

Brussels, 23 September 2019



Dear Members of the European and National Parliaments,

Dear dignitaries, by qualities and rank of protocol,

As the chair of the Europol Cooperation Board (ECB), it is a pleasure and an honour for me to report to you about the recent actions and perspectives of the ECB, as a continuation to my first report in Bucharest last February.

As you know, since the entry into force of the Europol Regulation 2016/794 of 11 May 2016, the European Data Protection Supervisor (EDPS), being the supervisor of all personal data processing activities carried out by EU institutions, bodies and agencies, is now the authority competent for monitoring the lawfulness of data processing carried out by Europol. Yet, the involvement of national DPAs remains essential, since the very large majority of data collected and processed by Europol originates from the Member States and will, at a certain point, also be sent back to them.

For this reason, Article 45 of the Europol Regulation has established the Europol Cooperation Board, composed of the EDPS and the national DPAs. Their fruitful collaboration within the ECB, as laid down by Articles 44 and 45 of the Europol Regulation, allows for the coordinated supervision of all data flows directed towards Europol and issued by it, which is essential in ensuring compliance of Europol data processing with the specific data protection framework agreed by the co-legislators.

On the operational side, the ECB maintains a pool of national experts, who participate in all joint inspections of Europol organised by the EDPS. This operational collaboration proves essential to maintain accurate knowledge about the functioning of Europol among National DPAs. It helps them to conduct their own inspections at the national level, and participates in maintaining a European-wide network of expertise and professional relationships that nourishes this community.

On its last meeting of 8 May 2019, the ECB adopted its Activity report for years 2017-2018, as well as an updated version (v1.1) of its Work Programme for years 2018-2020. You will find, in these two documents, a synthesis of its past, current and future activities. I will now elaborate on some of them.

The ECB recently delivered opinions on two related subjects:

- On February 2019, it issued an opinion on the “European Tracking Solution” (ETS) project, warning about the risks of unlawful cross-border exchange of geo-location data, and recommending the co-legislators to work urgently towards the creation of an adequate legal basis.
- This month, the ECB sent, to the Chair of the Financial Information Units network (FIU.net), its opinion concluding on the impossibility for FIU.net to benefit from Europol’s technical infrastructure for exchanging operational data, because the categories of data exchanged do not seem consistent with Europol’s mandate.

In both cases appears the need to secure the legal bases and operational means for processing, in order to ensure both the efficiency of ad-hoc law enforcement tools and the rights of the persons whose personal data is processed by them. In this regard, it is essential that any future processing

and any additional tasks carried out by Europol remain within the remits of its competence and legal framework, as decided by the co-legislators. Any processing going beyond its current mandate must then be defined by law.

The question of adequate mandate and supervision is not limited to these cases. Several new operational files and information systems are planned in the domain of sovereignty files, such as ETIAS, the European Travel Information and Authorisation System, or EES, the Entry-Exit System. Moreover, some momentum exists towards the interconnection (improperly called “interoperability”) of many of these files, including the Europol Information System (EIS). In this respect, an interconnection is in itself a processing, which requires adequate supervision to ensure its proportionality and the enforcement of individuals' fundamental rights.

One of the key instruments set up by the General Data Protection Regulation (GDPR) on 25 May 2018 is the European Data Protection Board (EDPB), which was given legal personality, and aims at the development of a European data protection doctrine, fostering a higher level of cooperation and consistency among all stakeholders.

Relying on this new framework, the EU co-legislators have defined a trajectory for integrating the separate ad-hoc Supervision coordination groups (SCG) of existing EU sovereignty information systems, such as the Customs Information System, the Eurodac system, the Schengen Information System and the Visa Information System, into a consistent framework.

The establishment of a coordinated supervision within the umbrella of the EDPB, started during the recast of Regulation 45/2001 (which resulted in Regulation 2018/1725), is currently being discussed within the Law enforcement (BTLE) subgroup of the EDPB, in terms of operational segmentation, internal rules and working arrangements. This new model of coordinated supervision will be formally established within the EDPB by the end of this year. The ECB is considering favourably its future inclusion in this process, as it is likely to bring more consistency and cohesion to supervision activities of EU sovereignty information systems. An amendment to the Europol regulation would however be necessary to make this integration a reality. This should take place in due time, when the new model is fully operational, because the smooth and efficient fulfilment of the missions devoted to the ECB is our priority.

One of the missions of the ECB is to make the protection of data subjects, and the exercise of their rights, more effective. This is why several items in its work programme, now completed, aimed at the update of documents directed towards the general public, such as the “Know Your Rights” leaflet.

In this respect, data subjects might be puzzled, if not lost, by the multiplicity of EU systems and procedures for exercising their rights. This is why, even before all SCGs join a common supervision framework, a common, accessible portal could be set-up, making all the relevant information available and facilitating the exercise of data subjects' rights, regardless of the system at stake. In spite of the issues it has with its own website, the ECB is eager to participate to this project with the EDPB, which seems all the more achievable that the EDPS is the technical service provider for both entities.

Another subject of growing importance concerns the exchange of data between Europol and third countries. To date, Europol is party to operational cooperation agreements, that allow for the exchange of personal data, with eight third countries: Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, and North Macedonia.

Article 25(4) of the Europol Regulation provides that the European Commission should review all cooperation agreements concluded in the past with third countries by 2021. Although all these countries possess a law on data protection, and a (more or less) independent data protection authority, it is essential that the review of these agreements be carried out at the earliest opportunity, for multiple reasons.

Firstly, the exchange of personal data with these countries should not be discontinued after the aforesaid deadline, while remaining in full compliance with the EU data protection legal framework.

Secondly, on 20 December 2017, the Commission adopted eight Recommendations for Council Decisions to authorise the opening of negotiations for international agreements between the European Union and eight third countries of the Middle East and North African (MENA) regions: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey. Such international agreements would provide the required legal basis for the exchange of personal data between Europol and the authorities of these third countries competent to fight serious crimes and terrorism. Subsequently, on 4 June 2018, the Council adopted the decisions that allow the Commission to open the negotiations with each of these third countries.

The ECB considers these concomitant events as an opportunity for the European Commission to define a generic agreement framework, in line with the highest data protection standards set by Directive (EU) 2016/680. This framework, of general applicability, would notably define mechanisms for the practical follow-up of each of these agreements, including periodic evaluations and on-site reviews, in order to assess its functioning in relation to the operational needs of Europol, as well as the respect of European rights and principles in data protection, in line with the European Parliament's position on the opening of these negotiations.

As exposed in its letter of 19 August 2019 to the Commission, the ECB is fully committed to carefully follow the review process and is fully available to cooperate in this important activity.

To conclude, as in my previous report, I would like to stress that the Europol Cooperation Board is committed to pursue its tasks in an open and transparent manner, and make the application of the Europol data protection framework a reality for both the Agency and data subjects. The ECB welcomes the oversight of the Joint Parliamentary Scrutiny Group on these important issues, and assures you of its willingness to bring all the information and assistance possible.

François Pellegrini, chair of the ECB