)(i) is to avoid illegalities of 'political' character¹⁹. Yet, the limits of the categories of offences are unclear. To reduce this uncertainty, the GS keeps an updated non-exhaustive list of specific offences that fall within the categories of offences²⁰.

Furthermore, the Constitution's neutrality and human rights provisions limit the basis on which Red Notices (and other Notices and Diffusions) can be published. Article 2 provides that the Interpol mandate is '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 in the spirit of the Universal Declaration of Human Rights'²¹.

¹⁷ Note that in a number of bilateral and multilateral extradition treaties, including the European Convention on Extradition, the Economic Community of West African States (ECOWAS) Convention on Extradition and the United Nations Model Treaty on Extradition, Interpol is an official channel for transmitting requests for provisional arrests, <https://www.interpol.int/INTERPOL-expertise/Notices>, last visited 01/11/2018.

¹⁸ IRPD, Article 83 (1)(a).

¹⁹ Sheptycki, J. (2017b), 71.

²⁰ IRPD, Article 83 (1)(a)(i).

²¹ Interpol Constitution, Article 2: <https://www.interpol.int/Media/Files/Legal-material/Reference-Documents/Constitution>, last visited 1/11/2018.

According to Article 3 of Interpol's Constitution 'it is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character'²². The primary objectives of Article 3 are to ensure²³:

1. the organisation's independence and neutrality²⁴;
2. to reflect international extradition law;
3. to protect individuals from persecution.

Within this mandate, Red Notices can be published on Interpol's secure website. At the request of a member country or international entity, extracts of Notices may also be published on Interpol's public website²⁵. A Red Notice can only be published if it fulfils all conditions for processing the information, including adherence to Articles 2 and 3 of the Constitution²⁶.

Interpol adopted the predominance test²⁷, on a case by case basis, to determine whether the political, military, religious or racial elements dominate in a given case. Interpol explains that the purpose of the predominance test was 'to implement Article 3 consistently and in recognition of the existence of what are termed purely political, military, religious and racial offences, but also the occurrence of ordinary law crimes within a political, military, religious and racial context'²⁸. No similar test has been developed for Article 2.

To determine whether a member country request to Interpol falls within the ambit of Article 3, all relevant information related to the case must be assessed by the GS, including the following elements²⁹:

1. the nature of the offence, namely the charges and the underlying facts;
2. the status of the person concerned;
3. the identity of the source of data;
4. the position expressed by another country or another international entity (such as an international tribunal);
5. obligations under international law;
6. implications for the neutrality of Interpol;
7. the general context of the case.

Based on the GS's experience in interpreting and implementing Article 3, a repository of practice on Article 3 was developed to guide the decision-making process³⁰. The repository provides guidance on the

²² Interpol Constitution, Article 3.

²³ See note on 'Neutrality' at <https://www.interpol.int/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution>, last visited 01/11/2018.

²⁴ See Interpol General Assembly Resolution, 75th Session, *Statement to Reaffirm Independence and political Neutrality*, Rio de Janeiro, 19-22 September 2006 (AG-2006-RES-04).

²⁵ See Interpol fact sheet on International Notices system https://www.interpol.int/content/download/786/6291/version/32/file/02_GI02_02_2017_EN_web.pdf, last visited 01/11/2018..

²⁶ See 'Publication' section at <https://www.interpol.int/INTERPOL-expertise/Notices>, last visited 01/11/2018.

²⁷ See Request for International inquiries, Interpol General Assembly Resolution, Lisbon, 10-15 June 1951 ([AGN/20/RES/11](https://www.interpol.int/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution)), paragraph 3.

²⁸ See Neutrality principle at <https://www.interpol.int/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution>, last visited 01/11/2018.

²⁹ IRPD, Article 34.

³⁰ Interpol Repository of Practice: Application of Article 3 of Interpol's Constitution in in the context of the processing of information via Interpol's channels (February 2013, 2nd edition), <https://www.interpol.int/content/download/34480/452435/version/6/file/article%203-english-february%202013vb%20CD.pdf>, last visited 01/11/2018.

evolution and development of Interpol's practice in application of Article 3 in a variety of circumstances, including:

1. offences committed by politicians and former politicians;
2. offences committed in an unconstitutional seizure of power;
3. offences with military, religious or racial aspects and offences against the security of the state³¹.

To ensure proper accountability, control mechanisms require Red Notice requests to be accompanied by a minimum set of data. A defined set of physical identifiers of the person concerned has to be submitted together with proper judicial data, comprising summary of facts of the case, the charge(s), the law(s) covering the offence(s), penalties or sentence involved, and reference to a valid arrest warrant or judicial decision³².

Processing requests to publish Red Notices involves the requesting NCB or international entity and the GS in a multi-level accountability structure. Among other things, the requesting NCB or international entity shall ensure that the warrant or order has the necessary legal foundation and confirm extradition will actually be sought upon arrest of the person³³. Further, the GS 'shall conduct a legal review of all red notices prior to their publication to ensure compliance with Interpol's Constitution and Rules, in particular with Articles 2 and 3 of Interpol's Constitution'³⁴. In 2016 a dedicated multidisciplinary task force was created to conduct more robust quality and legal compliance review process for all incoming notices and wanted persons diffusions prior to publication by the GS. The dedicated team conducting this review is multi-disciplinary, including lawyers working side-by-side with senior operational assistants, analysts, and police officers. It is also multilingual and multinational, including native speakers of all Interpol's official languages and over ten different nationalities.³⁵ In 2018 the GS began reviewing the significant number of red notices and wanted persons diffusions authorized prior to implementation of the robust legal compliance review in 2016, supported by Slovakia, Germany, Italy, Croatia, and, soon, Sweden, who seconded officials for this review following an appeal made by the Council of the EU under the Estonian Presidency.³⁶

All Red Notices that pass the task force review are stored in a database known as the Interpol 'Criminal Information System', which also contains personal data and the criminal history of people subject to request for international police cooperation.

1.2.2 Diffusion

Similar to a Notice, another request for cooperation or alert used by Interpol is a 'Diffusion'. This is less formal than a Notice but can be used to request the arrest or location of an individual or additional information in relation to a police investigation. A Diffusion is circulated directly by an NCB to the member countries of their choice, or to the entirety of Interpol. Review prior to circulation to other NCBs is performed by the circulating NCB. 'Diffusions' are also recorded in Interpol's Criminal Information System, but only after the GS has performed a review .

³¹ Interpol Repository of Practice (2013).

³² IRPD Article 83 (2) (a)-(b).

³³ IRPD Article 84.

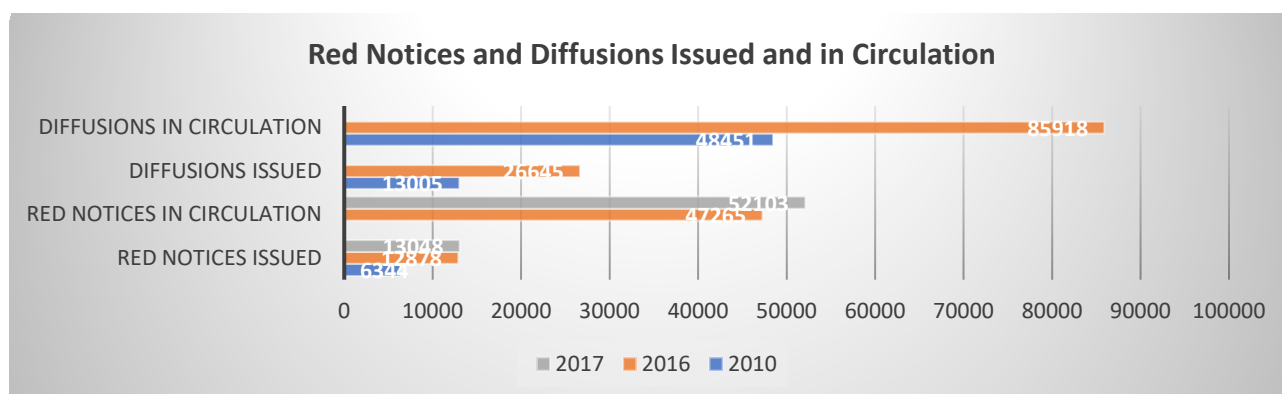
³⁴ IRPD Article 86.

³⁵ See Statement from Interpol's General Secretariat, page 2, 18 February 2019

³⁶ See Statement from Interpol's General Secretariat, page 3, 18 February 2019

1.2.3 Statistics

The most recently available Interpol Annual Report confirms that, in 2017, 52 103 valid Red Notices were on the Criminal Information System, 13 048 Red Notices were issued and 6 620 of these were public³⁷. In 2016, 20 922 Notices were published by the GS, including 12 878 Red Notices and recorded 26 645 Diffusions³⁸. There were 76 713 Notices, of which 47 265 were Red Notices³⁹ and 85 918 Diffusions in circulation at the end of 2016⁴⁰. In comparison, in 2010, 6 344 Red Notices were issued of a total of 10 135 notices and 13 005 Diffusions were also issued. In total, 35 318 Notices and 48 451 Diffusions were in circulation in 2010. The data is illustrated in the figure below.



Source: Interpol data. Interpol Annual Reports 2016 and 2017; Interpol Fact Sheet: International Notice System.

This data allows for two important observations. Firstly, the number of Red Notices and Diffusions is high and requires substantial resources and legal management systems. Secondly, the increase in Notices and Diffusions issued and in circulation, which has been continuous over the years, suggests the need for a corresponding increase in resources and legal management systems.

1.3 Interpol and the EU

All EU MSs are party to the Interpol agreement. The EU is not party to it, but Interpol has, since 2009, a Special Representative of Interpol to the European Union (SRIEU) in Brussels⁴¹.

The SRIEU gives Interpol the opportunity to 'act as a privileged partner' in EU forums and EU initiatives⁴². Interpol also has access to EU funded research projects and is a partner in projects to which the EU contributes financially⁴³. The projects cover a wide range of areas from the exchange of e-evidence (SIIP project), fighting e-crime, measuring for automated recognition technologies to initiatives covering Rules, Expectations and Security through Privacy-Enhanced Convenient Technologies (Respect; closed project)⁴⁴. Furthermore, Interpol and the EU cooperate on other inter-regional and international initiatives with non-EU countries such as the West African Police Information System (WAPIS)⁴⁵, the Critical Maritime Routes

³⁷ Interpol Annual Report (2017), 23.

³⁸ Interpol fact sheet: International Notices System,

https://www.interpol.int/content/download/786/6291/version/32/file/02_GI02_02_2017_EN_web.pdf, last visited 01/11/2018.

³⁹ Interpol Annual Report (2016), 23.

⁴⁰ Interpol fact sheet, International Notices System.

⁴¹ See 'International Partners' at <https://www.interpol.int/About-INTERPOL/International-partners/European-Union>, last visited on 01/11/2018.

⁴² See 'International Partners'.

⁴³ See 'International Partners'.

⁴⁴ For further details on ongoing and finalised projects, see 'EU funded projects' on 'International Partners' at <https://www.interpol.int/About-INTERPOL/International-partners/European-Union>, last visited on 01/11/2018.

⁴⁵ See 'WAPIS programme' at <https://www.interpol.int/About-INTERPOL/International-partners/European-Union/WAPIS-programme>, last visited 26/10/2018.

Law Enforcement Capacity Building in East Africa (CRIMLEA)⁴⁶, projects for the extension of Interpol's global police communications system of I-24/7 with Jordan⁴⁷ and the creation of an International Child Sexual Exploitation Database (ICSE)⁴⁸.

Council Justice and Home Affairs Officials have regular EU-Interpol meetings allowing ongoing dialogue and cooperation on topics of mutual interest. The meetings benefit from the expertise and preparation of experts in the Police Cooperation Unit, Directorate General Migration and Home Affairs of the European Commission⁴⁹ and the EEAS.

The European Parliament has also debated the issue of Red Notices and highlighted the abuse by some member countries of Interpol's Notice System in violation of international standards of human rights⁵⁰.

With this background the study reviews the current Interpol Notice System and the abuses of it. The following sections provide an overview of the reported abuses and their nature, describe the recent reforms undertaken by Interpol and assess their implementation to date. Further, the study identifies practices still in need of reform and recommends strategic activities, which the EU and EU Member States (MSs) could advocate to prevent the abuse of Interpol and its mechanisms. Additionally, responding to the particular importance of EU regulation on data protection, section 3 of the study reviews applicable EU rules and individuals' access to data considered relevant for Interpol and member countries.

2. Reforms and outstanding criticism

The process that led to the reforms of the Notice System between 2015-2017 followed an intensive and critical debate in governmental and non-governmental organisations and in academic literature⁵¹. The Interpol working group on the processing of information was tasked with a review and reform proposal in 2014. The major steps of the reforms that followed include:

2015: Refugee policy adopted

2016: Process of reviewing Red Notices reformed. GS Task Force established

2016: Adoption of new Statute for the Commission for the Control of Files and Rules on the Processing of Data updated

2017: Refugee data processing policy formally endorsed

As the following section shows, the reform and its changes after 2015 have been positive. Yet, as the section also demonstrates, there remains scope for improving the procedural handling of Notices and Diffusions and ensuring member countries respond appropriately to the abuse of the Notice System.

⁴⁶ See 'CRIMLEA' at <https://criticalmaritimeroutes.eu/projects/crimlea/>, last visited on 01/11/2018.

⁴⁷ See 'INTERPOL and EU launch Project Estijab to help reinforce security across Jordan' at <https://www.interpol.int/News-and-media/News/2014/N2014-184>, last visited on 01/11/2018.

⁴⁸ See 'Victim Identification' at <https://www.interpol.int/Crime-areas/Crimes-against-children/Victim-identification>, last visited on 01/11/2018.

⁴⁹ Interview with Commission official, Directorate General Migration and Home Affairs, on file with the authors.

⁵⁰ See further the debate available on EPTV at <http://www.europarl.europa.eu/ep-live/en/plenary/video?debate=1507141570195>, last visited on 01/11/2018.

⁵¹ For example, see further Cheah, W. L., (2010) 'Policing Interpol: The Commission for the Control of Interpol's Files and the Right to Remedy', *International Organizations Law Review* Vol. 7, 379.

2.1 Overview

2.1.1 Organization for Security and Co-operation in Europe Parliamentary Assembly (OSCE PA)

Through declarations adopted in Oslo (2010)⁵², Monaco (2012)⁵³, Istanbul (2013)⁵⁴ and Baku (2014), the Organization for Security and Co-operation in Europe (OSCE) Parliamentary Assembly expressed concern regarding politically motivated Notices and specifically abuse of the Red Notice System by states whose judicial systems did not meet 'international standards'. The Istanbul Declaration⁵⁵ of the OSCE PA cited specific cases of such prosecutions by Belarus, the Russian Federation and Ukraine, including those of the Russian activist Petr Silaev⁵⁶, financier William Browder⁵⁷, businessman Ilya Katsnelson⁵⁸, Belorussian politician Ales Michalevic⁵⁹, and Ukrainian politician Bohdan Danylyshyn⁶⁰.

On 13 February 2014 the OSCE Parliamentary Assembly's General Committee on Democracy, Human Rights and Humanitarian Questions in Vienna convened to consider rule of law concerns and political prisoners in the OSCE region. Yevgeniy Zhovtis, from the International Bureau for Human Rights and Rule of Law in Kazakhstan, highlighted the cases of Vladimir Kozlov⁶¹, Roza Tuletaeva⁶², Vadim Kuramshin and other civic activists who are serving prison sentences in Kazakhstan and 'the ambiguous role of Interpol' in many of these cases⁶³.

In a 2017 statement, OSCE Representative on Freedom of the Media Harlem Désir urged Secretary-General of Interpol Jürgen Stock that Interpol carefully review requests by Turkey demanding the arrest of people critical of the government living outside the country⁶⁴. This followed Interpol's decision to suspend the Red

⁵² OSCE PA Declaration and Resolutions adopted at the 19th annual session Oslo, 6- 10 July 2010, paragraph 16, <https://www.oscepa.org/documents/all-documents/annual-sessions/2010-oslo/declaration-5/267-oslo-declaration-english/file>, last visited 01/11/2018.

⁵³ OSCE PA Declaration and Resolutions adopted at the 21st Annual Session, Monaco, 2012, <https://www.oscepa.org/meetings/annual-sessions/2012-monaco-annual-session/2012-monaco-final-declaration/1674-05> paragraph 93, last visited 01/11/2018.

⁵⁴ OSCE PA Declaration and Resolutions adopted at the 22th annual session Istanbul, 29 June-3 July 2013, paragraph 147, <https://www.oscepa.org/meetings/annual-sessions/2013-istanbul-annual-session/2013-istanbul-final-declaration/1643-06>, last visited 01/11/2018

⁵⁵ OSCE PA Declaration and Resolutions adopted at the 22th annual session Istanbul, 29 June-3 July 2013, paragraph 146.

⁵⁶ Fair Trials, Case Study Petr Silaev <https://www.fairtrials.org/case-study/petr-silaev>, last visited 01/11/2018.

⁵⁷ See individual cases at Annex B.3.

⁵⁸ In April 2016, Ilya Katsnelson Interpol concluded that the Russian Federation's request for his arrest and extradition was predominantly political, <https://www.forbes.com/sites/tedbromund/2016/04/30/an-american-businessman-escapes-the-clutches-of-interpol-and-russia/#453e4f902805>, last visited 01/11/2018.

⁵⁹ Radio Poland, 'Poland wants changes to Interpol arrest system', 15 December 2011, <http://www.thenews.pl/1/10/Artykul/80561,Poland-wants-changes-to-Interpol-arrest-system>

⁶⁰ The former Economic Minister in the government of Yulia Tymoshenko; accused of abuse of power. On 13 January 2011, the Czech Republic granted him political asylum. Ukraine's request for his extradition was denied. However, Danylyshyn was removed from the Interpol list only after the closure of the criminal case in Ukraine.' Savchenko, I. et al (2017) 'The report: The reform of Interpol: Don't let it be stopped halfway'.

⁶¹ An unregistered opposition party, 'Alga', has been declared an extremist group, closed down, and its leader, Vladimir Kozlov, is serving a seven and a half year prison sentence <https://euobserver.com/opinion/121311>, last visited 01/11/2018.

⁶² See Front Line Defenders at <https://www.facebook.com/FrontLineDefenders/posts/roza-tuletaeva-is-currently-imprisoned/10203477303117511/>, last visited 01/11/2018.

⁶³ See 'OSCE PA human rights committee considers rule of law concerns, political prisoners', at <https://www.oscepa.org/news-a-media/press-releases/2014/1512-osce-pa-human-rights-committee-considers-rule-of-law-concerns-political-prisoners>, last visited 01/11/2018.

⁶⁴ See 'OSCE Representative on Freedom of the Media urges Interpol to carefully consider arrest warrant requests from Turkey' <https://www.osce.org/fom/336406>, last visited 01/11/2018.

Notice issued for a German writer of Turkish origin, Doğan Akhanlı⁶⁵, who was released after being detained by Spanish police in 2017.

2.1.2 Parliamentary Assembly of the Council of Europe

The Parliamentary Assembly of the Council of Europe (PACE) Committee on Legal Affairs and Human Rights reported in 2013 that Interpol had permitted politically motivated Red Notices⁶⁶.

In April 2017 PACE approved a report⁶⁷ by the Committee on Legal Affairs and Human Rights and a resolution⁶⁸ on Interpol reform to address abuse of Red Notices. The report acknowledged that Interpol's Working Group on the Processing of Information submitted a number of reform proposals adopted at Interpol's General Assembly in Bali (Indonesia) in November 2016⁶⁹. The report referred to recent examples of abuse of the Notice System that raised concern about the effectiveness of policies put in place by Interpol, in particular the refugee policy⁷⁰.

2.1.3 Non-governmental organisations

Human rights and non-governmental organisations (NGOs), such as the Open Dialog Foundation, Fair Trials and Centre for Peace Studies, regularly report on abuse of Red Notices against opposition politicians, journalists, human rights activists and businessmen. Furthermore, these organisations were asked to provide their recommendations to the 2014 Interpol Working Group, commissioned to review Interpol oversight mechanisms. Some of these NGOs continue to monitor issues with Red Notices.

The Open Dialog Foundation provided its recommendations⁷¹ to the Interpol Working Group, but has criticised the outcome and maintained the Notice System is still open to abuse⁷². The Open Dialog Foundation continues its campaign⁷³ to defend victims of misuse of the Notice System and draws international attention to politically motivated cases, such as those of Viktor and Ilyas Khrapunov⁷⁴, whose extraditions have been denied, yet who continued to have extant Red Notices⁷⁵ as of 2018.

Fair Trials has advocated for a reform of the Notice System since 2012 and regularly highlights examples where Red Notices have been misused by member countries against political activists, journalists and refugees. In a 2013 report Fair Trials recommended a reform of the Notice System⁷⁶. In a follow up report in 2018 Fair Trials acknowledged that Interpol had undertaken demonstrable reforms, yet it continued to push for better improvements on a range of both regulatory and implementation issues⁷⁷. In 2018 Fair

⁶⁵ See individual cases at Annex B.3.

⁶⁶ PACE Reference to committee: Doc. 12842, Reference 3837 of 9 March 2012, paragraph 56.

⁶⁷ PACE (2017), Fabritius Report.

⁶⁸ PACE, Resolution 2161 of 26 April 2017, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23714&lang=EN>, last visited 01/11/2018.

⁶⁹ PACE (2017), Fabritius Report, paragraph 7. Note that the CCF reforms were implemented as of March 2017. See also Interpol Annual Report at 59 <https://www.interpol.int/News-and-media/Publications2/Annual-reports2>, last visited 01/11/2018.

⁷⁰ PACE (2017), Fabritius Report, paragraphs 55-56. See also 2.3.1 below.

⁷¹ Kozłowska, L. (2015), 'ODF drafted recommendations on the reform of Interpol', at <https://en.odfoundation.eu/a/6690.odf-drafted-recommendations-on-the-reform-of-interpol>, last visited 01/11/2018.

⁷² Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', at <https://en.odfoundation.eu/a/8201.the-report-the-reform-of-interpol-don-t-let-it-be-stopped-halfway>, last visited 01/11/2018.

⁷³ Savchenko, I. (2017), 'The list of Kazakhstani political prisoners and persons subjected to politically motivated prosecution by Kazakhstan', at <https://en.odfoundation.eu/a/8423.the-list-of-kazakhstani-political-prisoners-and-persons-subjected-to-politically-motivated-prosecution-by-kazakhstan>, last visited 01/11/2018.

⁷⁴ See individual cases at Annex B.3.

⁷⁵ Savchenko, I. et al (2017).

⁷⁶ Fair Trials Report (2013), 'Strengthening respect for human rights, strengthening INTERPOL', at <https://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf>, 66, last visited 01/11/2018.

⁷⁷ Fair Trials (2018), 'Dismantling the Tools of Oppression: Ending the Misuse of INTERPOL', at <https://fairtrials.org/publication/dismantling-tools-oppression-1>, 63-66, last visited 28/10/2018.

Trials wrote a letter to the President of the European Commission, to urge action against Turkey abusing Interpol processes against its critics⁷⁸.

The Stockholm Center for Freedom (SCF) is an advocacy organisation that promotes the rule of law, democracy and fundamental rights and freedoms with a special focus on Turkey. In a 2017 report the Stockholm Centre for Freedom concluded that 'Turkey under autocratic leader Erdoğan's rule must be recognised as a country that uses Interpol in bad faith in order to advance political persecution and hunt down government critics and opponents'⁷⁹. The report highlighted another abuse of Interpol, whereby details of stolen and lost passports are submitted directly to the Interpol database of Stolen and Lost Travel Documents (SLTD) by a member country. The report claims that the Turkish government has reported to the STLD database, 'claiming missing, lost or revoked passports and travel documents for critics and opponents who, in many instances, are not even aware that their passports and travel documents have been invalidated.'⁸⁰ The report identifies that, 'this practice started in 2014 and gained pace in 2015 and 2016, when the NCB for Turkey allegedly reported passports that were cancelled as stolen or lost on Interpol's SLTD.'⁸¹

Human Rights Watch also actively follows individual cases of misuse of the Notice System and advocates to both state bodies and international organisations for respecting human rights and the rule of law in using the Notice System as well as other international mutual legal assistance instruments. Anticipating the General Assembly meeting in Beijing, September 2017, Human Rights Watch wrote a letter to the Secretary General of Interpol, Jürgen Stock, alerting him and Interpol to recent cases in which Chinese authorities have used the Notice System to detain and extradite persons in alleged targeting of critics of the Chinese government and its policies⁸².

2.2 Procedural Issues

2.2.1 Review

A secure e-based communication system, 'I 24/7', was introduced by Interpol in 2003 and iLink in 2008 to improve publication and circulation of Notices and Diffusions to member countries. By 2010 all Red Notices were submitted directly by individual NCBs via this 'I 24/7 Network'⁸³. In 2015 Interpol ensured that a review is carried out before Notices are circulated to NCBs (the submission process)⁸⁴. This development is consistently reported as a significant improvement of the process. The issues that remain concern Diffusions specifically and some aspects of the review process.

First, as Fair Trials describes, there is no effective review process for Diffusions, which are circulated to all or selected NCBs directly and not through the GS. According to Fair Trials, the GS reviews all Diffusions which request coercive measures, such as arrest. If a Diffusion is not approved by Interpol, the GS will not upload it in the Interpol Database, and circulate a message to NCBs to that effect and advise not to use Interpol channels to act upon the Diffusion. The problem reported by Fair Trials and other non-

⁷⁸Fair Trials (2018), 'Letter to EU about Turkish dissidents targeted by authoritarian regimes' <http://www.fairtrials.org/publication/fair-trials-letter-eu-about-turkish-dissidents-targeted-authoritarian-regimes> last visited 01/11/2018. The letter referenced the cases of Bahar Kimyongur (see individual case at Annex B.3) Abdullah Büyük (see individual cases at Annex B.2) and Dogan Akhanli (see individual cases at Annex B.3).

⁷⁹ SCF (2017), 'Abuse of Interpol System by Turkey', at https://stockholmcf.org/wp-content/uploads/2017/09/Abuse-Of-The-Interpol-System-By-Turkey_September-20-2017.pdf, 40, last visited 01/11/2018.

⁸⁰ SCF (2017), 'Abuse of Interpol System by Turkey', 26.

⁸¹ SCF (2017), 'Abuse of Interpol System by Turkey', 26-27.

⁸² Human Rights Watch Letter to Secretary General Jürgen Stock, September 22 2017, <https://www.hrw.org/news/2017/09/24/letter-hrw-interpol-secretary-general-stock>, last visited 01/11/2018.

⁸³ See Interpol Annual Report 2010.

⁸⁴ Fair Trials (2018), 'Dismantling the Tools of Oppression', 31.

governmental organisations is that the Diffusions often remain in the national databases despite Interpol updates. Effectively, it remains possible for NCBs to continue to act on the Diffusion bilaterally⁸⁵.

Secondly, as to the review itself, both written sources and interviews report concerns about the quality and consistency of the GS's review of Red Notice requests. It is well-known that the GS has established a Task Force with a number of persons (reportedly 30-40), to ensure reviewing of incoming Notice requests, among other things⁸⁶. Nevertheless, both consulted governmental sources and NGOs report that they continue to see individual cases that indicate the review is not working as effectively as it could. For example, Fair Trials describes that despite resource improvements of the submission process (allocating more personnel to carry out reviews and a documented strict procedure) the process is not as effective as it should be.

Two conditions are highlighted. First, PACE in their report identified that the increasing case numbers makes it questionable if there are sufficient resources to perform timely reviews⁸⁷ of Red Notices issued before the establishment of the Task Force⁸⁸. As described above, there is a significant increase in the number of Notice requests submitted to the GS, representing a demonstrable pressure on the existing resources within the GS. Furthermore, as Fair Trials also submits, the effectiveness of the review process is inhibited by the lack of clarity and consistent application of the rules and principles⁸⁹.

2.2.2 Corrections

Interpol informs that if the GS receives information that suggests data in the system is in violation of Interpol rules, the GS takes action to ensure compliance. This may include immediately blocking the visibility of the data on the Criminal Information System while a review is pending⁹⁰.

Nevertheless, both the written sources and the interviews confirm that updating data in the Criminal Information System to bring it into compliance with Interpol rules remains a significant challenge. Firstly, when extradition is denied, it is not always recorded in the Criminal Information System. Whilst this does not always entail that a Red Notice should be deleted, it does represent relevant information for member countries. Secondly, there are several individual cases that suggest refugees have difficulties in having their Red Notices deleted, although the refugee policy, herein further presented, would require this. This is due to difficulties in getting the refugee status confirmed and to the extended procedure when having to submit their request to the CCF. Thirdly, due to the lack of control over NCBs, refugees have difficulties getting their Red Notices deleted in national databases, even when deleted in the Interpol Criminal Information System⁹¹. This is also identified by the Open Dialog Foundation, which reports that a process for Interpol to correct deletions of Red Notices stored in NCB national databases is absent⁹².

⁸⁵ Fair Trials (2018), 'Dismantling the Tools of Oppression', 31.

⁸⁶ PACE (2017), Fabritius Report, 7.

⁸⁷ PACE (2017), Fabritius Report, 7.

⁸⁸ Flash Report 20 November 2017 JHA Senior Official Meeting EU-Interpol, DG HOME, European Commission, limited circulation, on file with the authors.

⁸⁹ Fair Trials (2018), 'Dismantling the Tools of Oppression', 31-38.

⁹⁰ Interview September 7, 2018, on file with the authors.

⁹¹ For remedies under Data protection principles and regulations for information held by NCBs see further Section 3 of this Study.

⁹² Mądrzycki, W. (2015), 'Legal analysis of the directions of recommended Interpol reform aimed at preventing the abuse of Red Notice mechanisms', at <https://en.odfoundation.eu/a/6157/legal-analysis-of-the-directions-of-recommended-interpol-reform-aimed-at-preventing-the-abuse-of-red-notice-mechanisms>, last visited 1/11/2018.

2.3 Policy Issues

2.3.1 Refugee policy

In 2006 the United Nations High Commissioner for Refugees (UNHCR) highlighted situations whereby refugees, recognised under the 1951 Refugee Convention, were apprehended or detained due to politically-motivated requests for Red Notices made by their countries of origin. As a result, such individuals were often left without access to due process of law, were at risk of *refoulement*⁹³ or unable to return to their country of asylum⁹⁴.

In 2015 Interpol adopted a new refugee policy. The aim was to enable removal of a Red Notice if the individual is a refugee under the 1951 Refugee Convention. In practical terms the reform mandated the GS to remove a Red Notice or Diffusion from its Criminal Information System if the relevant person has been recognised as a refugee under the 1951 Convention.

It is widely recognised that the reform has bolstered Interpol's efforts to ensure that refugee status is respected. At the same time, Fair Trials, in its report from 2018, as well as in an interview, reports that the refugee policy lacks effect in two respects: implementation and scope⁹⁵.

As to implementation, Fair Trials describes that the policy has not been implemented thoroughly in the analogue and digital communication of Interpol, with consequences for the NCBs adherence to the new policy. Fair Trials reports that the policy remains unreferred to in most reference texts, which is key to implementing the policy globally. Further, the refugee policy has not been publicly published, only the General Assembly resolution of 2017 which formally endorsed the 2015 policy and entails measures to avoid that criminals and terrorists abuse refugee status⁹⁶. Fair Trials states that some NCBs have not sufficiently implemented the policy. This is reported both as a consequence of the resistance from some NCBs (effectively not being part of Interpol's direct accountability structure) and as a consequence of the predictable challenge of implementing policy change across offices with differences in legal and political culture, resource availability and in the level of professional capacity.

As to the scope of the policy, Fair Trials reports that 'the Refugee Policy is phrased as though it is intended to prevent the dissemination of Interpol alerts against refugees ("the processing of Red Notices and Diffusions against refugees will not be allowed if the following conditions are met...") but in practice, this policy is most likely to be applied retrospectively as a ground for deletion of an Interpol alert'⁹⁷. This is because Interpol lacks access to information on who among those subject to Interpol Notices have been granted refugee status. Furthermore, Fair Trials reports that while the policy is limited to people for whom 'the status of refugee or asylum-seeker has been confirmed', it remains unclear what evidence is sufficient to confirm a person as an 'asylum seeker'. Fair Trials also observes that the refugee policy may be too limited, as it does not apply to those granted a subsidiary form of protection or those who have been naturalised as citizens in the previous country of asylum⁹⁸.

⁹³ Meaning: the forcible return of refugees or asylum seekers to a country where they are liable to be subjected to persecution.

⁹⁴ UNHCR presentation to the Joint Seminar of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and Committee on Article 36 (CATS) organized by the Slovenian EU Presidency, Ljubljana, 17 – 18 January 2008 'Terrorism as a Global Phenomenon' Remarks by Vincent Cochetel, Deputy Director of the Division of International Protection Services, United Nations High Commissioner for Refugees, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDF.pdf?docid=478e03702>, last visited 01/11/2018.

⁹⁵ Fair Trials (2018), 'Dismantling the Tools of Oppression', 56.

⁹⁶ Interpol General Assembly Resolution No. 9, GA-2017-86-RES-09.

⁹⁷ Fair Trials (2018), 'Dismantling the Tools of Oppression', 56.

⁹⁸ Fair Trials (2018), 'Dismantling the Tools of Oppression', 56-57

The Open Dialog Foundation provided its recommendations⁹⁹ to the Interpol Working Group but has criticised the resulting refugee policy due to its inconsistent application: '(...) this policy is not enshrined in the legislation and is applied inconsistently. There are numerous refugees and other persons on Interpol's wanted lists, whose persecution has been recognised by the EU Member States and human rights activists as politically motivated'¹⁰⁰. This is an observation which was confirmed in interviews. The Open Dialog Foundation also identifies inconsistent application of the refugee policy, for cases based on similar facts.

Another issue Fair Trials, the Open Dialog Foundation and the PACE report draw attention to is the problem that refugees may not even be aware of the fact that they are on the Notice System, as most of Interpol's Notices are non-public¹⁰¹. For a list of individual cases which show the application or non-application of the Refugee policy, see Annex B.1.

2.3.2 Human rights violations

Article 2 of the Interpol Constitution requires Interpol and its members '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'¹⁰². The RPD further states: 'The aim of the present Rules is to ensure the efficiency and quality of international cooperation between criminal police authorities through Interpol channels, with due respect for the basic rights of the persons who are the subject of this cooperation, in conformity with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers'¹⁰³.

The issues concern both how Interpol takes into consideration member countries' positions on extraditions based on human rights grounds and how Interpol, in its own evaluation of Notice requests, respects international human rights.

International governmental as well as NGOs observe significant practical problems of implementing policies to safeguard individuals' human rights in the Notice System. First, based on individual case studies (see also the list in Annex B.2), it is argued that Interpol maintains an inconsistent human rights approach. This concerns both the practice of the GS and the practice of the individual NCBs. Second, there is a reported lack of clarity and transparency as to the legal framework for the GS decision-making as well as their actual practices. In 2014 the Interpol General Assembly invited the GS to develop a repository of practice on Article 2¹⁰⁴. This repository is still under construction and the impact, as all governmental organisations and NGOs we have interviewed confirm, is a lack of transparency regarding application of Interpol rules by the GS and NCBs.

2.3.3 Neutrality principle

In its 2018 update report Fair Trials observes that there has been no further development in the way in which Interpol interprets Article 3 of its Constitution, in particular the neutrality clause. The CCF decisions do provide some insight into how the political neutrality clause is applied¹⁰⁵, but it remains open how Interpol interprets Article 3 *vis-à-vis* international and domestic extradition law.

⁹⁹ Kozlovskaya, L. (2015), 'ODF drafted recommendations on the reform of Interpol'

¹⁰⁰ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

¹⁰¹ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

¹⁰² Interpol Constitution, Article 2.

¹⁰³ IRPD, Article 2.

¹⁰⁴ Interpol, Resolution No. 18, AG-2014-RES-18. Development of practice collection is also mandated in the Rules of Processing of Data, Article 34, sec. 4. See further <https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>, last visited August 9, 2018. See also PACE (2017) Fabritius Report, paragraphs 37-41.

¹⁰⁵ See [Annex C](#) for a summary of the CCF Decision Excerpts

On 7 March 2017 Rapporteur Bernd Fabritius stated, when the Committee on Legal Affairs and Human Rights of PACE approved recommendations in a report to end the abuse of Red Notices, that ‘the sharp increase of such Notices over the last decade, and their alleged abuse by some member states in the pursuit of political objectives, repressing the freedom of expression or persecuting members of the political opposition beyond their borders, represent a serious challenge for the system’¹⁰⁶.

Interpol now publishes a repository of practice on Article 3, which gives a greater legal transparency on application and represents a good tool to ensure some level of legal consistency. For a list of individual cases, which demonstrate the impact of the (non-) application of the neutrality principle, please see Annex B.3.

2.4 Redress and accountability

2.4.1 The CCF

The CCF provides individuals with an opportunity to send paper submissions to review information on the Criminal Information System. This process allows a person to determine if they are subject to a Red Notice and to request its deletion from the Criminal Information System, applying Articles 2 and 3 of the Constitution, the RPD and the CCF Statute.

Since 2015 the CCF has undergone significant reform, both in its composition, its institutional independence and its procedures for handling complaints. The current statute of the CCF requires its members to have legal expertise¹⁰⁷ and to represent the major legal systems of the world (where possible)¹⁰⁸. The CCF statute enshrines its independence¹⁰⁹ and there are rules on time limits¹¹⁰, interim relief¹¹¹ and publication of decisions¹¹². For two individual cases demonstrating the impact of CCF decisions see Annex B.4.

The CCF decisions are binding on Interpol¹¹³. This differs from the previous Interpol rules,¹¹⁴ which conferred the CCF with an advisory role only. This significant change gives the CCF the power to ‘decide on any appropriate corrective actions’ and ‘other appropriate remedies’ if any information on the Criminal Information System violates the right of an individual.¹¹⁵

The CCF must include in its rulings reasoned decisions¹¹⁶ a summary of the proceedings, information about the parties’ submissions, facts of the case, an explanation of how the CCF applied Interpol’s rules to the facts of the case, and its analysis of the parties’ legal arguments¹¹⁷. A request will be examined on the basis of written submissions, although hearings will only be held if deemed necessary by the CCF Requests Chamber¹¹⁸. Further, there is no right under the statute to any appeal against a decision by the CCF. If new

¹⁰⁶ Council of Europe, ‘Legal Committee recommends steps to end abuse of Interpol’s Red Notices’, 7 March 2017, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6534&lang=2>, last visited 01/11/2018.

¹⁰⁷ Statute for the Commission for the Control of Interpol’s Files, Article 8(4).

¹⁰⁸ Statute for the Commission for the Control of Interpol’s Files, Article 8(2).

¹⁰⁹ Statute for the Commission for the Control of Interpol’s Files, Article 4, Article 5(1) and Article 11.

¹¹⁰ Statute for the Commission for the Control of Interpol’s Files, Article 40.

¹¹¹ Statute for the Commission for the Control of Interpol’s Files, Article 37.

¹¹² Statute for the Commission for the Control of Interpol’s Files, Article 44 – to date 14 decision excerpts are included on the CCF section of the Interpol website - <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Legal-texts-and-studies/Decision-excerpts> - see a summary of the CCF Decision Excerpts at [Annex C](#)

¹¹³ Statute for the Commission for the Control of Interpol’s Files, Article 26(1) and 38(1).

¹¹⁴ Rules on the Control of Information and Access to Interpol’s Files.

¹¹⁵ Statute for the Commission for the Control of Interpol’s Files, Article 39.

¹¹⁶ Statute for the Commission for the Control of Interpol’s Files, Article 27(1).

¹¹⁷ Statute for the Commission for the Control of Interpol’s Files, Article 38(2).

¹¹⁸ Statute for the Commission for the Control of Interpol’s Files, Article 36.

facts are discovered, there is a possibility to request the re-examination of the CCF decision¹¹⁹. However, the standards for such re-examination are subject to a limitative test, namely, 'facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed' are accepted¹²⁰. Moreover, such re-examinations must be introduced within a six-month period since the discovery of the new facts¹²¹.

Article 35 of the statute allows for information connected to the request to be disclosed to the applicant. Such disclosure can be restricted on the basis of national security, confidentiality of an investigation or prosecution, to protect the rights and freedoms of the applicant or a third party or to enable the CCF and/or Interpol to discharge its functions¹²².

All written sources and interviews bear testament to the significant impact of the CCF reform. For example, in its update report from 2018 Fair Trials welcomes the reforms and their designs at length, but also outlines areas where continued reform is necessary. Accordingly, Fair Trials notes that effective implementation of the reforms is an absolute necessity for them to be of real significance. This is in line with the observations from other sources.¹²³

The first implementation issue pertains to effective case processing and available resources. Fair Trials mentions that setting up a new and faster timeframe for managing cases is necessary so the CCF is equipped with necessary resources. It should be remembered that despite the drastic increase in the publication of Notices and potential complaints, the decision-making is routinely longer than a year¹²⁴. The CCF will need to develop a procedural infrastructure or improved case management system to ensure all parties comply with the timetables¹²⁵. The PACE report pays significant attention to the effective redress provided through the CCF. The immunity, which Interpol enjoys under the agreement with its host countries, presumes the system ensures an effective remedy to protect the rights of the individuals¹²⁶. The PACE report concluded that due to 'jurisdictional immunity' Red Notices could not be challenged by targeted individuals before any national or international courts and reiterated that the CCF was 'ill-equipped to deal with the large and growing number of complaints and their complexity'¹²⁷.

The second issue pertains to the NCBs. The reform of the CCF meant that the GS is bound by the decisions of the CCF. Yet, it remains to be seen to what extent the NCBs will effectively implement the decisions. Fair Trials points out that in these cases interim measures are lacking, such as reporting any corrective action or suspending enforcement action pending a CCF decision¹²⁸. However, the member countries that do not agree with the way in which the RPD are applied can commence concerted consultations.

The third issue concerns the presumption of disclosure of information to the individual applicant¹²⁹. According to Article 35 of the CCF Statute, NCBs can decline to disclose information if justified¹³⁰. If there is no justification for non-disclosure by the NCB, the CCF can take this into consideration when assessing and

¹¹⁹ Statute for the Commission for the Control of Interpol's Files, Article 42 (1). Also see Decision Excerpts No.6 (2 March 2017) and No.7 (2 March 2017) in [Annex C](#) when requests were submitted to the CCF for re-examination.

¹²⁰ Statute for the Commission for the Control of Interpol's Files, Article 42 (1) and Article 19(1) of the Operating Rules of the Commission for the Control of Interpol's Files.

¹²¹ Statute for the Commission for the Control of Interpol's Files, Article 42 (2).

¹²² Statute for the Commission for the Control of Interpol's Files, Article 35(3).

¹²³ Interview 15 August 2018, on file with the authors.

¹²⁴ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

¹²⁵ See proposals by Fair Trials (2018) 'Dismantling the Tools of Oppression', 49, 51.

¹²⁶ PACE (2017), Fabritius Report, 9.

¹²⁷ PACE (2017), Fabritius Report, 1.

¹²⁸ Fair Trials (2018), 'Dismantling the Tools of Oppression', 39-42.

¹²⁹ Statute for the Commission for the Control of Interpol's Files, Article 35(1).

¹³⁰ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', Article 35(3).

deciding a request¹³¹. Fair Trials comments in their report from 2018¹³² that NCBs that do not adequately justify non-disclosure should be subject to scrutiny by the CCF and that weight will be attached to evidence that the NCB has refused to disclose without justification¹³³. Fair Trials stated in its 2018 update report that the CCF 'may attribute less weight to evidence which the NCB has refused to disclose without justification, but it remains to be seen what impact this has in practice'¹³⁴. The PACE report also raised concerns about how the CCF will actually apply these disclosure provisions¹³⁵ and that time will tell how Article 35 is interpreted, commenting 'this could be read as meaning that the CCF may continue to rely on evidence undisclosed and unseen (and un-commented) by the applicant if an NCB can convince the CCF that it has acceptable reasons for objecting to disclosure. This would be less protective of the applicant's procedural rights than the case law of the Court of Justice of the European Union on disclosure of evidence in security-related cases. Article 35 thus leaves gaps for the CCF to fill in by interpretation and practice'¹³⁶.

One commentator raised concerns that an applicant could be subject to unequal treatment by making their rights conditional upon a government's willingness to fulfil its obligations of disclosure under Article 35 and that this would 'trample the presumption of innocence, deny the individual due process, and subject him/her to an arbitrary arrest or detention, all in direct violation of the Universal Declaration of Human Rights¹³⁷, and consequently of the organisation's Constitution. The newly adopted statute¹³⁸ gives the Commission the power to cease Interpol's involvement in any such violation. The Commission must exercise this power without exception'¹³⁹.

It remains a consistent observation in the literature that a due process access to appeal is lacking. Fair Trials emphasises that there is no meaningful access to appeal decisions of the CCF¹⁴⁰. In highlighting the absolute authority to hand down decisions on complaints, the Open Dialog Foundation similarly emphasises the lack of an access to appeal: 'There is no mechanism that would allow to file an appeal against the actions of Interpol with an independent judicial body outside the structure of Interpol'¹⁴¹.

2.4.2 Transparency

Given the fact that a strategic objective of Interpol is to 'promote and ensure high quality of data and information exchanged' and to 'assist law enforcement globally with criminal intelligence exchange and analysis'¹⁴², Interpol has a legitimate need for some level of confidentiality as to the rules and processes of the Notice System. Despite the reforms since 2015, written sources report and the interviews confirm that individuals, their legal representation and the organisations that are involved in cases concerning Notices continue to experience a lack of required knowledge about the rules and processes of the NCB and GS vetting process and the CCF case handling.

The matter of access to information about rules and procedures is complicated by the complex accountability structure of the Interpol bodies. The GS and the CCF are subjected to the rules and

¹³¹ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', Article 35(4).

¹³² Fair Trials (2018), 'Dismantling the Tools of Oppression', 44-46.

¹³³ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', 48.

¹³⁴ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', 48.

¹³⁵ PACE (2017), Fabritius Report, paragraphs 35-36.

¹³⁶ PACE (2017), Fabritius Report, paragraph 36.

¹³⁷ Universal Declaration of Human Rights, Articles 9, 10, 11(1), 10 December 1948, <http://www.un.org/en/universal-declaration-human-rights>, last visited 01/11/2018.

¹³⁸ The Statute of the Commission for the Control of INTERPOL's files, adopted at the 85th General Assembly, 2016.

¹³⁹ Nemets, Y. L., (2017), *Due Process and the Presumption of Innocence in the Interpretation and Enforcement of INTERPOL's Rules*, accessed at SSRN: <https://ssrn.com/abstract=2928438>, last visited 01/11/2018, or <http://dx.doi.org/10.2139/ssrn.2928438>, last visited 01/11/2018.

¹⁴⁰ Fair Trials (2018), 'Dismantling the Tools of Oppression', 51.

¹⁴¹ Savchenko, I. et al (2017).

¹⁴² Interpol Strategic Framework 2017-2020, at <https://www.interpol.int/About-INTERPOL/Priorities>, last visited 01/11/2018.

regulations of Interpol. The NCBs are primarily domestic bodies, subjected to domestic police organisations' authorities. As a consequence, it is a challenge to maintain consistent legal rules and procedures throughout all the bodies that actually process Red Notices. Hence, it is a substantially increased challenge for individuals to have access to information on their legal and procedural standing.

The publication of an Article 3 repository¹⁴³ makes a significant contribution to a better formal legal consistency, as do the recent publication of CCF decision extracts¹⁴⁴. However, there is a need for further communication of both GS and CCF rules and procedures to those who challenge Red Notices or Diffusions.

Turning to the actual practices of the vetting mechanisms of the GS, the CCF and of the NCBs, it is a striking observation, from all interviews, that insufficient information is available. Increased information is a condition for even the simplest accountability mechanism. The Open Dialog Foundation emphasises the lack of access to information about rules, procedures and practices and describes it as a problem of 'accountability'¹⁴⁵. The PACE report goes a long way to describe the lack of knowledge and related accountability measures in the setup of the Notice System and Criminal Information System. The report emphasises the need for a sound factual knowledge about Notice issues, jurisdictions requesting them, and how many of them give rise to extraditions¹⁴⁶.

2.4.3 Accountability

All NGO interviewees claim it is as a problem that some members of Interpol continue to violate Interpol rules without being held accountable and sanctioned. For example, the PACE report describes the need for Interpol to make use of Articles 130 and 131 of the RPD more frequently: 'A good start would be for Interpol to make more intensive use of the facilities available to it under Articles 130 and 131 of its Rules on the Processing of Data. These include the possibility, for Interpol's Secretariat, to invite NCBs to suspend or withdraw access rights, or to do so itself, and even to take one or more of the corrective measures listed in Article 131'¹⁴⁷. Similarly, the Open Dialog Foundation observes the need to enforce the rules with NCBs and member countries and proposes a compensation mechanism for those who suffered from misuse of Interpol. The Open Dialog Foundation proposes that violating member countries should provide the funding for the compensation and victims should be able to hold the NCBs in question accountable.¹⁴⁸

One of the key elements of the accountability issue is that, in its current procedures, Interpol does not have authority over all the bodies that control the Notice data and the use of it. NCBs and member countries are key bodies in enforcing Interpol rules and procedures on Notices, yet at the same time they are not subjected to the same accountability structure as the GS. It is, as the PACE report describes, an asymmetrical relationship¹⁴⁹. This issue is highlighted by the initial direct submission of Notice requests in the Criminal Information System, the distribution of Diffusions, in decisions not to disclose information, and in decisions to maintain Red Notices in national databases, even when deleted from the Criminal Information System.

¹⁴³ Repository of Practice on Article 3 Interpol Constitution, at <https://www.interpol.int/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution>, last visited 01/11/2018.

¹⁴⁴ Interpol, CCF cases, at <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Legal-texts-and-studies/Decision-excerpts>, last visited 01/11/2018. See summaries in [Annex B](#).

¹⁴⁵ Interview with Open Dialog Foundation, 5 September 2018.

¹⁴⁶ PACE (2017), Fabritius Report, paragraph 63.

¹⁴⁷ PACE (2017), Fabritius Report, paragraph 60.

¹⁴⁸ Savchenko, I. et al (2017) 'The report: The reform of Interpol: Don't let it be stopped halfway', note 61 above., paragraphs 26-28.

¹⁴⁹ PACE (2017), Fabritius Report, paragraphs 61.

3. Data protection under international and EU rules

Protection of personal data is a significant challenge for the effective exchange of police information across jurisdictions with diverse systems of data protection. The EU regulation of data protection has been subject to significant change in the past years. EU MSs are required to observe Interpol rules but also the new EU regulatory framework and other international conventions to which the EU MSs are parties. For these purposes, this section will address some of the relevant data protection issues in the field of law enforcement exchanges of information.

Interpol has shaped its regulatory framework in line with general principles of data protection, among others by requesting an internal assessment of this topic¹⁵⁰. Individuals subjected to Red Notices have made applications before national courts, requesting deletion or correction of data held by Interpol¹⁵¹.

Without reiterating the parts that have been mentioned previously in this study, the following subsections will present a brief overview of the current data protection framework at Interpol, NCBs and challenging aspects represented through the relationship with the NCBs of EU MSs.

3.1 Interpol data protection officer

As part of the supervision and monitoring obligations, the NCBs and the GS must designate data protection officers¹⁵². Since October 2015 Interpol has a designated Interpol Data Protection Officer (IDPO)¹⁵³, who has free and unlimited access to all the data processed by Interpol, is formally independent and reports only to the Secretary General. If an NCB encounters difficulties or does not observe its obligations in matters of data protection, the IDPO can recommend to the GS the application of corrective measures provided by Article 131 of Interpol's Rules on the Processing of Data (RPD), extending to the suspension of access rights to users¹⁵⁴. However, since 2015 no such recommendations have been made¹⁵⁵.

Moreover, the IDPO liaises with the CCF on data processing issues and can collaborate on taking measures for recommendations and share reports for information¹⁵⁶.

The IDPO liaises with the data protection officers of NCBs and international organisations. At the level of NCBs, Data Protection Officers (DPO) ensure the implementation of processing procedures, supervision through 'spot checks', and when necessary, updates the data protection procedures and mechanisms and organises trainings¹⁵⁷. Likewise, the IDPO examines the DPOs through NCBs annual reports, liaises and organises trainings within Interpol and at the level of NCBs¹⁵⁸. There is also an online platform assisting the DPOs from the NCBs to communicate and share best practices¹⁵⁹.

¹⁵⁰ de Villenfagne, F. and Gayrel, C. (2011), Data Protection at ICPO-INTERPOL Assessment, Issues and Outlook, Centre de Recherche Information, Droit et Société (CRIDS), Notre Dame de la Paix University, Namur, Belgium, available at <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Legal-texts-and-studies/External-studies2> , last visited 01/11/2018.

¹⁵¹ Martha, R. S. (2000), Challenging Acts of INTERPOL in Domestic Courts, in Reinisch, A. *International Organisations before National Courts*, Cambridge University Press, p. 206.

¹⁵² Interpol's Rules on the Processing of Data (RPD), Articles 121 and 121A.

¹⁵³ Interpol Factsheet, The Interpol Data Protection Office, available at <https://www.interpol.int/en/News-and.../The-INTERPOL-Data-Protection-Office/>.

¹⁵⁴ Interpol's Rules on the Processing of Data, Article 121A (6).

¹⁵⁵ Interview with the IDPO, 24 September 2018, on file with the authors.

¹⁵⁶ Interpol's Rules on the Processing of Data, Article 121A (6).

¹⁵⁷ Interpol's Rules on the Processing of Data, Article 121 (2).

¹⁵⁸ Interpol's Rules on the Processing of Data, Article 121A (4).

¹⁵⁹ Interview with IDPO, 24 September 2018.

3.2 Data protection regulatory framework

The high number of 194 countries constituting Interpol's global membership raises issues of overlapping legal frameworks in matters of data protection.

Data protection regulation is an area that has been developed comparatively recently and consensus building at an international level has been slow. To begin with, individual non-binding texts were issued, such as the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980)¹⁶⁰. The United Nations General Assembly in 1990 adopted Resolution 45/95 of 14 December 1990 on guidelines for regulating computer-based information containing personal data. In the context of the Council of Europe (CoE), all 47 member states and 6 non-members (Cabo Verde, Mauritius, Mexico, Senegal, Tunisia and Uruguay) have ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)¹⁶¹. The 1987 CoE Recommendation (87)15 on the use of personal data in the police sector establishes principles for personal data processing¹⁶². In 2018 the CoE 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 Article 8 of the European Convention Human Rights are observed¹⁶³. Furthermore, the provisions of Convention 108 have been updated and modernised through the adoption of a Protocol (CETS no. 223) on 18 May 2018¹⁶⁴. CoE law applies to activities related to national security, whereas the EU law on data protection does not cover this area¹⁶⁵. All EU MSs have also ratified the CoE Convention 108.

The EU framework on Law Enforcement Data Protection for Police and Criminal Justice was recently updated through the Law Enforcement Data Protection Directive EU 2016/680 (LED) on the protection of natural persons with 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 that became fully applicable as of 6 May 2018.¹⁶⁶ This Directive, herein below presented, complements the General Data Protection Regulation (GDPR) on the processing and transfer of personal data for the citizens of the Union¹⁶⁷.

¹⁶⁰ See OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, at <http://www.oecd.org/internet/ieconomy/oecdguidelinesontheprivacyandtransborderflowsofpersonaldata.htm>, last visited 1/11/2018.

¹⁶¹ See the Chart of signatures and ratifications of Treaty 108 at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures>, last visited 01/11/2018.

¹⁶² See Council of Europe Recommendation No. R (87) 15 of the Committee of Ministers to Member States Regulating the Use of Personal Data in the Police Sector at <https://polis.osce.org/node/4656> last visited 01/11/2018.

¹⁶³ CoE, Consultative Committee of the Convention for the Protection of Individuals with regard to automatic processing of personal data, Practical guide on the use of personal data in the police sector T-PD(2018)01, 15 February 2018, available at <https://rm.coe.int/practical-guide-use-of-personal-data-in-the-police-sector/1680789a74>, last visited 01/11/2018.

¹⁶⁴ Protocol open for signatures on 10 October 2018, it will enter into force once it has been ratified by the Contracting states to the Convention 108. See the text of the Protocol and Explanatory memorandum at <https://www.coe.int/en/web/conventions/new-treaties> last visited 01/11/2018.

¹⁶⁵ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European data protection law*, 2018, 273.

¹⁶⁶ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with 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, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32016L0680> (hereafter LED), last visited 01/11/2018.

¹⁶⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>, last visited 01/11/2018.

3.3 The EU context

According to the LED, the processing of personal data must comply with the principles of lawfulness, fairness, purpose limitation, data minimisation, accuracy, integrity and confidentiality¹⁶⁸. In this sense, data must be kept up to date and every reasonable step must be taken to ensure that ‘personal data that are inaccurate (...) are erased or rectified without delay’ and not be kept in longer than necessary¹⁶⁹. Moreover, the LED contains provisions on the rights of data subjects, notably the rights to information, to access their personal data, to rectification, erasure and restriction of processing, and provides that such rights may also be exercised indirectly through National Supervision Authorities¹⁷⁰. These rules are applicable to all the NCBs established in the EU MSs, when dealing with data transfers to and from Interpol. Partial or total limitations to the right of access can be put into place, provided that these measures are proportionate with the interests of justice, but fully observe fundamental rights¹⁷¹.

Interpol data in France is covered by one exception, based on the agreement with the host country. It follows that in an exchange of letters dating from February 2016 between the French government and Interpol, a protocol was added to the Headquarters’ Agreement, based on the mutual understanding that the arbitration channel in that agreement ‘does not apply either to disputes regarding the processing of data in Interpol’s Information System (such as Interpol notices, diffusions or messages) which may be brought before the Commission for the Control of Interpol’s Files, or to disputes regarding the employment conditions of INTERPOL’s officials, which may be brought before the Administrative Tribunal of the International Labour Organization’¹⁷².

The EU MSs had a general deadline for the transposition into national legislation of the provisions of the LED Directive 2016/680 until 6 May 2018. Of the 28 EU MSs, until November 1, 2018 only 16 have reported measures of transposition into their national legislation of the LED¹⁷³. The data transfers by EU MSs to Interpol and other third countries are subject to the provisions on international transfers of the LED¹⁷⁴. However, these measures do not impede the application of the Stolen Travel Documents Common Position that encourages the exchange of passport data with Interpol with the aim to combat serious and organised crime, including terrorism¹⁷⁵. For this purpose, personal passport data can be transferred from the Schengen Information System (SIS II) to Interpol, provided that such data is ‘subject to an adequate level of protection, guaranteed by an agreement, providing strict safeguards and conditions’¹⁷⁶. The SIS II alerts have priority over Interpol alerts and parallel alerts should be avoided in the exchanges of data among Schengen states¹⁷⁷. Therefore, *a priori* Diffusions are exchanged through SIS II rather than Interpol

¹⁶⁸ LED, Article 4.

¹⁶⁹ LED, Article 4 (1), (c)-(d).

¹⁷⁰ LED, Articles 12-17.

¹⁷¹ LED, Article 15.

¹⁷² Decree No. 2016-326 of 17 March 2016 promulgating the additional protocol in the form of an exchange of letters between the Government of the French Republic and the International Criminal Police Organization – INTERPOL on the interpretation and application of Article 24 of the Agreement of 14 and 24 April 2008 regarding INTERPOL’s headquarters in France, signed in Paris on 9 February 2016 and in Lyon on 12 February 2016 (1), Journal Officiel (France) of March 19, 2016.

¹⁷³ See National Transposition measures communicated by EU MS at <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32016L0680&qid=1541319224142>, last visited 1/11/2018.

¹⁷⁴ LED, Preamble recital (25).

¹⁷⁵ Council Common Position 2005/69/JHA, 24 January 2005 on exchanging certain data with Interpol, at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2005.027.01.0061.01.ENG&toc=OJ.L:2005:027:TOC. last visited 01/11/2018.

¹⁷⁶ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), Preamble recital (18) <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32007D0533>.

¹⁷⁷ See further SIRENE Manual 1.8. *Relations between SIRENE Bureaux and Interpol*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1528&rid=8>.

channels, the latter being used only in exceptional cases, where the information is not sufficient to form a SIS II alert¹⁷⁸.

Based on Schengen good practices, it is recommended that Interpol and all other offices responsible for international police co-operation (SIRENE, Europol) are accessed through a single point of contact that would be integrated within the same management structure and site¹⁷⁹. As a limitation to the application of the LED Directive, Article 55 of the Council Decision 2007/533/JHA provides some derogatory conditions for data exchanges on specific information with Interpol in the case of stolen, misappropriated, lost or invalidated passports, provided that the information is only accessible to states with an adequate level of protection for personal data and that the EU MSs entering the information into this system has given its consent¹⁸⁰.

Transfers of data from the EU towards third countries and international organisations are allowed if the recipients are considered to guarantee an adequate level of protection of personal data. Such transfers are subject to the observation of different rules. The conditions for transferring information to third countries and international organisations are provided in Chapter V of the LED. These general principles provide that the transfer must be necessary for the purposes of the Directive, namely prevention, investigation, detection or prosecution of criminal offences, execution of criminal penalties, and safeguarding against threats to public security¹⁸¹.

Furthermore, data transfers to third countries and international organisations can take place in cases where:

- an adequacy decision has been adopted by the Commission;
- appropriate safeguards have been provided;
- there are derogations for specific situations¹⁸².

Nevertheless, onward transfers to a third country or international organisation also require the authorisation of the initial sender¹⁸³.

3.4 Remedies for data subjects in the EU Member States

As already mentioned, NCBs must observe national legislation applicable in the processing of personal data at national level. Notably, 'when members undertake action in response to Red Notices they do so under the auspices of their domestic laws, not Interpol rules'¹⁸⁴.

Convention 108¹⁸⁵, the EU General Data Protection Regulation (GDPR)¹⁸⁶ and LED¹⁸⁷ provide for avenues for data subjects to be informed about, to access, to request the change or deletion of information held by law enforcement agencies at national level. Particularly, data held by NCBs is subject to national legislation

¹⁷⁸ SIRENE Manual 1.8.3. Use and distribution of Interpol diffusions in Schengen States.

¹⁷⁹ EU Schengen Catalogue, Police Co-operation, Recommendations and Best Practices, vol. 4, 2003, 8, http://www.consilium.europa.eu/media/30963/item_2310_12364.pdf, last visited 5/10/2018.

¹⁸⁰ Council Decision 2007/533/JHA, Article 55.

¹⁸¹ LED, Article 35 -1 (a).

¹⁸² LED, Articles 35 -1 (d), 36, 37 and 38.

¹⁸³ LED, Article 35 -1 (e).

¹⁸⁴ Sheptycki (2017b), 79.

¹⁸⁵ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) Article 8.

¹⁸⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) Articles 13-19.

¹⁸⁷ LED, Articles 12-18.

in EU MSs and must observe all the international instruments hereinabove referenced, to which the EU MSs have agreed to participate.

Moreover, data transfers by EU MSs to Interpol are subject to the provisions of the LED¹⁸⁸. Even if the applicability of the LED is limited to activities which do not fall outside the scope of Union law¹⁸⁹ Articles 8(1) of the Charter of Fundamental Rights of the European Union and 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.

Therefore, the contents of Red Notices, once stored in NCB national databases, require measures of implementation through national procedures. This requires observation of the principles for data protection of individuals applicable in and by the EU.

Data subjects have the right to ask NCBs in the EU MSs for details or measures for the processing of data concerning them, such as the modification or deletion of data that is no longer relevant or inaccurate¹⁹⁰. Further remedies can be pursued by lodging complaints with the supervisory authority¹⁹¹. Additionally, all data subjects must have access to effective judicial remedies against binding decisions of the supervisory authority in individual cases and against controllers or processors of personal data¹⁹².

4. Response of the EU and the EU Member States

Individual EU MSs respond to the criticism in a number of different ways. First and most importantly, some EU MSs do not act upon Interpol Red Notices without their own further vetting. Based on a consideration of the member country from which the notice originates, the individual EU MS will make a consideration of the reliability of the notice. Low reliability will be followed by further internal and cross-agency vetting of the notice and its foundation. For example, the United Kingdom does not consider Red Notices as a basis for arrest and its NCB will undertake a risk assessment on cases outside the EU¹⁹³. Second, EU MSs engage in bilateral communication with Interpol and with the countries requesting Red Notices to correct wrongful information and to protect individuals from persecution¹⁹⁴. Third, EU MSs also assert their influence through their membership in the Interpol General Assembly and its power to regulate GS activities¹⁹⁵. Considering that EU MSs represent a minority group in the GA, this is a challenging avenue to address the problems. Fourth, as correspondence between EU MSs and EU institutions documents, individual EU MSs advocate directly for the European Union institutions, the Commission, the Parliament, and specifically the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission¹⁹⁶ to assert pressure on Interpol, to address the issues.

Members of the European Parliament (MEPs) have submitted written questions to the European Commission, inquiring about the Commission's willingness to engage with Interpol to ensure it has the necessary mechanisms in place for 'detecting attempts to abuse its systems in order to seek the arrest,

¹⁸⁸ LED, Preamble recital (25).

¹⁸⁹ LED, Articles 1-2.

¹⁹⁰ LED, Articles 16-18. Convention 108 (in force), Article 8; Modernised Convention 108, amended by Protocol (CETS no.223), Article 9.

¹⁹¹ LED, Article 52.

¹⁹² LED, Articles 53 and 54.

¹⁹³ Chatham House, International Law Roundtable Summary, Policing Interpol, 4

¹⁹⁴ For example, see case of Dogan Akhanli in Annex B.3.

¹⁹⁵ Interpol Constitution, Article 8 (b)-(d).

¹⁹⁶ See further the joint letter of the German and Swedish Ministers of Foreign Affairs addressed to H.E. Federica Mogherini High Representative of the Union for Foreign Affairs and Security Policy and Vice-president of the European Commission, of 6 September 2017, at <https://www.regeringen.se/4a559d/contentassets/9ffb8c5926cb43469a136a0fb3e99bf6/letter-to-mogherini.pdf>, last visited 01/11/2018.

detention and extradition of those facing politically motivated prosecutions, and about how it determines whether a prosecution is politically motivated'¹⁹⁷. In its resolution of 13 April 2016 on implementation and review of the EU-Central Asia Strategy (2015/2220(INI)) the European Parliament also touched upon the issue, urging EU MSs to secure better safeguards for individuals against abuse through the Notice System¹⁹⁸.

The Parliament debated the use of Red Notices and Diffusions on 4 October 2017, with a majority of speakers calling for a mechanism that ensures respect of the principles of 'necessity and proportionality'. The MEPs considered evidence that Russia, China, Iran and Turkey abuse Interpol for political purposes and insisted that Interpol should assess requests before issuing a Red Notice. The Estonian Deputy Minister for EU Affairs, Matti Maasikas, announced a meeting between EU officials and Interpol representatives to discuss safeguarding the rights of citizens and particularly to have a system of redress in place. Commissioner Jourová also underlined that national authorities are not obliged to follow a Red Notice: 'It is up to the country to assess what action to take', taking into consideration, she suggested, the country from which the Notice originates¹⁹⁹.

An article following the debate and Matti Maasikas's announcement of a meeting with Rutsel Silvestre J. Martha, one of the former heads of the Interpol Office of Legal Affairs, raised the question of why the EU did not raise their concerns of political interference at the 86th Interpol General Assembly held two weeks prior to the debate²⁰⁰.

In November 2017 Interpol's vetting of Red Notices was included in the agenda of the meeting between JHA Senior Officials and Interpol²⁰¹. In that meeting, Interpol described the mechanism of Red Notices as a 'very valuable tool with limited cases of concern'²⁰². Interpol introduced its latest reforms and the work of the CCF. However, they also reported a backlog in the review of Red Notices issued before 2016 and asked for EU's support to reduce it²⁰³.

In 2014 the European Commission engaged in a dialogue with Interpol on its use of Red Notices and Diffusions. This included providing Interpol with an overview of EU MSs use of Notices and Diffusions and applicable improvements in the field of data protection²⁰⁴.

In 2015-2016 the Commission carried out a survey of EU MSs and their use of Interpol's Notice System²⁰⁵. As Mr Fabritius confirms in the PACE report of 2017, the survey has not resulted in a written report. However, the Commission has made general findings of the survey available and the PACE report provides

¹⁹⁷ Written question [E-011457/2013](#) (OJ C 216, 9.7.2014) to the Vice-President of the Commission by Judith Sargentini and Barbara Lochbihler, 7 October, 2013, at <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-011457&language=EN>, last visited 01/11/2018.

¹⁹⁸ European Parliament, resolution of 13 April 2016 on implementation and review of the EU-Central Asia Strategy ([2015/2220\(INI\)](#)) See Paragraph 31: The European Parliament Condemns the targeting of exiled opposition representatives by some of the Central Asian regimes, including murders and abuse of extradition procedures through Interpol; urges Member States to provide better protection and to avoid deporting them in line with the principle of non-refoulement, which forbids the rendering of genuine victims of persecution to their persecutor.

¹⁹⁹ European Parliament, Interpol arrest orders: MEPs request a review of the system to prevent abuses, at <http://www.europarl.europa.eu/news/en/press-room/20171002IPR85138/interpol-arrest-orders-meps-request-a-review-of-the-system-to-prevent-abuses>, last visited 3/0/2018. - it is unclear what the result of this meeting was.

²⁰⁰ EU Observer, Interpol and the EU: don't play politics, at <https://euobserver.com/opinion/139446>, last visited 01/11/2018.

²⁰¹ Council of the EU, JHA Senior Officials meeting EU - OIPC INTERPOL, 20 November 2017, Document Limite 5897/18, Brussels, 7 February 2018, point (2).

²⁰² Council of the EU, JHA Senior Officials meeting EU - OIPC INTERPOL, 20 November 2017.

²⁰³ Council of the EU, JHA Senior Officials meeting EU - OIPC INTERPOL, 20 November 2017.

²⁰⁴ Answer given by Mr Avramopoulos on behalf of the Commission, 13 May 2015 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-002608&language=EN>.

²⁰⁵ European Commission, Questionnaire on the use by Member States of Interpol's system of notices and diffusions CM 4177/15, Brussels, October 15, 2015.

information about an oral summary delivered by the competent service of the Commission. From these sources, it appears that out of 22 EU Member States who participated a significant proportion of respondents had signalled problems with the reliability of Interpol Red Notices – mostly in terms of lack of sufficient information and clarity. About half of the replies submitted by the NCBs mentioned that they had experienced unlawful Red Notices. Only a minority of the NCBs who replied accept and act on Red Notices without further checks. The others do not consider a Red Notice as such as a valid reason to arrest someone²⁰⁶.

5. Recommendations

The Interpol reforms since 2015 have resulted in a significant change in the processing of Notices and in the handling of complaints. However, improvements can still be made to ensure accountability, transparency and enforcement. The European Parliament could lobby the EU and the EU MSs to use available measures to ensure Interpol resolves remaining issues following the reforms from 2015 to 2017 and that the increasing use of the Notice System does not jeopardise accountability to legal and procedural safeguards. The following recommendations are presented:

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 Articles 2 and 3 of the Interpol Constitution. Delivering the repository of practices on Article 2 and updating the repository of practices on Article 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 rules and regulations, applying Articles 130 and 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 naturalised 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 naturalised as citizens in the previous country of

²⁰⁶ PACE (2017), Fabritius Report, paragraph 57. Commission, Powerpoint presentation, 'Use by EU MS of Interpol's red notices and diffusions. Results of questionnaire', LEWP, February 24, 2016.

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 Articles 130 and 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 modernised 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 projects²⁰⁷. 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.

²⁰⁷ Interview with the Police Cooperation Unit, EU Commission, Directorate General Migration and Home Affairs, 4 October 2018, on file with the authors. See also section 1.3 of the present study.

Annex A

Glossary

‘Criminal Information System’ is the Interpol database available to authorised users, where the full list of Notices is available and contains personal data and the criminal history of people subject to request for international police cooperation.

‘Diffusion’ is a request for cooperation or alert mechanism and is less formal than a notice but is also used to request the arrest or location of an individual or additional information in relation to a police investigation. A Diffusion is circulated directly by a National Central Bureau to the member countries of their choice. If the diffusion could lead to an arrest, it is reviewed by Interpol before being simultaneously recorded in Interpol’s Criminal Information System.

‘I-24/7 Network’ is a global police communications system connecting law enforcement officers in Interpol member countries. It enables authorised users to share sensitive and urgent police information with their counterparts around the globe, 24 hours a day, 365 days a year. I-24/7 also enables investigators to access Interpol’s range of criminal databases (including the Interpol Criminal Information System). Authorised users can search and cross-check data, with direct access to databases on suspected criminals or wanted persons, stolen and lost travel documents, stolen motor vehicles, fingerprints, DNA profiles, stolen administrative documents and stolen works of art.

‘Member countries’ means the global member countries of Interpol

‘National Central Bureau’. Every Interpol member country has a National Central Bureau, linking national police with their global network. It is typically a division of the national police agency or investigation service and serves as the contact point for all Interpol activities in the field.

‘Notice System’ are international requests for cooperation or alerts allowing police in member countries to share critical crime-related information which is stored on the Interpol Criminal Information System. Notices, such as Red Notices, are published by Interpol’s General Secretariat at the request of National Central Bureaus and authorised entities and can be published in any of the organisation’s official languages: Arabic, English, French and Spanish. In addition, Notices are used by the United Nations, International Criminal Tribunals and the International Criminal Court to seek persons wanted for committing crimes within their jurisdiction, notably genocide, war crimes, and crimes against humanity. All notices are published on Interpol’s secure website and at the request of the member country or international entity, extracts of notices may also be published on the organisation’s public website.

‘Red Notice’ means an international request published by Interpol’s General Secretariat at the request of National Central Bureaus and authorised entities, that the person concerned is wanted by national jurisdictions for prosecution or to serve a sentence based on an arrest warrant or court decision.

Annex B

The following collection of individual cases is based on descriptions in reports from governmental and non-governmental organisations. It was beyond the scope of this study to verify the information about each individual case and updates publicly available in all situations. Further, individuals were subject to Red Notices and Diffusions before the establishment of the Task Force review in 2018 of all Red Notices and wanted persons Diffusions in circulation.

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 Estonia²⁰⁸.

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 Interpol²⁰⁹.

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 policy²¹⁰.

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 policy²¹¹.

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 notified the CCF, which blocked the Red Notice and subsequently deleted all data on 12 February 2016²¹².

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

²⁰⁸ 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.

²⁰⁹ Fair Trials (2018), 'Dismantling the Tools of Oppression', 54.

²¹⁰ Fair Trials (2018), 'Dismantling the Tools of Oppression', 55.

²¹¹ Fair Trials (2018), 'Dismantling the Tools of Oppression', 54.

²¹² Fair Trials (2018), 'Dismantling the Tools of Oppression', 55.

Cyprus but was soon released. The Diffusion was deleted on the basis of the refugee policy in March 2016²¹³.

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 policy²¹⁴.

In 2014 the Czech Republic refused to extradite **Tatiana Paraskevich**, a former colleague of [Mukhtar Ablyazov](#)²¹⁵, 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 Paraskevich²¹⁶. 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 year²¹⁷.

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 policy²¹⁸.

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 Azerbaijan²¹⁹. 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 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'²²⁰. 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

²¹³ Fair Trials (2018), 'Dismantling the Tools of Oppression', 32.

²¹⁴ Fair Trials (2018), 'Dismantling the Tools of Oppression', 54.

²¹⁵ See individual cases at Annex B.3.

²¹⁶ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', 22.

²¹⁷ 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.

²¹⁸ Fair Trials (2018), 'Dismantling the Tools of Oppression', 55.

²¹⁹ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²²⁰ Unclear if a Red Notice or Diffusion.

promote Uyghur self-determination. Fair Trials reported on 23 February 2018 that Interpol had deleted the Red Notice²²¹.

A Red Notice was issued against **Muhiddin Kabiri**, the leader of Tajikistan's leading opposition party, the Islamic Renaissance Party, in September 2016²²². 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'²²³. In early 2018 Interpol removed Kabiri's Red Notice based on his having been granted asylum in a European country²²⁴.

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.²²⁵

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 Notice²²⁶.

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 Wikström²²⁷ and from The European Centre for Press and Media Freedom (ECPMF)²²⁸, Yalçın was released in October 2017 and returned to Sweden²²⁹.

Roman Solodchenko, a former colleague of the chairman of the BTA Bank in Kazakhstan ([Mukhtar Ablyazov](#))²³⁰ 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

²²¹ 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.

²²² 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.

²²³ 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.

²²⁴ 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.

²²⁵ Fair Trials (2018), 'Dismantling the Tools of Oppression', 59.

²²⁶ PACE (2017), Fabritius Report, 13.

²²⁷ Swedish Radio, 'EU parliamentarians demand release of Hamza Yalçın, Sveriges Radio', 30 August 2017, at <http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6766667>, last visited 01/11/2018.

²²⁸ 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.

²²⁹ 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.

²³⁰ See individual cases at Annex B.3.

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'²³¹.

2. Individual cases relating to Article 2 of the Interpol constitution (risk of human rights violations)²³²

Following a Red Notice issued by Turkey, **Abdullah Büyük** was arrested in Bulgaria on 10 August 2016 and transferred to Turkish authorities²³³. The Sofia City Court and the Bulgarian Court of Appeals in Sofia refused Büyük's extradition in March 2016, deciding the charges were politically motivated²³⁴ and that he was unlikely to have a fair trial in Turkey²³⁵. Despite these rulings, Büyük was extradited, and it is alleged this followed a political bargain between the Turkish and Bulgarian governments.

Anatoliy Pogorelov, is a Kazakh wanted on a Red Notice issued by Kazakhstan, as an accused in the prosecution of **Mukhtar Ablyazov**²³⁶. 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 2017²³⁷.

Aysen Furhoff a Turkish national, naturalised as a Swedish citizen²³⁸, was arrested in Georgia in 2015 on the basis of a Red Notice requested by Turkey on a charge of 'separatism'²³⁹. 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 proceedings²⁴⁰. 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 Turkey²⁴¹. 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 treatment²⁴².

3. Individual cases relating to Article 3 of the Interpol constitution (neutrality principle)²⁴³

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

²³¹ Savchenko, I. et al (2017) 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²³² It is to be noted that some individual cases will be relevant to both human rights violations and the neutrality principle.

²³³ 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.

²³⁴ 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.

²³⁵ 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.

²³⁶ See individual cases at Annex B.3.

²³⁷ PACE, Declaration No. 630, Document 14306, 27 April 2017.

²³⁸ 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'.

²³⁹ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway', 21.

²⁴⁰ SCF (2017), 25.

²⁴¹ SCF, 'Interpol Helped Harvard Educated Professor Get Tortured In Turkish Prison', 30 August 2017, <https://stockholmcf.org/interpol-helped-harvard-educated-professor-get-tortured-in-turkish-prison/>, last visited 01/11/2018.

²⁴² 'Abuse of Interpol System by Turkey', 13-14, SCF (2017).

²⁴³ It is to be noted that some individual cases will be relevant to both human rights violations and the neutrality principle.

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 consideration²⁴⁴. In 2014 the Czech Republic's Constitutional Court ruled Torubarov's extradition was illegal²⁴⁵. Torubarov alleges he was subject to cruel treatment in Russia²⁴⁶. In July 2013 he was released from detention and placed under house arrest, whereupon he fled to Hungary, where he is requesting asylum²⁴⁷.

Andrey Nekrasov, a Russian journalist and activist was detained²⁴⁸ in Cyprus following an Interpol alert²⁴⁸ launched by Russia. However, Russia was denied his extradition. Moreover, Lithuania subsequently granted Nekrasov refugee status²⁴⁹.

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 alert²⁵⁰ 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 alert²⁵¹. 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.²⁵² 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 correct²⁵³.

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'²⁵⁴. Merkel claimed Turkey's use of the Interpol for political purposes was 'unacceptable'²⁵⁵.

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 forgery.

²⁴⁴ 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.

²⁴⁵ 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.

²⁴⁶ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²⁴⁷ 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.

²⁴⁸ 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.

²⁴⁹ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²⁵⁰ See explanation at FN 146 above.

²⁵¹ SCF (2017), Abuse of Interpol System by Turkey, 25-26.

²⁵² Fair Trials, 'Bahar Kimyongür Case Study' <https://www.fairtrials.org/case-study/bahar-kimyongur>.

²⁵³ Fair Trials, 'Bahar Kimyongür Case Study'.

²⁵⁴ 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.

²⁵⁵ 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.

Huseynli was detained for two weeks and upon release was subjected to an abduction attempt²⁵⁶. 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 Yury 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 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 movement²⁵⁷.

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 asylum²⁵⁸. Following a Red Notice issued at the request of Turkey, Aydogan (with **Aysen Furhoff**²⁵⁹) was detained in Georgia in 2015²⁶⁰ 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 Bank²⁶¹. 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 reasons²⁶². Interpol removed the Red Notice in July 2017.

In late February 2018 Czech police arrested **Salih Muslim**²⁶³, 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 court²⁶⁴.

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 Interpol²⁶⁵. The Khrapunovs report, that after they refused to testify against [Mukhtar Ablyazov](#)²⁶⁶ 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

²⁵⁶ Human Rights in Ukraine, 'Ukraine is putting persecuted journalist's life in danger', 15 March 2018, <http://khpq.org/en/index.php?id=1521037354>, last visited 01/11/2018.

²⁵⁷ Kvyiv 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.

²⁵⁸ Kvyiv Post, 'Azerbaijani dissident who fought extradition leaves Ukraine a free man', 19 April, 2018.

²⁵⁹ See individual cases at Annex B.2.

²⁶⁰ 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-tsentralluri-biuros-tanamshromlebma-turqetis-respublikis-samartaldamtsavi-organoebis-mier-dzebnili-piri-daakaves/7686>, last visited 01/11/2018.

²⁶¹ 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.

²⁶² 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.

²⁶³ 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.

²⁶⁴ Daily Sabah, 'Czech court releases terrorist PKK/PYD former co-chair Salih Muslim', 27 February 2018 at <https://www.dailysabah.com/war-on-terror/2018/02/27/czech-court-releases-terrorist-pkkpyd-former-co-chair-salih-muslim>, last visited 01/11/2018.

²⁶⁵ As of 23 October 2018.

²⁶⁶ See individual cases at Annex B.2.

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 Kazakhstan²⁶⁷.

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 Plahotniuc²⁶⁸, 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 Victor 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 three²⁶⁹.

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 released²⁷⁰.

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 alert²⁷¹. Andreev has a residence permit in Israel and the Open Dialog Foundation reports that he believes he was denied citizenship as his name is on Interpol's Criminal Information System²⁷².

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](#)²⁷³ and wrote to the OSCE that he had not been kidnapped and returned to Kazakhstan of his own volition²⁷⁴.

On 21 October 2017, journalist and blogger **Zhanara Akhmet** from Kazakhstan was detained in Ukraine²⁷⁵ 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,

²⁶⁷ Savchenko, I. et al (2017) 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²⁶⁸ Infotag, <http://www.infotag.md/reports/763470/>, last visited 01/11/2018.

²⁶⁹ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²⁷⁰ BBC, 'Putin critic Bill Browder freed after brief arrest in Spain', 30 May 2018, <https://www.bbc.co.uk/news/world-europe-44301072><https://www.bbc.co.uk/news/world-europe-44301072>, last visited 01/11/2018.

²⁷¹ Unclear if a Red Notice or Diffusion.

²⁷² Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²⁷³ See individual case at above.

²⁷⁴ Savchenko, I. et al (2017), 'The report: The reform of Interpol: Don't let it be stopped halfway'.

²⁷⁵ Mapping Media Freedom, at <https://mappingmediafreedom.org/#/4699>, last visited 01/11/2018.

that his extradition would present an unacceptable risk of him being exposed to torture and prosecuted on the basis of evidence obtained by torture²⁷⁶. An application to the CCF by Fair Trials in January 2015 led to the deletion of the Red Notice²⁷⁷.

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 2016²⁷⁸.

Annex C

Summary of all excerpts of CCF decisions

Excerpt of Decision 1 - Date of publication: 2 March 2017

The Requesting Party (RP) resided in Country B and was wanted by Country A on the basis of an arrest warrant issued by the judicial authorities of Country A. Country A sent a Red Notice request for the arrest of the RP. The data concerning the RP was not unblocked by the Interpol General Secretariat upon receipt and the RP sought deletion of the data concerning him. The CCF held that a Red Notice was premature, as Country A was proceeding under a Mutual Legal Assistance Treaty with Country B for transfer of the RP to assist in an investigation, rather than extradition. The CCF noted, that the purpose of a Red Notice is not to obtain the transfer of a person in order to assist in an investigation or give evidence in proceedings but to facilitate the seeking of a person's extradition. On balance, the CCF recommended the deletion of the RPs data, as the investigation had not yet progressed to the point of Country A authorities having charged the RP within the meaning of Article 83(2)(b) of the Rules on Processing Data (RPD) or seeking extradition as required by Article 84(2) of the RPD.

Excerpt of Decision 2 - Date of publication: 2 March 2017

The Requesting Party (RP) was a national of Country A and B and was wanted in Country A on the basis of an arrest warrant issued by Country A. A Diffusion was issued – although the excerpt does not detail the facts. Extradition was refused to Country A by Country B. The RP requested access and deletion of the data concerning him on the basis the case against him was politically motivated and he would not receive a fair trial if extradited. In determining whether a matter is of a political character, Interpol applies the predominance test – i.e. it evaluates all relevant information and pertinent elements, as provided by the rules, to determine whether the offense is of a predominant political character. The CCF found that even though there may be some political elements surrounding the case, the information provided was not sufficient to conclude that these political elements were predominant over the ordinary criminal law elements of the case. The CCF concluded that the data challenged was compliant with Interpol's rules and was not able to establish that the political elements were predominant over the common law crime elements of the case. The CCF did recommend that if extradition should be denied by Country B, it was reported in Interpol's files.

²⁷⁶ Redress, Djamel Ktiti, at <https://redress.org/casework/interpol-2015/>, last visited 01/11/2018.

²⁷⁷ 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.

²⁷⁸ PACE (2017), Fabritius Report, paragraph 55.

Excerpt of Decision 3 - Date of publication: 3 March 2017

The Requesting Party (RP) used to reside in Country A and had connections to the former President and fled after the President's fall from power. He was the subject of a Red Notice issued at the request of the NCB of Country A. The RP was arrested in Country C on the basis of the Red Notice and released shortly afterwards. The RP was then arrested in Country D on the basis of the Red Notice and released on bail pending extradition proceedings. The RP requested access to the data concerning him and its deletion. The RP submitted that the case was predominantly of a political character and Country A failed to request his extradition, despite knowing his whereabouts, and the Red Notice lost its purpose. Applying the predominance test the CCF found that although there were political elements surrounding the case, it was insufficient to find that the charges were predominantly politically motivated, and the processing of the data was contrary to Article 3 of the Interpol Constitution. The CCF also held that although the RP's extradition had been denied in Country C and Country D, these were not founded on a lack of extradition efforts by Country A. The CCF added that in compliance with General Assembly Resolution AGN/53/RES/7 of 1984 any extradition denial must be reported in Interpol's files. The CCF also considered the RP's contention that his right to travel under Article 13 of the Universal Declaration of Human Rights had been infringed due to the Red Notice. The CCF found that Article 13 was not infringed by the mere issuance of a valid Red Notice, as sovereign states are not prevented from enacting legal requirements regarding access to their state or from issuing an order for the arrest of an individual suspected or having committed a crime.

Excerpt of Decision 4 - Date of publication: 2 March 2017

The Requesting Party (RP) was a national of Country B and is the subject of a Red Notice issued at the request of the NCB of Country A for issuing 'dud cheques' on the basis of a court decision. The RP requested the deletion of data concerning him as the dispute was civil in nature and he was not aware of the charges against him. The CCF found insufficient justification for the issuance of the Red Notice and that it was more of a civil or commercial dispute than a criminal offence. Accordingly, the minimum criteria for the publication of a Red Notice under Article 83(1)(a)(i) was not met and the data concerning the RP was deleted.

Excerpt of Decision 5 - Date of publication: 2 March 2017

The Requesting Party (RP) was a national of Country C and worked in Country B. The RP was convicted in his absence in two trials and sentenced to life imprisonment. The NCB of Country B issued a Red Notice. The RP requested the deletion of data as the data registered was inaccurate, a lack of evidentiary basis and the suits were politically motivated and lacked due process. The CCF decided that the political elements of the case were predominant over the common law crime elements, the proceedings were not based on the rule of law and lacked due process. The CCF recommended the deletion of the data from Interpol's files.

Excerpt of Decision 6 – Date of publication: 2 March 2017

This was a re-examination of Decision number 2. The CCF, applied Article 19(1) of the Operating Rules of the Commission for the Control of INTERPOL's Files (Re- examination): "An application for re-examination of a request by the Commission may be made by the requesting party only when it is based on the discovery of a fact which would probably have led to a different conclusion if that fact had been known at the time the request was processed." The RP submitted that Country B would have denied his extradition to Country A. The NCBs responded that extradition was still in progress with the adoption of new extradition treaty. For this reason, the CCF decided there were no new facts which fell within the circumstances for re-examination under Article 19.

Excerpt of Decision 7 - Date of publication: 2 March 2017

This was a re-examination of a previous decision. The CCF invited the NCB of Country A, that issued the Red Notice, to confirm certain issues. No answers were provided by the NCB of Country A, so the CCF held that

the elements submitted by the Requesting Party (RP) highlight new facts which could have led to a different conclusion had they been known at the time the request was processed. The CCF recommended that access to the data provided by Country A concerning the RP was blocked, unless the NCB of Country A provided the required elements within one month.

Excerpt of Decision 8 - Date of publication: 2 March 2017

The Requesting Party (RP) was a national of Country B and had been residing in Country C and was the subject of a Red Notice issued by the NCB of Country A. The RP requested access to data in Interpol file and its deletion. The RP submitted that the Red Notice was related to a private commercial dispute rather than a criminal offence. The CCF concluded that insufficient justification was provided by the NCB of Country A demonstrating effective personal participation in criminal conduct pursuant to Article 83(2)(b)(i) of the RPD. As the data was not compliant with Interpol's rules, the CCF recommended the data provided by the NCB of Country A was deleted.

Excerpt of Decision 9 - Date of publication: 2 March 2017

The Requesting Party (RP) was a national of Country A and Country B and was the subject of a Red Notice issued at the request of the NCB of Country A. The RP was arrested in Country B and Country A requested extradition. Country B denied the request as the RP was a national of Country B. Country B prosecuted the RP for the acts listed in the extradition requested and dismissed all charges and released the RP from custody. The RP requested the deletion of the data concerning him as the Red Notice violated the principle of *non bis in idem*. The CCF decided that the application of the principle of *non bis in idem* should be left to the competent national courts to be decided at trial or during extradition proceedings. The CCF recommended that the data challenged was compliant with Interpol's rules applicable to the processing of personal data.

Excerpt of Decision 10 - Date of publication: 25 January 2018

The Requesting Party (RP) was a national of Country A and was appointed President of a Bank. The RP was the subject of a Red Notice issued by the NCB of Country A. The RP requested access and deletion of the data held on Interpol's files with the main objection being the case was predominantly political in character and violated international standards of due process. The CCF emphasised that it is not empowered to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case, that is the function of the competent national authorities. The CCF review whether the NCB provided sufficient information to indicate the possible effective and personal participation of the RP to the criminal acts of which he was accused. The role of the CCF is to ensure Interpol's rules have been complied with. The RP asserted that other persons had not been questioned in Country A because they are known in business and political circles and high-ranking officials sought to eliminate him, take his assets and hide their own criminal activities. The NCB replied that the RP did not engage in political activities in Country A and the criminal charges were not politically motivated. The CCF concluded, applying the political predominance test and analysis of the relevant factors in Article 34(1) of the Rules on Processing Data (RPD), that the information provided by the RP was insufficient that political elements were predominant over the ordinary criminal law elements of the case. The RP also submitted, several procedural irregularities meant his defence rights were violated. The CCF concluded, based on the information provided by the NCB, the initial decision was not an arrest warrant compliant with Article 83(2)(b)(ii) of the RPD and combined with the political elements, the data was not compliant with Interpol's rules and it should be deleted.

Excerpt of Decision 11 - Date of publication: 25 January 2018

The Requesting Party (RP) was a national of Country B and used to work as a businessman in Country A. He was the subject of five different Red Notices issued at the request of the NCB of Country A, all for the same charges of 'uttering unfunded cheques'. The RP requested access and deletion of the data held on Interpol's files, with objections that the case is civil in nature and did not respect the principles of due

process and human rights. The CCF decided that whilst many member countries would consider the inability to pay a debt or to fulfil a contractual obligation lacks dual criminality, such matters should be considered on a case by case basis. Here, the fact that the RP had been convicted on five occasions may illustrate a fraudulent scheme and allow for international police cooperation. The CCF also held that the copies of the court decisions showed the RP could have participated effectively, the appropriate use of national procedure and that the RP could be tried again with the assistance of his lawyer.

Excerpt of Decision 12 - Date of publication: 25 January 2018

The Requesting Party (RP) was a national of Country B and was the subject of a Red Notice issued at the request of the NCB of Country A, for the charge of 'uttering unfunded cheques'. The RP was arrested on the Red Notice in Country B and following the receipt of the formal extradition request from Country A, Country B subsequently denied the extradition request. The RP requested deletion of the data as the charge was not criminal in nature, Country A had not demonstrated genuine extradition efforts and diligence following the refusal to extradite by Country B and as Country B's authorities had recognised risk of breach of human rights if surrendered to Country A, the Red Notice contradicted Article 2 of Interpol's Constitution and the Universal Declaration of Human Rights. The CCF decided that the fact Country A did not seek to appeal the extradition decision was insufficient to indicate they still did not have a genuine interest in extraditing the RP. The CCF noted that its role is not to assess a country's law enforcement of judicial system *in abstracto*. This meant it will not rely on general statements concerning the situation in a country and will only examine compliance of Interpol's rules applying the facts of a case. However, in this case the CCF referred to the fact of Country B's court decision, verified by the NCB of Country B, of the risks of inhumane/degrading treatment in detention and an unfair trial, if extradited. The CCF commented that it could not ignore these risks and they contributed to the doubts raised about the nature of the offence. As a result, the CCF decided that the data challenged was not compliant with Article 2 of Interpol's Constitution.

Excerpt of Decision 13 - Date of publication: 25 January 2018

The Requesting Party (RP) was a national of Country B and a prominent business executive and the subject of a Red Notice request from the NCB of Country A. The RP requested deletion of the data concerning him as the case was predominantly political in character, arose from a private dispute, the purpose of the Red Notice could not be achieved and the proceedings were unlawful. The CCF decided that Country A's authorities could request extradition from another country and therefore the RP's claim that the red notice could serve no purpose could not be upheld. Applying the predominance test and the analysis of all factors in Article 34(3) of Rules on Processing Data (RPD), the CCF concluded that there were political elements around the case that could have adverse effects on the neutrality of Interpol, in that the Organisation would be perceived as facilitating politically motivated activities. The CCF also considered doubts identified on the link of the case with a private dispute, as well as the political elements surrounding the proceedings. The data challenged was not compliant with Interpol's rules applicable to the processing of personal data and should be deleted.

Excerpt of Decision 14 - Date of publication: 25 January 2018

The Requesting Party (RP) was a national of Country A and C. He was elected in Country A for the opposition party. He was the subject of a Diffusion to arrest by Country A, on the basis of an arrest warrant issued in Country A. The RP was arrested on the basis of the Diffusion in Country B, who subsequently received a request for extradition. The RP requested deletion of the data concerning him due to irregularities in the proceedings and as a result of the case being predominantly political in character. The CCF concluded that the information provided by the RP did not demonstrate the likelihood that a flagrant denial of justice took place. The CCF decided, when considering the predominance test and the relevant factors in Article 34(3) of the RPD, that the information provided by the RP was insufficient to show that the processing of the

data was contrary to Article 3 of the Interpol Constitution. In particular, the CCF highlighted that the RP was not charged with an offence linked to his position as an elected official but from the information provided by the NCB of Country A, as the head of a company, where he could take advantage of his position for personal gain.

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