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NOTE

From:	Presidency
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA - Discussion paper on Europol's agreements with third countries

INTRODUCTION

The discussions on the proposed Regulation on Europol, in particular Chapter VI "Relations with partners" at the LEWP on 4-5 September 2013 revealed that Member States are quite concerned and need further clarifications as regards the future of Europol's relations with third countries.

The aim of this paper is therefore to briefly describe the state of play as regards Europol's cooperation with third countries, outline the proposed legal basis for its future cooperation and to encourage delegations to provide input and guidance for further discussions on the draft Regulation in this regard.

CURRENT PROCEDURE FOR CONCLUDING EUROPOL'S AGREEMENTS WITH THIRD COUNTRIES

The current procedure for negotiating and concluding agreements with third countries and organisations is defined in Article 23 and Article 26 of the Europol Council Decision and in Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information, in particular Articles 5 and 6 thereof.

The procedure is as follows (for more detailed information see Annex):

- a) the list of third states and organisations with which Europol shall conclude agreements is determined by the Council after consulting the European Parliament;
- b) the Director of Europol negotiates the agreement with the third country or organisation (in case of operational agreement relating to the exchange of personal data the Director proceeds only after the Management Board of Europol (MB) has decided so on the basis of an assessment of the existence of an adequate level of data protection ensured by that third party);
- c) the Director submits the draft agreement to the MB for endorsement before it is submitted to the Council for approval, after which the agreement can be signed by the Director and the third party.

This procedure is very lengthy and currently takes on average¹ approximately 14 months for strategic agreements, from the start of negotiations to the entry into force of the agreement, whereas for operational agreements it takes circa 3 years.²

Any agreement for which the above procedure is not finalised when the proposed Regulation enters into force will have to be concluded according to procedure set out in the Regulation.

¹ Based upon the experience of concluded cooperation agreements by Europol.

² The duration of the process for the conclusion of cooperation agreements with third countries varies significantly depending on the nature of the agreements (strategic or operational) and on the specific country. The internal administrative structure as well as the national rules and procedures for the internal consultation and approval have an impact on the duration of the process, especially in relation to the ratification of the agreement.

THE SCOPE OF CURRENT STRATEGIC AND OPERATIONAL AGREEMENTS

Under the current legal regime, strategic cooperation agreements generally provide for the exchange of all information (operational, strategic or technical) with the exception of personal data. In addition to the exchange of information and in accordance with the tasks of Europol such agreements also often include the exchange of specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, participation in training activities as well as providing advice and support in individual criminal investigations, facilitation of setting up and operation of joint investigation teams. Operational cooperation agreements cover the same topics but allow also for the exchange of personal data. Some cooperation agreements foresee the secondment of liaison officers as well.

PROCEDURE FOR CONCLUDING AGREEMENTS AS PROPOSED IN REGULATION

Article 29(1) of the draft Regulation provides that Europol, insofar as necessary for the performance of its tasks, may establish and maintain cooperative relations with the law enforcement authorities of third countries.

According to Article 29(2), Europol may exchange non-personal data with these entities without cooperation agreements or working arrangements. However, the article does not explicitly foresee the possibility for Europol to conclude such agreements/arrangements. No further details are included in the draft Regulation as to how this would be done in practice (insofar as no exchange of personal data is involved), i.e. whether this would be similar to the negotiations and conclusion of the current strategic agreements or follow a different form.

Existing agreements between Europol and third countries would remain valid also after the entry into force of the Regulation (see Article 73 of the draft Regulation).

When the exchange of personal data is required with a third country with which Europol does not yet have an operational agreement, Article 31(1) of the draft Regulation specifies that this could be done only on the basis of an adequacy decision of the Commission or of an international agreement concluded between the EU and that third country pursuant to Article 218 TFEU.

As set out in Article 218(6) TFEU and depending on the kind of the international agreement, the Council would adopt the decision concluding the agreement after obtaining the consent of the European Parliament or after consulting it. According to Article 218(10), the European Parliament is immediately and fully informed at all stages of the procedure.

Article 53 of the draft Regulation also specifies that Europol shall transmit to the European Parliament and to the national parliaments, taking into account the obligations of discretion and confidentiality, for information the working arrangements adopted pursuant to Article 31(1) relating to the transfer of personal data to third countries as mentioned above.

OPERATIONAL CONCERNS

During the discussion at the LEWP on 4-5 September 2013, the general concern of delegations was whether the proposed Regulation would allow for the same level of Europol's cooperation with third countries as foreseen in its current cooperation agreements as well as regarding the degree of involvement of Member States in deciding on the need for cooperation with a certain third country.

QUESTIONS

- What are the operational needs for cooperation between Europol and third countries?
- What kind of control should the Council (or the Commission) have in this regard?
(e.g. approval of the list of third countries)
- Do delegations consider that the procedure envisaged under Article 218 for concluding international agreements would affect the possibilities for operational activities of Europol in relation to third countries?

**Procedure for negotiating and concluding agreements with third states as defined
in Article 23 of the Europol Council Decision
and in Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules
governing Europol's relations with partners, including the exchange of personal data and
classified information**

- a) Establishing the list
- The Management Board (MB) prepares (and reviews when necessary) the list of third states and organisations with which Europol shall conclude agreements.
 - The Council, acting by qualified majority after consulting the European Parliament, determines/adopts this list.
- b) Negotiations with the third party
- Where the conclusion of an operational agreement is envisaged, Europol carries out an assessment of the existence of an adequate level of data protection ensured by that third party, obtains the prior opinion of the Joint Supervisory Body (JSB) and forwards that assessment to the MB.
 - On the basis of that assessment, the MB decides, taking into account the opinion of the JSB, whether or not the Director shall enter into negotiations with the third party on the conclusion of an operational agreement.
 - Having obtained a positive decision of the MB, the Director enters into negotiations with the third party. In case of a negative decision, the MB may consider the conclusion of a strategic agreement with the third party concerned.
 - Where a strategic agreement is envisaged from the start, the same procedure applies with the exception of the involvement of the JSB.

c) Approval and signing of the agreement

- After finalising the negotiations, the Director submits the draft agreement to the MB. In the case of the conclusion of an operational agreement, the MB obtains the opinion of the JSB.
- The MB endorses the draft agreement.
- The MB then submits the draft agreement to the Council for approval. In case of an operational agreement, the opinion of the JSB is also submitted to the Council.
- Once approved by Council, the Director and the third party sign the agreement.

Overview of Europol's ongoing cooperation with third countries and organisations

(1) Europol has concluded operational agreements with:

Australia

Canada

Former Yugoslav Republic of Macedonia

Iceland

Norway

Switzerland

Monaco

United States of America

Interpol

(2) Europol has concluded strategic agreements with:

Albania

Bosnia & Hercegovina

Colombia

Moldova

Russia

Turkey

Serbia

Montenegro

Ukraine

World Customs Organization

United Nations Office on Drugs and Crime

(3) Negotiations are ongoing on concluding operational cooperation agreements with:

Albania
Bosnia & Hercegovina
Colombia
Israel
Lichtenstein
Moldova
Montenegro
Russia
Serbia
Turkey
Ukraine

(4) Negotiations are ongoing on concluding a strategic cooperation agreement with:

Morocco

(5) Countries included in the list with which Europol shall conclude agreements as set out in Council Decision 2009/935/JHA, but with which the negotiations have not yet been initiated:

Bolivia
China
India
Peru

(6) Countries proposed to be included in the list with which Europol shall conclude agreements (Council decision is pending, doc. 16229/12):

Brazil
Georgia
Mexico
United Arab Emirates
