



*Address to the constituent meeting of the Joint Parliamentary Scrutiny Group of Europol*

*9 October 2017*

*European Parliament, Brussels*

*Giovanni Buttarelli*

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

It is a great pleasure to accept your kind invitation to this first constituent meeting of the Joint Parliamentary Scrutiny Group on Europol.

The Lisbon Treaty transformed the area of police and judicial cooperation in criminal matters into a main area of EU law, subject to the full jurisdiction of the Court of Justice of the European Union.

It conferred binding legal effect on the EU Charter of Fundamental Rights.

And it provided, under Article 16(2) of the Treaty on the Functioning of the European Union, the legal basis for a strong EU-wide data protection law in all areas of EU policy, including the field of police and judicial cooperation in criminal matters.

The European Data Protection Supervisor is ready to provide proactive advice and committed to ensuring that Europol's activities, as well as possibly the ones of other 'police and justice' EU agencies (such as Eurojust, the European Public Prosecutor's Office) are in full compliance with fundamental rights, of which data protection is an essential component.

The Europol Regulation, as just recalled by MEP De Mera, aligns Europol with the requirements of the Lisbon Treaty: it strengthens data protection rights and ensures, in particular, that each individual has the right to submit complaints to an independent data protection authority, whose decisions are subject to judicial review.

Europol is now, as from 1 May, supervised by the EDPS. We have now supervision by independent supervisory authority with enforcement powers in line with Art. 8 of the Charter; the EDPS is then itself 'judicially accountable', as its decisions can be appealed before the Court of Justice of the European Union.

And the EDPS is also politically accountable before the European Parliament and the Joint Parliamentary Scrutiny Group.

At the same time, the national Data Protection Authorities are closely involved via their participation to the Cooperation Board, which has just adopted its rules of procedures and elected its Chair and Vice-Chair during its constituent meeting of 14 June and for which the EDPS is already providing the Secretariat.

In monitoring compliance with the Europol Regulation, the EDPS is fully aware of the need to strike the right balance between security and privacy, taking into account the specificities of data processing in the police and justice area.

The idea of a secure and open Europe can only become a reality if we are able to ensure two things: enhanced operational effectiveness in the fight against crimes that have a cross-border dimension and protection of the fundamental rights and freedoms of individuals.

And I would like to quote the words of European Commission Vice President Timmermans on two different occasions when he said “data protection is something we can easily get wrong, but we have to get it right”, and “we need to get our data protection regime in order. That is urgent; it's not 'nice to do' but 'need to do'.”

The EDPS is ready to reinforce safeguards in a practical and modern way in line with the new challenges for law enforcement, opening a totally new chapter on supervision.

We have carefully prepared our processes and resources in order to perform effective supervision of Europol’s operations and responsive advice to Europol and its stakeholder community in setting up the new data protection safeguards required.

For this purpose, we have set up a dedicated team on Europol supervision. This Team works in full synergy with all other teams at EDPS.

In performing our new role as Supervisor, in these five months from the entry into force of the Europol Regulation, we have already carried out a range of duties, including:

- hearing and investigating complaints from individuals who consider their personal data to have been mishandled by Europol;
- advising Europol on all matters concerning the processing of personal data; and
- the preparation for the inspection, which the EDPS will perform in December in cooperation with the national supervisory authorities.

I will now tell you more in details about this, speaking about EDPS vision of ‘data protection in practice at Europol, which, located in The Hague, is at three hours distance from us in Brussels

Let me point out to three key issues (I apologise for using some data protection jargon):

First, accountability.

In conducting its supervisory tasks, the EDPS is and will rely on the accountability principle.

This principle is at the heart of the data protection reform, at the heart of both the General Data Protection Regulation and the so-called Police Directive. One of the main aims of the reform is to streamline a ‘data protection strategy’ focused on risks to the fundamental

rights and freedoms of the individuals concerned (the risk based approach) and encompassing the several key steps:

- documentation of the data processing activities performed by the organization (aiming at facilitating control on policies, data flows, IT tools by the Data Protection Officer and by the supervisory authority in charge);
- risk assessment (aiming at identifying, addressing and monitoring the risks for the data subjects);
- data protection impact assessment and consultation of the supervisory authority prior to starting processing operations that are considered particularly risky for the rights and freedoms of the individuals concerned.

We consider that these basic steps also apply to Europol and the EDPS is working together with Europol's DPO and Europol to implement this approach effectively.

In this context, let me point out to the role of DPO (at Europol, the Data Protection Function). The DPF is key to help identify risks and should therefore be closely involved in any new project to ensure data protection by design and assist in the performance of the data protection impact assessment. The DPF is also our first and main point of contact: they know Europol's operations and are experts in data protection, hence they are the optimal interface between us and Europol.

My second key theme is cooperation with national data protection authorities.

This entails cooperation with national DPAs where relevant, either bilaterally (for example, handling of complaints where EDPS must consult DPAs in cases relating to data 'originating' from their member state), or multilaterally through the Cooperation Board as foreseen under the Europol regulation in particular in case of issues requiring national involvement.

The first meeting of the Cooperation Board took place on 14 June. The EDPS as Secretariat has organised the second meeting, which will take place on 16 November.

It is with a spirit of genuine cooperation, reaching a wide consensus and shared approach to data protection compliance, that the EDPS intends involving experts from national DPAs in its first inspection at Europol. For this, we will soon launch a call for expression of interest.

Third key theme is taking an innovative approach to this challenge.

While working in continuity with the past supervision, the EDPS is developing a new and tailored made supervision policy for Europol, taking into account the challenges of the new legal framework under a data protection viewpoint, but also of the need for Europol to rapidly adapt and be at the forefront of technological innovation.

We must be well aware of the fact that criminality takes advantage of ever more powerful IT tools, and that law enforcement should therefore be able to master such tools.

But at the same time the protection of individuals should be 'technologically neutral' and not depend on (suffer from) the techniques used.

As Supervisor, my task is that of providing pragmatic answers to questions such as:

- What does it mean being accountable for Europol?
- What does it mean compliance with necessity and proportionality?
- What does it mean processing personal data fairly and lawfully? Focussing among others on data quality reviews; on the audits on data processing activities.

As you can see, it's a challenging task, and I think that only together, sharing these questions and answers, these objectives, with you and all stakeholders, we can reach this goal.

Let me finally recall more in details what the EDPS has been doing so far on supervision, on the specific responsibility entrusted to me, in the 5 months from the entry into force of the Europol Regulation.

- We have set up a dedicated Europol Supervision Team.
- The team meets regularly with Europol's data protection function unit and operational staff on new projects and other previously agreed issues. We have had two meetings so far, on 10 July and 25 September.
- Handling complaints; two so far, one inadmissible, one pending. For the latter, the concerned national DPA has been consulted.
- In cooperation with Europol and its DPO, we are developing a methodology for the specific risk assessment and consultations.
- Finally, in we have issued our Opinion on Europol "Integrated Data Management Concept Guidelines", whose recommendations Europol is currently addressing.

The accountability principle is not new. What is new is its application in the context of police and judicial activities. The EDPS is taking responsibility for the first (and therefore unprecedented) application of the accountability principle in the area of freedom, security and justice, acting as a beacon of respect of fundamental rights and freedoms.

The EDPS is in the vanguard when it comes to bespoke safeguards for individuals in the context of police and justice activities.

The Honorable Members of European and national legislators who are assembled here are more aware that anyone of the challenging which this presents.

I hope we have an opportunity to meet again to discuss progress.

In the meantime, I would like to leave you with one essential message.

Compliance with data protection rules is not only about privacy and fundamental rights, it goes beyond that.

For an organisation like Europol, whose core business is to process personal data, compliance is key for good governance.

Data protection and efficiency are not adversarial, they go hand in hand.

Thank you for listening. I look forward to our discussion and to deepening our working partnership as supervisors of this crucial area