

E U R O P O L

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Europol tasks – present and future

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Welcome and Congratulations

I. Introductory remarks

Today I would like to talk about Europol's current and future tasks – mainly seen from the point of view of data protection. I will shed light on what is expected from Europol and how data protection and supervision will remain an added value for this law enforcement organisation.

The main topic of today's presentation is:

“Europol is heading towards a model solution representing the right balance between efficiency of law enforcement and respect for the fundamental right of data protection.”

Exactly two years ago, at another conference organised by the JSB, I spoke on data protection and its added value for law enforcement organisations.

My speech at that time was composed of two main parts:

- Necessary changes to Europol's legal framework
- Organisational measures taken at Europol to guarantee an effective protection of personal data.

Since that speech, the situation at Europol has been further developed. Let me update you in detail on this development.

II. Current situation

Today, only two years after my last speech in front of the JSB, I'm happy to be able to report that we have made a big step forward.

The most important changes with regard to the new Europol legal basis have already been prepared. They will be approved and implemented soon.

Most likely, the Europol Convention will be replaced by a Europol Council Decision (ECD) in 2010. Consequences will be:

- This new legal framework represents a significant improvement for Europol's mission.
- Europol will have new and very important operational possibilities and responsibilities.

These broadened possibilities have two effects - they create new challenges, from two points of view:

- Operational capabilities
- Data protection
- These will be counterbalanced by institutional and organisational data protection guarantees.

This means that Europol is moving towards a model solution where the "right balance" is about to be established between two expectations:

- Being an effective law enforcement organisation, supporting the EU-MS and committed third partners in fighting organised crime and terrorism;
- Establishing reasonable data protection which is a fundamental right for all citizens, not just for EU citizens.

III. New possibilities

The extension of Europol's tasks and responsibilities means that Europol will receive more information on individuals, ie there will be more operations which necessitate the processing of personal data.

With these two examples, I will demonstrate that the new regime will be accompanied by additional data protection guarantees. These guarantees are designed to counterbalance the potential risks of handling this kind of information.

Example One:

The first example concerns the possibility for Europol to establish and maintain new systems for processing personal information.

Experience has shown that there is an operational need for new IT systems to combat some types of serious international crime. Member States have asked Europol several times to create such systems, e.g. expert databases or automated reporting mechanisms. But there are some parameters influencing and impacting this:

- The establishment of these mechanisms or databases is currently not possible because of the legal limitations.
- It will be possible based on Article 10 of the Europol Council Decision.
- Europol will be able to use new electronic tools and systems, in addition to the current ones which are:
 - The Information System
 - The Analysis Work Files
- The ECD foresees additional data protection guarantees for these new systems:
 - The JSB will be consulted in advance
 - No "sensitive" personal information will be processed in those systems

Example Two:

Europol will be allowed to receive information from private parties and from private individuals

- In accordance with Article 25 of the ECD
- In some operational areas, the cooperation with private entities is essential, e.g. in combating financial crime, cooperation with banks and credit card institutions is of vital importance.

Limitations will be imposed to avoid data protection risks and regulate the transmission of data to Europol:

- If the third party exists under the law of an EU MS – the transmission will take place via the respective ENU.
 - If the third party does not exist under the law of an EU MS – the transmission will take place via the nominated focal point
 - On the basis of an operational agreement with this third party - if it is in place
 - On the basis of a memorandum of understanding if there is no operational agreement with this third party; but this will happen only if this specific private entity is already on a list adopted by the MB
- ▶ In addition, the JSB has to be consulted in two ways:
- On a new memorandum of understanding;
 - In advance by the Management Board, before preparing the list of private entities.

I would also like to mention the substantial strengthening of the position of Europol's Data Protection Officer (DPO). Currently, the Europol DPO acts on the basis of an Act of the Director and on the Analysis rules; this is good but not good enough. In future, the DPO will act on the basis of the ECD. This will provide him/her with a more robust legal basis which will strengthen his/her position in the organisation.

- The DPO will have enhanced responsibilities; he/she
 - Will act independently when performing his/her duties;
 - Will ensure compliance with the ECD provisions, which will encompass the processing of personal administrative information;
 - Will prepare an annual report to be communicated to the MB and to the JSB.

Being a Europol staff member, the DPO will of course not be totally independent. But he/she will rely on a more explicit reporting mechanism, involving the Director, the Management Board and the JSB in three successive steps:

- The main rule will be that the DPO will first report on all data protection matters to the Director.
- In cases of non-compliance and if the issue cannot be solved by the Director, the DPO shall inform the MB.
- Only if it is not possible to resolve an issue by the MB, will the DPO refer the matter to the JSB.

This 3-step approach ensures a logical flow of decision-making if the situation requires.

IV. The “right balance”

The “right balance” between the operational needs of a law enforcement organisation and adequate data protection level is not only an achievement on an “institutional” level, it is also the result of productive cooperation between Europol and the JSB over the years.

- Europol has always had a record of excellent cooperation with the JSB. This includes the annual inspections which are positively evaluated by Europol.

- Gratitude must be expressed towards the inspection teams!

- Mutually good relations were demonstrated recently in the course of a demanding period of the Europol Council Decision preparatory work, especially within the Europol Working Party (EWP).

For example, with regard to the chapter describing the rights of individuals, the EWP has adopted a proposal commonly elaborated upon by Europol and the JSB. Therein, we agreed to a simplified procedure carefully balancing the operational interests on the one hand and the rights of citizens on the other.

- This productive cooperation is the result of mutual trust and common understanding which has proved to be very beneficial for both parties.
- Europol always considers the recommendations of the JSB as an opportunity to improve the quality of its products. We do not consider its recommendations as negative criticism but as positive and constructive advice.

To conclude this paragraph, I’m pleased to note that the Chairman of the JSB praises Europol’s achievements in important areas such as during a hearing in the UK House of Lords recently:

- The JSB Chairman declared that “the JSB was very satisfied with the quality of Europol’s information as processed in the AWFs”
 - Furthermore, the JSB Chairman mentioned in a very positive way Europol’s efforts in:
 - Dealing with the access requests of citizens
 - Conducting the internal data protection audits.

These very positive remarks did not go unnoticed. They are highly appreciated by the organisation and by me.

Let me also add some words on information exchange as expected by the chairman prior to today. Europol’s role in this area will be defined hopefully in the Post-Hague Programme. This programme may be guided by the “Future

Group Report". In this report, the different roles and responsibilities of the various EU-agencies and cooperation frameworks are described in detail. Information exchange has to be embedded into an Information Management Strategy which must be part of the architecture on Internal Security in the EU. The purpose of an information exchange must guide the choice of the channel and Europol must be the first channel of choice. One should not forget that technical solutions have to be carefully studied under various headings: business need, purpose, efficiency, cost aspects, data protection, etc.

In addition, the principle of availability must be fully implemented including Europol's role in that respect.

V. Commitment for the future

Concerning commitment, Europol as an organisation has to be understood in the broadest sense - everybody acting under Art 2 of the Convention is considered to represent Europol in that respect. This means the Europol HQ, the Member States and the JSB as well. Today, the MS have demonstrated their commitment through the presence of the MB Secretary; Europol HQ is represented by three Directorate Members and the DPO. The JSB is present as a complete entity today.

The institutional "right balance" must be based on a strong commitment from all parties involved to continue this close cooperation towards our common goal. This is "to effectively combat serious crime in a common European area of Freedom, Security and Justice".

Europol will continue to closely cooperate with the JSB. We will seek their opinion and advice on all important topics such as developments concerning new technical systems like OASIS and SIENA and all relevant acts necessary for implementing the provisions of the ECD.

Europol counts on the continuous support of the JSB to maintain the already established confidence of the European citizens.

I regard this element as an essential factor in the fulfilment of Europol's important mission in the future.

Once again, let me express my congratulations on this anniversary. Thank you very much for your attention.