



JPSG meeting on Europol

Reporting back by the EDPS on Europol Supervision

25 February 2019

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Intro

Honourable members of the European Parliament, honourable members of the national Parliaments,

Once again, with great pleasure, I appear before this Group which plays a crucial role in politically monitoring Europol's activities both for the fulfillment of Europol mission and for its activities' impact on fundamental rights and freedoms of individuals.

This meeting takes place almost two years after the beginning of our role as a hands-on regulator of Europol and it constitutes an opportunity for a retrospective summary of what we did but also for considerations for the future.

Today, we are very proud to say that the Supervision of Europol is a core business in the context of the wider EDPS.

Allow me to reassure you on this, because it also constitutes a specific chapter of our Annual Report for 2018 which will be presented tomorrow at the LIBE Committee of the European Parliament.

Although there would be many topics on which I would like to report, I can only focus on some of them.

My colleague Wojciech, who is there with you, is ready to answer any specific questions where requested.

1. The highly positive cooperation – both at management and staff level

The first topic relates to the excellent cooperation towards our supervisory role that Europol has shown since the very beginning.

Already with the previous Director we had a satisfactory level of cooperation that today endures in a positive way.

The first steps taken by the new management show continuity in this sense and this will allow us to continue working efficiently.

In particular, since the last meeting of this Group, we have noted a genuine interest and commitment of both top management and staff level during our visits and inspection activities.

After her appointment, I invited Ms. De Bolle for a first courtesy visit at the EDPS in July 2018.

In that occasion, we had a good opportunity to re-establish the foundations for an effective cooperation based on mutual trust.

I therefore invited her to take part in the International Conference of Data Protection and Privacy Commissioners that we hosted in October 2018.

I cannot report on all the initiatives in this sense, but I think it worth it to highlight the EDPS presence in the Conference on Freedom and Security, jointly organised by the Europol Data Protection Experts Network (EDEN) and the Academy of European Law (ERA) in November 2018.

These positive and continuous exchanges of information are crucial because they allow us to ensure that we are able to anticipate any possible problems and plan future activities.

As you know, one of the GDPR cornerstones' is the accountability principle and through our cooperation with Europol we would like to lead by example on this.

In fact, through our supervision activities we aim to ensure that the middle management, as controllers in practice, are aware of their responsibilities and embed data protection in all operations under their responsibility.

2. Inspections

Secondly, I would like to talk about our inspections, which are only a part of our activities and not necessarily the most important, but I think it is appropriate to mention them.

On 8 May 2018, we issued a report on our first Europol inspection, carried out in December 2017. As with did with our other inspections.

The results were not shared publicly, but the report was shared with the national data protection authorities (DPAs) through the secretariat of the Europol Cooperation Board.

We carried out a second inspection from 22-25 May 2018. Three experts from the DPAs of France, Greece and Italy joined the inspection as part of the EDPS team.

The Member States are Europol's main information providers so, as well as benefitting from their expertise, the participation of national experts in the inspection process helps to raise awareness of any problems arising at Europol level which might have originated at national level.

The legal part of the inspection focused on four topics:

- A. The processing of data as part of Europol's operational analysis project, focusing on the processing of personal data of individuals who travel to and from conflict zones, Syria in particular.

- B. The processing of data on migrants arriving at hotspots in Greece and Italy.
- C. The processing of data relating to individuals under the age of 18 in all operational analysis projects, particularly in cases when such individuals are labelled as suspects.
- D. The processing of data in the Europol Information System (the Europol's database of suspects, convicted persons and potential future criminals).

We issued our inspection report on 19 December 2018.

We will follow-up with Europol on our specific recommendations throughout 2019.

Most recently, on 5 and 6 February 2019, we carried out an inspection to verify Europol's processing under the TFTP Agreement.

The Terrorist Financing Tracking programme was set up by the U.S. Treasury Department shortly after the terrorist attacks of 11 September 2001 in the context of the fight against terrorism.

In 2018, we also carried out remote inspections of two Europol websites as part of our follow-up exercise on the protection of personal data processed by EU institution websites.

To these inspections, should be added the seven bi-monthly meetings (the last one took place on 17 January 2019) in which we discussed pending issues and new projects with the Europol's DPO, the members of the Data Protection Function (DPF) Unit and the staff.

3. Other key activities

As I said, the inspection function is only one of the themes.

Let me now briefly draw your attention to four among the many activities we put in place within our supervision:

1. EDPS involvement in the Europol Cooperation Board (ECB)

Firstly, in the wake of the positive cooperation I told you about, it must certainly be pointed out our involvement of in the Europol Cooperation Board (ECB).

In particular, after the first four meetings of the Board, I can already acknowledge that we built a solid cooperation with national DPAs, for example, by involving their experts in its on-site inspections.

2. Supervising operational analysis projects

As you know, the Europol Regulation allows for the processing of personal data to support what is known as operational analysis. However these criminal investigations and criminal intelligence operations carried out by Member State law enforcement authorities must be performed as part of an operational analysis project which relates to a particular type of crime, such as child pornography, cybercrime, drug trafficking, etc.

For each project, Europol is required to define and inform the EDPS about:

- the specific purpose of the project;
- the categories of data involved and the individuals it concerns;

- the participants, which could be Member States, non-EU countries or organisations;
- the length of time that the data will be stored;
- the conditions for access to the data concerned and for any proposed transfer of this data.

At the end of 2018, Europol had a portfolio of 30 operational analysis projects and this results in a considerable amount of work, given also the sensitivity of the files in question.

3. Europol acting as service provider

The infrastructure provided by Europol it is not only used to send data to the agencies and the national authorities involved in a certain operation, but allows also the exchange of information in between the different Member States.

On this, allow me to quote two main cases which may be particularly interesting for this audience:

FIUnet case: where we founded one major obstacle in the Europol Regulation to the embedment of FIU.Net into SIENA. We understand that such embedment would require Europol to process personal data, even if only in its capacity of service provider.

WHOIS case: Europol seeked EDPS opinion with a view to the requirement for law enforcement authorities across Europe to regain access to personal data contained in the WHOIS database, a publicly available and decentralized database of registration and contact information of registrars and registrants of domain names.

Both these cases have been discussed during a trilateral meeting we had with the European Commission (DG Home & DG Just) and Europol that took place on 7 February.

4. Data transfers from Europol to Frontex

This fourth point was also part of the trilateral meeting with the European Commission and Europol and is particularly relevant for this Group since the EP just adopted its report regarding the new Frontex Regulation that deals with the issue of data exchanges.

Lastly, in 2018 we then received only one complaint, which was deemed inadmissible.

4. Legislation

As I said during the last meeting, however, the extent of our efforts over Europol stays however dependent on the related legal framework.

The new Regulation (EU) 2018/1725, adopted with a light delay in relation to the desirable date, is fully applicable as from 11 December 2018.

We trust that this Regulation will bring benefits not only with regard to the processing of administrative data by Europol as it happens right now.

On a longer term, we are confident that it will contribute to limit the fragmentation in the data protection legal framework applicable to the agencies in the EU criminal justice and law enforcement area.

This aspect would be highly important for the EDPS as well as for the coherence of its activities, taken also into account that we will assume the general monitoring role in this area becoming the supervisory authority for both Eurojust (December 2019) and EPPO (November 2020) as well.

In addition, as you know, the security of EU borders remains a hot topic and the EU legislator put forward several new proposals in 2018 aimed at increasing security and improving border management.

In this respect, through our continued and constructive cooperation with Europol we are ideally placed to demonstrate that increased security can be achieved without restricting data protection rights.

5. Conclusions

To conclude, the main challenge we face in supervising Europol's activities is to individuate concretely the right balance between security and privacy when dealing with data processing for the purpose of law enforcement.

After almost two years my assessment on is certainly positive, but we still have a long way to go.

Tomorrow, taking the opportunity to present our Annual Report at the European Parliament, we will announce the publication of an EDPS Manifesto in the spring.

The aim of this Manifesto will be to advise the legislators on how to approach the future of data protection and how to be prepared for the arising challenges.

Thank you very much for your attention.

I wish you all an engaging and fruitful discussion.