



Mr David Maria SASSOLI
President of the European Parliament
European Parliament
B-1049 Brussels

3 August 2021
C2017-0145-20210728
Please use europol-cooperation-board@edps.europa.eu for all correspondence

Subject: Opinion of the Europol Cooperation Board on the proposal for an amendment of the Europol Regulation

Dear Mr President,

Having regard to Article 45(3)(a) and (4) of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, [hereinafter: Europol Regulation] please find enclosed our Opinion on the Proposal for an amendment of the Europol Regulation.

The Europol Cooperation Board (ECB) has been established by the Europol Regulation as an advisory board with *inter alia* the task of discussing general policy and strategy and the permissibility of the transfer, the retrieval and any communication to Europol of personal data by the Member States. It may issue Opinions. The ECB is composed of representatives of the national supervisory authorities and of the EDPS.

We have sent a copy of this Opinion to the President of the European Commission and the President of the European Council as well.

Yours sincerely,

François Pellegrini
Chair

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Gabriele Löwnau
Vice-Chair

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Encl.: Opinion

Cc: Mr. Juan Fernando LÓPEZ AGUILAR, Chair, Committee on Civil Liberties, Justice and Home Affairs (LIBE)
Mr Antoine CAHEN, Head of Unit, Committee on Civil Liberties, Justice and Home Affairs (LIBE)



Mr Juan Fernando LÓPEZ AGUILAR
Co-Chair of the JPSG
Chair of the Committee on Civil
Liberties, Justice and Home Affairs
European Parliament

Mr Nik PREBIL
Co-Chair of the JPSG
Head of the National Assembly of
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30 September 2021

FP/mp C2017-0145/JPSG/20210930
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Subject: Written contribution to the Ninth JPSG meeting on 25-26 October 2021

Dear Members of the Europol Joint Parliamentary Scrutiny Group,

It is once again a pleasure to share with you the Europol Cooperation Board's written contribution, as part of your 9th meeting to be held by remote participation. The processing of personal data by law enforcement authorities has been at the core of several policy discussions at both national and European levels, and we believe it is essential that national supervisory authorities and the EDPS, as members of the ECB, do contribute with their expertise and recommendations to assist in your mission of parliamentary scrutiny of Europol activities.

Since my last written contribution in February 2021, the Board has continued its activities and meetings remotely, while maintaining its objective in terms of priorities and deliverables. We

have in particular finalised our work programme for 2021-2023, while considering the upcoming legislative changes to the Europol legal framework which will entail an evolution of our coordinated supervision framework. Our ongoing and future activities will in any case continue focusing on key issues when it comes to Europol data processing activities, for which a coordinated supervision is to be ensured. I would like to mention in particular the exercise of data subjects' rights, the audit framework for Europol National Units and the processing of personal data concerning minors.

Over the past months, the Board has also completed its analysis of the European Commission proposal to amend the Europol regulation, which is currently being discussed by the co-legislators. We consider these discussions of paramount importance when it comes to the legal framework applicable to Europol personal data processing activities. The Board has adopted a formal opinion on the Commission's proposal, addressed the European Parliament and the Council of the European Union, which you will find annexed to this contribution.

While recognizing the need to ensure Europol's mandate remains relevant in light of the current law enforcement challenges and developments at EU and international levels, the ECB considers essential that any amendment to the Europol's founding regulation (i.e., Regulation (EU) 2016/794) ensures consistency with the existing EU acquis in the field of personal data protection.

In its opinion, the Board has in particular taken note of the need for Europol to be able to obtain information from private parties, but recalled that information gathering must remain strictly within the scope of Europol's legal competence and mandate. Moreover, the ECB expressed its concerns and recommended that, in order to ensure legal certainty, the role and responsibilities of Europol, when acting as service provider to national authorities by offering its infrastructure for exchanges of data between Member States and private parties, is clarified, and that mandatory requirements are provided for in a binding legal act under the Union or Member State law.

As an overall concern, the Board has highlighted in its opinion that the new proposed provisions related to the processing of large and complex datasets may raise serious challenges with respect to the effective exercise of data subject's rights. The Board considers that, as for other proposed regulatory updates, these rights do not seem to have been sufficiently taken into account as part of the impact assessment carried out prior to the Commission's Proposal. Regarding the processing of personal data for research and innovation and use of so-called "artificial intelligence" systems, the Board invites the co-legislators to stand out for safeguards for Europol to refrain from the development of tools that, in practice, would be incompatible with, or heavily debatable, regarding the respect of the fundamental rights and values of the European Union.

In relation to the proposed provisions aiming at strengthening Europol's cooperation with third countries, an issue which we have already brought to your attention on several occasions, and called the European Commission to act, the Board considers that a meaningful review of all agreements concluded by Europol on the basis of Article 23 of Decision 2009/371/JHA, as well as any necessary update to ensure compliance with EU law and case-law, is an essential prerequisite for the entry into force of the proposed regulation amending Regulation (EU) 2016/794.

Finally, the ECB very much welcomes the provisions of the Commission proposal aiming at further strengthening the data protection framework applicable to Europol, in particular with the direct application of Chapter IX and Article 3 of Regulation (EU) 2018/1725 to the operational data processing by the Agency. The single model of coordinated supervision foreseen under Article 62, and now established within the European Data Protection Board (EDPB), would also apply to the coordinated supervision of Europol personal data processing. While

such change implies that the Board would then cease to exist in its current form, the ECB considers that this evolution towards the single model of coordinated supervision within the EDPB would lead to greater coherence and synergies in the coordinated supervision of EU information systems. We therefore welcome that the Coordinated Supervision Committee, established within the EDPB, will serve as the relevant body for this purpose when addressing coordinated supervision issues in relation to Europol personal data processing.

Depending on the outcome and calendar of the legislative process for the finalisation and adoption of the Europol amended regulation, this may be one of the last contributions of the Board addressed to the JPSG. However, I would like to stress that the foreseen change of institutional setting for the coordinated supervision of Europol personal data processing activities should not affect the existing dialogue and exchanges established between data protection authorities and the JPSG. We trust the EDPB Coordinated Supervision Committee to be a most valuable contributor to your future meetings and discussions, maintaining the essential link between personal data processing supervision and parliamentary scrutiny in relation to Europol activities.

The ECB and its members wish you a fruitful meeting, and remain at your disposal, should you need any further details related to any of the aforementioned elements.

Yours sincerely,

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François Pellegrini
Chair