



EUROPEAN COMMISSION

25.11.2020

SEC(2020) 545

REGULATORY SCRUTINY BOARD OPINION

**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**

{COM(2020) 796}

{SWD(2020) 543}

{SWD(2020) 544}



Brussels,
RSB

Opinion

Title: Impact assessment / Strengthening of Europol's mandate

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Europol's mission is to support Member State authorities to prevent serious international organised crime and terrorism. It does this through exchange of information and criminal intelligence.

Since the last changes to Europol's legal basis in 2016, security threats have become more complex. Criminals exploit possibilities created by new technologies, globalisation and mobility.

The present initiative is a key action of the EU Security Union Strategy. It aims to address these new threats and some identified shortcomings of the Regulation. The most important of these is a lack of legal clarity on the processing of personal data. It also aims to align the procedures establishing cooperation with non-EU countries and with other EU Agencies.

(B) Summary of findings

The Board notes that the report has been substantially redrafted. It provides a clearer assessment of the main trade-offs, notably between combatting crime and personal data protection. It also better explains the context and the current mandate of Europol.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The main report does not cover an assessment of some key policy options. It is still not sufficiently streamlined and includes repetition.**
- (2) The report does not explain some of the policy options well and how they differ from the baseline.**

(C) What to improve

- (1) The presentation of the report should be further streamlined. It should reduce repetition between sections, especially between the problem description and the related**

drivers. Lengthy quotes from inter-institutional resolutions or conclusions should be replaced with corresponding links in footnotes. This would free up space to bring in relevant analysis from the annexes.

(2) The main report should integrate the assessment of the options concerning Europol's capability to issue alerts in the Schengen Information System or request the initiation of criminal investigations, as far as they involve real policy choices. The preferred option should include all measures involved.

(3) The report should explain the policy options with more precision to help understand how they would work in practice. It should explain the origin of the policy options (e.g. why it considers an intrusive policy option like a new category of data subjects including persons unrelated to crime; whether certain groups of stakeholders have requested certain policy options). Furthermore, the report should clearly justify the absence of alternatives that do not necessitate changing Europol's mandate (e.g. for the coordination of research).

(4) The report should clarify the differences between the policy options and the baseline. For example, it is not clear how the option allowing Europol to process data received directly from private parties differs from the current situation and how it affects the legal deadline beyond which the data must be deleted. For the policy options in relation to research, the report should clarify that enabling Europol to process personal data for the purpose of innovation could also include persons unrelated to crime. It should explain how, under this policy option, Europol would treat and protect personal data in comparison to other options involving persons unrelated to crime.

(5) The report should describe stakeholder views more systematically. It should not limit this information to percentages, but explain when stakeholder groups differ in their views. Throughout the text, the report should indicate how the stakeholder views were taken into account.

(6) When comparing the policy options, the report should distinguish between the costs for businesses and those for public authorities. Annex 3 should provide more information on the estimates for costs and benefits and provide precise references to the underlying studies.

The Board notes the estimated costs and benefits of the preferred options in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment on a proposal to strengthen the Europol mandate
------------	---

Reference number	PLAN/2020/6621
Submitted to RSB on	04 November 2020
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of benefits (total of all provisions) – Preferred options (EUR million over a 10 year period)</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Saving in administrative costs	200 (Total)	<p>Main beneficiaries are public authorities in Member States and businesses. Savings are based on the following factors:</p> <p><i>Policy Option 2: Europol to process data received directly from private parties, to request personal data held by private parties to establish jurisdiction, as well as to tasks serve as a channel to transmit Member States' requests containing personal data to private parties outside their jurisdiction (regulatory intervention)</i></p> <ul style="list-style-type: none"> - Reduced costs for cross-border service providers to identify the jurisdiction of the relevant law enforcement authorities concerned, in cases in which these are difficult to establish; - Reduced liability risks for service providers when sharing personal data with Europol; - Reduced costs for national law enforcement authorities, who will have to spend less resources on analysing multi-jurisdictional data sets for information relevant for their jurisdiction, because Europol is doing this for them; - Reduced cost for national law enforcement authorities to transfer requests containing personal data to private parties outside their jurisdiction by using channels set up by Europol for this purpose. <p><i>Policy option 4: clarifying the provisions on the purposes of information processing activities (regulatory intervention)</i></p> <ul style="list-style-type: none"> - Reduced costs for national law enforcement authorities as Europol will provide more operational support, especially in complex, large-scale and resource demanding investigations in the Member States, upon

		<p>their request. The reduced costs cannot be established in advance.</p> <p><i>Policy option 7: enabling Europol to process personal data, including large amounts of personal data, as part of fostering innovation; Europol will participate in the management of research in areas relevant for law enforcement (regulatory intervention)</i></p> <ul style="list-style-type: none"> - Reduced costs for national authorities, notably national innovation labs working on security, as they will benefit from synergies and economies of scale created by the Europol innovation lab. The reduced costs cannot be established in advance. This is mainly because the innovation and research needs in relation to internal security will depend on the development of crime and the use of technology by criminals, both of which is the result of various factors and cannot be predicted in advance. <p><i>Policy option 9: introducing a new alert category in the Schengen Information System to be used exclusively by Europol (regulatory intervention)</i></p> <ul style="list-style-type: none"> - There are no direct cost benefit for national authorities. Indirectly, the society as a whole will benefit from enhanced internal security (see below). <p><i>Policy option 11: targeted revision aligning the provision on the transfer of personal in specific situations with the Police Directive (regulatory intervention)</i></p> <ul style="list-style-type: none"> - Reduced costs for national authorities as they will benefit from Europol's cooperation with third countries. The reduced costs cannot be established in advance. This is mainly because the crime rate, and hence the workload of public authorities investing and countering those crimes that require cooperation with third countries, is the result of various factors and cannot be predicted in advance. <p><i>Policy option 12: seeking best practice and guidance (non-regulatory intervention)</i></p>
--	--	---

		<ul style="list-style-type: none"> - Reduced costs for national authorities as they will benefit from Europol's cooperation with third countries. The reduced costs cannot be established in advance. This is mainly because the crime rate, and hence the workload of public authorities investing and countering those crimes that require cooperation with third countries, is the result of various factors and cannot be predicted in advance. <p><i>Policy option 14: enabling Europol to request the initiation of criminal investigations in cases affecting only one Member State that concern forms of crime which affect a common interest covered by a Union policy (regulatory intervention)</i></p> <ul style="list-style-type: none"> - Reduced costs for national competent authorities in the Member States in investigating cases falling under this option, as they will have to spend fewer resources in activities that will be supported by Europol (e.g. criminal and forensic analysis). The reduced costs cannot be established in advance. This is mainly because the crime rate, and hence the workload of public authorities investing and countering these crimes, is the result of various factors and cannot be predicted in advance. <p><i>EPPO:¹ enabling Europol to invite the EPPO to consider initiating an investigation (regulatory intervention)</i></p> <ul style="list-style-type: none"> - Reduced costs for national authorities in the participating Member States as the EPPO, strongly supported by Europol, will undertake relevant investigations. The reduced costs cannot be established in advance. This is mainly because the crime rate, and hence the workload of public authorities investing and countering these crimes, is the result of various factors and cannot be predicted in advance.
--	--	--

¹ This is not a policy option, but a regulatory alignment following from Council Regulation (EU) 2017/1939 (12.10.2017), which will have cost impacts on Europol (see Impact Assessment, Main Report, Section 2 Problem Definition).

<i>Indirect benefits</i>		
Reduction of crime	1 000	Main beneficiary of reduction of crime for society at large.

<i>II. Overview of costs – Preferred options²</i>							
<i>Policy Option</i>	<i>Measures</i>	<i>Citizens/ Consumers</i>		<i>Businesses</i>		<i>Administrations³</i>	
		<i>One-off</i>	<i>Recurrent</i>	<i>One-off</i>	<i>Recurrent</i>	<i>One-off</i>	<i>Recurrent</i>
Policy option 2	Private parties sharing personal data proactively with Europol, Europol engaging in follow-up exchanges with private parties about missing information, Europol issuing own-initiative request to Member State of Establishment, and Europol serving as a channel for Member State's request containing personal data to a private party outside its jurisdiction	None	None	Small one-off costs for adapting internal procedures for direct exchanges with Europol	Costs of identifying the relevant personal data for Europol. However, these costs should be offset by savings, as national law enforcement authorities issue less individual requests for the data already shared with Europol.	One-off costs for Europol to modify IT systems to allow for exchanges with private parties and the subsequent processing of personal data, including an increase in bandwidth and storage capacity (~EUR 1 million).	Additional costs for Europol to maintain IT systems and increase support for operations including meetings and missions (~EUR 6 million). ~60-70 FTE for Europol to analyse additional data coming from private parties. However, these costs should be offset at the level of Member States, as national law enforcement authorities will not have to analyse this data to identify information relevant for their jurisdiction. FTEs to be scaled up in the first years of implementation, to follow expected demand growth.

² Figures are total estimates over the period of the next MFF 2021-2027. The number of FTEs will be scaled up in the first years of implementation, to follow expected demand growth. Staff figures are based on Europol's resource needs at the end of this period. The ranges for staff figures are based on Europol's estimates with a margin of 1-5 staff for smaller staff needs, and a margin of 1-10 staff for higher staff. The indications of FTEs correspond mostly to temporary agents, due to the specificities of the tasks (handling of personal data). A limited number of contract agents (~1-5) is included as well in the FTE estimates, for tasks related to the establishment and maintenance of IT capabilities.

³ The costs related to Europol have been estimated on the basis of the considerations outlined in the Impact Assessment, of estimates shared by the agency, and of the agency's annual reporting on operational indicators related to their levels of activities.

This opinion concerns a draft impact assessment which may differ from the final version.

Policy Option 4	clarifying the provisions on the purposes of information processing activities	None	None	None	None	None	Additional costs for Europol to increase support for operations including meetings and missions (~EUR 0.1 million). ~5-15 FTE for Europol for Europol to manage, process and analyse data and maintain IT systems.
Policy Option 7	enabling Europol to process personal data, including large amounts of personal data, as part of fostering innovation; Europol will participate in the management of research in areas relevant for law enforcement	None	None	None	None	One-off costs for Europol to set up relevant IT systems including a secured data space, a repository of tools and an EU technology observatory (~EUR 2 million).	Additional costs for Europol to support Member States in implementing innovation projects including the management of the Innovation hub and the testing of innovative IT solutions in a secured environment (~EUR 13 million). ~25-35 FTE for Europol to run its innovation lab, support the EU innovation hub for internal security, and to support the management of security research.
Policy Option 9	introducing a new alert category in the Schengen Information System to be used exclusively by	None	None	None	None	There will be marginal costs for Member States to update their national systems allowing their end-users to see the alerts issued by	Additional costs for Europol to renew, maintain, and expand IT systems (including bandwidth and storage) in line with demand

	Europol					<p>Europol, as well as to update their SIRENE workflows.⁴</p> <p>One-off costs for Europol to establish and adapt relevant connections with SIRENE community to be able to send data in a structured way to the central component of the Schengen Information System when they issue an alert (~EUR 1 million).</p> <p>Costs for eu-LISA,⁵ the EU agency responsible for the operational management of the Schengen Information, as it would need to update the central system to enable Europol as a new user to create alerts, as well as some elements of the SIRENE mail exchange. These costs would be below EUR 2 million.</p>	<p>(~EUR 7 million).</p> <p>~10-20 FTE for Europol to create alerts in the Schengen Information System and to provide 24/7 follow up to Member States in case of a hit. FTEs to be scaled up in the first years of implementation, to follow expansion of the new system's users. The need of 24/7 support implies necessary human resources (shift work).</p>
Policy option 11	targeted revision aligning the provision on the transfer of personal in specific situations with the Police Directive	None	None	None	None	<p>One-off costs for Europol to adapt IT systems to provide for secured connections with third countries (~EUR 0.4 million).</p>	<p>Additional costs for Europol to increase support for operations including meetings and missions (EUR 3 million).</p> <p>~1-5 FTE for Europol to make use of its mechanism</p>

⁴ SIRENE stands for “Supplementary Information Request at the National Entries”. Each Member State operating the Schengen Information System has set up a national SIRENE Bureau, operational 24/7, that is responsible for any supplementary information exchange and coordination of activities connected to alerts.

⁵ EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice.

							to exchange personal data with third countries where necessary
Policy option 12	seeking best practice and guidance	None	None	None	None	None	Additional costs for Europol to exchange best practices, organise meetings and trainings (~EUR 0.3 million).
Policy option 14	Europol requesting the initiation of criminal investigations in cases affecting only one Member State that concern forms of crime which affect a common interest covered by a Union policy	None	None	None	None	One-off costs for Europol to modify IT systems and tools, including an increase in bandwidth and storage capacity (~EUR 0.5 million).	Additional costs for Europol to increase support for operations in individual Member States including meetings, missions and operational infrastructure (EUR 6 million). ~15-25 FTE for Europol to coordinate with the Member States and to support Member States in their investigation (incl. on-the-spot-support, access to criminal databases and analytical tools, operational analysis, forensic and technical expertise)
EPPO ⁶	Europol requesting the EPPO to consider initiating an investigation in line with its mandate, in full respect of the	None	None	None	None	None	Additional costs for Europol to increase support for investigations of the EPPO including meetings, missions and operational infrastructure (EUR 1

⁶ This is not a policy option, but a regulatory alignment following from Council Regulation (EU) 2017/1939 (12.10.2017), which will have cost impacts on Europol (see Impact Assessment, Main Report, Section 2 Problem Definition).

	independence of the EPPO, and Europol actively supporting the investigations and prosecutions of the EPPO (e.g. report suspected PIF cases, provide any relevant information requested by the EPPO, provide on-the-spot-support, access to criminal databases and analytical tools, operational analysis, forensic and technical expertise, specialised training)						million). ~5-15 FTE Europol to coordinate with EPPO and to actively support EPPO in its investigations and prosecutions. This includes reporting suspected PIF cases, providing relevant information requested by the EPPO, providing on-the-spot-support, access to criminal databases and analytical tools, operational analysis, forensic and technical expertise and specialised training). FTEs to be scaled up in the first years of implementation, as the volume of EPPO investigations and prosecutions increases.
--	---	--	--	--	--	--	--