



SOC/673

Strengthening of Europol's mandate

OPINION

European Economic and Social Committee

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation

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1. Conclusions and recommendations

- 1.1 The EESC welcomes the Commission's proposal on strengthening Europol's mandate insofar as it improves data protection safeguards and research capabilities. This will help boost the fight against organised crime and terrorist activity and reinforce operational police cooperation in the EU Member States to protect our citizens.
- 1.2 The EESC also welcomes the proposed cooperation on the part of Europol with third countries, enabling cooperation with private parties or operators, notably regarding the exchange of data. The EESC is of the opinion that private operators should have a point of contact at EU level where they could report information that might be relevant for criminal investigations. The Commission's proposal will address this shortcoming.
- 1.3 The EESC also welcomes the Commission's proposal as it aims to support crime prevention authorities to find innovative solutions to counter international crime and keep up with the evolving landscape. The proposal will also develop Europol's and national enforcement agencies' competence and research capabilities.
- 1.4 The EESC underlines that strengthening Europol's capacity should involve prioritising cross-border investigations, particularly with regard to serious attacks against whistleblowers and investigative journalists who play an essential role in exposing corruption, fraud, mismanagement and other wrongdoing in the public and private sectors.
- 1.5 The EESC is also of the opinion that there are no concerns with regard to privacy protection and fundamental rights in the processing of data. On the contrary, up-to-date and harmonised legislation would allow for more effective examination of issues related to data protection, while striking a balance between the security requirements of individual Member States and those of the EU.
- 1.6 Currently, Europol is not able to provide law enforcement authorities in the Member States directly and in real time with information on criminal activities sourced from third countries or international organisations. The proposal amendments therefore seek to address this security gap and create a new alert category for exclusive use by Europol in defined circumstances. The EESC thus welcomes the creation of a new alert category in support of the Schengen Information System.
- 1.7 Reinforcing Europol's powers and resources involves a commitment to efficiency because scale allows for cost-effective efforts. The EESC considers the proposed increase in Europol's budget to be a positive response to further protecting EU citizens as well as enhancing cooperation between Europol and national law enforcement agencies. However, it would expect this

increase to be reflected in the number of operational staff at Europol and enhanced organisational effectiveness.

- 1.8 Overall, the EESC is of the opinion that the proposals are a step in the right direction in that they extend Europol's role in responding to evolving situations. However, Europol's work will still rely heavily on the activities and actions of Member States and the data gathered by national law enforcement agencies. Hence, and especially in the context of an increasingly globalised environment, it may be pertinent to ask whether it is time to allow Europol to act on its own initiative.
- 1.9 In this context, the EESC also believes that bolder steps to widen Europol's mandate and scope may need to be taken in the future. As the proposals acknowledge, organised crime has become more sophisticated and the most dangerous criminal networks are increasingly transnational. With organised crime continually evolving, Europol's mandate will need to be adapted to make it an even more central player in European security.
- 1.10 This is why the EESC recommends, at some point, an independent review of Europol's role and responsibilities. The review would also investigate how national law enforcement practices and data-gathering processes impact on the analyses provided by Europol. Such a review would also take into account the views of civil society and social partners as well as other relevant stakeholders.

2. **European Commission Proposal**

- 2.1 In response to rising security threats, particularly those posed by criminal organisations, the European Commission published a proposal for a Regulation amending Regulation (EU) 2016/794 on 9 December 2020 as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation.
- 2.2 The proposal attempts to address these key issues:
 - (i) Enable Europol to cooperate effectively with private parties;
 - (ii) Enable Europol to support Member States with the analysis of large and complex datasets (big data);
 - (iii) Allow Europol to request that the competent authorities of a Member State initiate, conduct, or coordinate the investigation of a crime that affects a common interest covered by an EU policy, regardless of the cross-border dimension of the crime.

- 2.3 The Commission also sees a need to strengthen Europol's cooperation with the European Public Prosecutor's Office (EPPO) as well as third countries. Europol's role on research and innovation, its data protection framework, and its parliamentary oversight will also be bolstered.
- 2.4 Insofar as enhanced cooperation with private parties is concerned, the proposal sets out rules for Europol to exchange personal data with private parties (in order for the agency to be able to receive personal data from them), to inform them about missing information, and to ask Member States to request that other private parties share additional information.
- 2.5 The rules also introduce the possibility for Europol to act as a technical channel for exchanges between Member States and private parties. In order to improve crisis response, other rules will govern support to Member States in preventing the large-scale dissemination of terrorist content via online platforms (related to ongoing or recent events depicting harm to life or physical integrity or calling for imminent harm to life or physical integrity).
- 2.6 To be able to process large and complex datasets, the Commission intends to introduce the possibility to carry out pre-analysis of personal data, with the sole purpose of determining whether such data fall into the various categories of data subjects and are linked to a crime.
- 2.7 To effectively support criminal investigations in Member States or by the EPPO, in certain cases, Europol would be able to process data that national authorities or the EPPO obtained in the context of criminal investigations – in accordance with procedural requirements and safeguards applicable under national criminal law. To this end, Europol would be able to process (and store upon request) all data contained in an investigative case file provided by the Member State or the EPPO for the duration of the agency's support for that specific criminal investigation.
- 2.8 The Commission also proposes the creation of a new alert category of the Schengen Information System. This proposal is based on the fact that Europol is not able to provide the Member States' law enforcement authorities directly and in real time with information sourced from third-countries or international organisations on persons who have been suspected or convicted of criminal and terrorist offences.
- 2.9 From a budgetary perspective, the proposal estimates that an additional budget of approximately EUR 180 million and approximately 160 additional positions would be needed for the 2021-2027 period of the Multiannual Financial Framework.

3. General Comments

- 3.1 Europe's security in all its spheres of activity, be they private or public, faces evolving and increasingly complex security threats. The digital transformation, advanced technology, and ease with which criminals can execute criminal activities via the internet has accelerated criminal activities in Europe and worldwide, with the incidence of cybercrime rising exponentially.
- 3.2 Terrorism also remains a significant threat to the freedom and way of life of the EU and its citizens. The COVID-19 crisis has enhanced such threats, with criminal organisations exploiting the crisis and adapting their modes of operation or developing new criminal activities.
- 3.3 These evolving security threats call for effective EU level support to the work of national law enforcement authorities. These threats spread across borders, cut across a variety of crimes, and manifest themselves in organised crime groups that engage in a wide range of criminal activities.
- 3.4 In view of these developments, action at national level alone is not sufficient to address these transnational security challenges and Member States' law enforcement authorities have increasingly made use of the support and expertise that Europol, the EU agency for law enforcement cooperation, offers to counter serious crime and terrorism.
- 3.5 Europol is the centrepiece for EU-level support to Member States in countering serious crime and terrorism. The agency offers support and expertise to national law enforcement authorities in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by an EU policy. Since the entry into application of the 2016 Europol Regulation, the operational importance of the agency's tasks has changed substantially and its operational support has continued to increase, with Europol now part of almost every major counter-terrorism investigation in the EU.
- 3.6 Against the background of evolving and increasingly complex cross-border security threats, with blurring boundaries between the physical and digital world as well as the residual high threat of terrorism in Europe, strengthening Europol's capacities, capabilities, and tools to support Member States effectively in countering serious crime and terrorism is considered both a welcome and timely response.

4. Specific Comments

- 4.1 The EESC welcomes the Commission's proposal on strengthening Europol's mandate as the proposal seeks to bring improved data protection safeguards and strengthen Europol's role in terms of research.
- 4.2 The EESC also welcomes the proposed operational cooperation with third countries, enabling cooperation with private parties, notably regarding the exchange of data. The EESC does not consider the proposal enabling cooperation with private parties to be disproportionate. On the contrary, the proposal is deemed quite necessary given the constant evolution of international crime using internet and mobile devices. Criminal organisations increasingly use cross-border services offered by private parties to communicate and carry out illegal activities. However, private operators do not currently have a point of contact at EU level where they could report information that might be relevant for criminal investigation. This proposal seeks to address this gap. In effect, the legislative amendment would enable Europol to act as the contact point and to examine, in a centralised manner, the crime or the case under investigation by the Member State(s). This arrangement allows for the development of the necessary cooperation between Europol and private parties.
- 4.3 The amendments propose that Europol should play a key role in assisting Member States to develop new technological solutions based on artificial intelligence, which would benefit national law enforcement authorities throughout the EU. Identifying innovative solutions is an important part of countering international crime to ensure that crime prevention authorities keep up with the evolving landscape. That can only be done through coordinated research. The EESC, therefore, supports Europol's proactive role in providing centralised support to law enforcement authorities in Member States in (i) identifying innovations and (ii) in the development of the competence and capabilities of these authorities, using technologies and innovations developed within the EU itself, rather than resorting to security solutions sourced from third countries.
- 4.4 Insofar as the data protection of individuals is concerned, the changes aim to effectively ensure that privacy protection and fundamental rights in the processing of different types of data are fully respected. The EESC is also of the view that processing of personal data is already very strictly regulated and hence there are no issues to flag. On the contrary, up-to-date and harmonised legislation would allow for more effective examination of issues related to data protection, while striking a balance with the security requirements of individual Member States and the EU in its entirety.
- 4.5 The EESC also notes that currently Europol is not able to provide the law enforcement authorities in Member States directly and in real time with information sourced from third-countries or international organisations on persons who have been suspected or convicted of criminal and terrorist offences. The Commission's proposal, therefore, seeks to address this

security gap. This together with the creation of a new alert category for exclusive use by Europol in specific and well-defined cases and circumstances is welcomed by the EESC.

- 4.6 However, the EESC is of the view that the Commission may need to take even bolder steps in the future to widen Europol's mandate and scope. As the proposals acknowledge, crime has evolved and the most dangerous criminal networks are increasingly transnational. That is why cooperation and collaboration between European countries and police forces is important. It is essential that over time Europol's mandate be adapted to make it an even more central player in European security.
- 4.7 The EESC underlines that strengthening Europol's capacity should involve prioritising cross-border investigations, particularly with regard to serious attacks against whistleblowers and investigative journalists who play an essential role in exposing corruption, fraud, mismanagement and other wrongdoing in the public and private sectors. This is consistent with the European Parliament Resolution of July 2020, which refers to a stronger mandate to enable Europol to request the initiation of cross-border investigations in cases of serious attacks against whistleblowers and investigative journalists¹.
- 4.8 The EESC believes that reinforcing Europol's powers implies a commitment to efficiency because scale allows for cost-effective efforts. Further strengthening Europol's mandate and increasing its resources is a necessity for European society to feel and be protected.
- 4.9 By further strengthening Europol's mandate, the EESC implies further strengthening of the coordination between national law enforcement agencies and Europol with the latter asserting itself as a centre for analysis and innovation. In this connection, the proposed legislation is seen as a step in the right direction. Coordination between Europol and Member States is key to all this and the proposals provide a strong basis for enhanced coordination.
- 4.10 However, criminal activity does not respect borders and, in an increasingly globalised environment, the EESC raises the question of whether it is time to allow Europol to act on its own initiative. Should Europol have a right to initiate investigations and to pro-actively execute law enforcement activities in the Member States? This is currently not allowed but developments in criminal activity may necessitate a debate as to whether criminal investigations on a wider scale ought to be initiated by Europol.
- 4.11 As stated, the proposals are a step in the right direction in that they extend Europol's role to respond to evolving situations, but Europol's work will still rely heavily on the activities and actions of Member States and the data gathered by national law enforcement agencies. The

¹ European Parliament Resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing (2020/2686(RSP)).

EESC, therefore, considers that an independent review of Europol's effectiveness in executing its tasks and activities (which to a significant degree also depend on the effectiveness of national law enforcement agencies) would prove highly relevant. The review, possibly conducted by a small group of retired senior members of the judiciary and police force, would also examine how national law enforcement practices and data-gathering affect the analyses and assessments produced by Europol, and how that in turn affects national law enforcement activity. Such a review would also need to take into account the views of civil society and social partners and relevant stakeholders, especially those groups and individuals whose lives could be wrongly or unjustifiably affected by law enforcement activities.

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The president of the European Economic and Social Committee
