



Brussels, 27.3.2013  
SWD(2013) 98 final

Part 1

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT on adapting the European police Office's legal framework  
with the Lisbon Treaty**

*Accompanying the document*

**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 COUNCIL  
DECISIONS 2009/371/JHA AND 2005/681/JHA**

{COM(2013) 173 final}  
{SWD(2013) 99 final}  
{SWD(2013) 100 final}

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## 1. INTRODUCTION

This report assesses the impact of options for the reform of the European Police Office (Europol) aiming at:

- 1) aligning Europol with the Treaty of Lisbon's requirements,
- 2) achieving by Europol of goals set forth in the Stockholm Programme.

This reform is intended to form a part of a wider package which includes a proposal- for which a separate impact assessment has been prepared- to merge the European Police College or 'CEPOL' with Europol and to implement a European Law Enforcement Training Scheme LETS for law enforcement officials (LETS).

The Treaty of Lisbon provides for a new legal basis for Europol (regulation) and for the scrutiny of Europol's activities by the European Parliament together with national parliaments. Consequently, the Council Decision on Europol<sup>1</sup> (hereinafter "Council Decision") needs to be replaced. At the same time, following the entry into force of the Treaty of Lisbon which sets out strict rules on the representation of the EU at the international scene, Europol will no longer be able to conclude international agreements with third countries or international organisations.

In addition, the Stockholm Program<sup>2</sup> has stressed that organised crime continues to become more globalised, that the fight against it requires, inter alia, systematic exchange of information and called for Europol to become a “hub for information exchange between the

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<sup>1</sup> Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol)

<sup>2</sup> The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens, OJ C 115, 4.5.2010, p. 1–38

law enforcement agencies of the Member States, a service provider and a platform for law enforcement services".<sup>3</sup>

Finally, by reforming Europol the Commission is committed to apply the governance standards agreed together with the European Parliament and Council in July 2012 in the Common Approach on EU decentralised agencies.<sup>4</sup>

## 2. PROCEDURAL ISSUES AND CONSULTATION OF THIRD PARTIES

This impact assessment has been informed by a number of consultations and studies.

A study on the Implementation of Europol's Council Decision and Europol's Activities was commissioned by the Management Board of Europol and carried out in 2011 and 2012<sup>5</sup>. The Commission has taken an active role as a member of the evaluation steering group. The aim of the study was to assess both the way in which Europol has implemented the Council Decision on Europol and the impact of the current legislative framework on its activities. The evaluation (hereinafter "the RAND report") confirmed that Europol is a well-functioning agency which adds value to the security of European citizens and has a robust data protection regime. Nevertheless, it identified a number of areas where improvements are needed. It contains a substantial amount of data, which has been further enriched with data from annual and specific reports by Europol as well as those collected through "ad hoc" consultations with Europol and other stakeholders. An executive summary of the RAND evaluation is in Annex 1.

Starting in 2010, the Commission has held dialogues and has consulted all major stakeholder groups through dedicated multilateral and bilateral meetings, including:

- Law enforcement experts from Member States and European agencies: meeting of COSI<sup>6</sup> on 17 February and 11 April 2012 and of the Law Enforcement Working Party<sup>7</sup> on 12 March 2012. In addition regular discussions and information exchanges with Member States have taken place at the Europol Management Board's meetings and in bilateral meetings with DG HOME. Several Member States also provided

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<sup>3</sup> The European Council also invited the Commission to "examine how it could be ensured that Europol receives information from Member States law enforcement authorities so that the Member States can make full use of Europol capacities".

<sup>4</sup> [http://europa.eu/agencies/documents/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf)

<sup>5</sup> Evaluation of the implementation of the Europol Council Decision and if Europol's activities, RAND Europe. The report has been published on the Europol's website: [https://www.europol.europa.eu/sites/default/files/publications/rand\\_evaluation\\_report.pdf](https://www.europol.europa.eu/sites/default/files/publications/rand_evaluation_report.pdf)

<sup>6</sup> COSI consists of high level representatives of Member States, Europol and Eurojust.

<sup>7</sup> Representatives of law enforcement authorities within Member States, of Europol, Europol National Units and Eurojust.

written comments to DG HOME's working document presented at COSI meeting on 11 April<sup>8</sup>.

- Data protection community: meeting with the Joint Supervisory Body of Europol on 14 March and the European Data Protection Supervisor (EDPS) on 16 March 2012. On 16 May 2012, the EDPS also submitted a set of written comments.
- A number of Members of the European Parliament's LIBE committee on 28 February 2012.
- Representatives of the national parliaments across the EU: a half-day debate session on 20 April 2012.

This has allowed the Commission to capture different perspectives and expectations from stakeholders. The summary on the stakeholders' consultations and views is in Annex 2.

An inter-service steering group<sup>9</sup> was convened on 8 March and met subsequently on 2 May and 11 June 2012 to help define policy options and consider the draft impact assessment.

The Impact Assessment Board of the European Commission assessed draft versions of the present impact assessment, issuing its final opinion in 10/10/2012. The IAB made several recommendations and requested to submit a revised version of the report, which have been addressed as follows.

- *Indicate clearly in the baseline scenario how the problems and their drivers are expected to develop-* Section 3.2.1. *Baseline scenario* indicates how the core problems and their drivers are expected to develop, based on evidence from statistics, the input of Europol or the external stakeholders and the Commission's assessment. For the sake of transparency, section 5.2. *Transversal issues* and Annex 6 presents the problems which were identified in the RAND report but are not discussed in this impact assessment as they do not have an impact on the general objective of Europol's reform, or because there is a general consensus on them, or because an alternative approach is not considered realistic. Specific aspects of the problems (e.g. "Member States do not comply with their obligation" or "do not recognize the existence of an obligation") have been further analysed in section 3.2.1 so as to enable to define appropriate options to effectively solve the problem. The baseline scenario in section 3.2.1 incorporates more explicitly the changes to the legal basis that are required under the Lisbon Treaty, the CEPOL review and the Common Approach on EU decentralised agencies.
- *Explain more clearly how the objectives will address the main problems and define a broader range of options to deliver the required results-* Section 4.1. *Objectives* have been revised with clearer specific and operational aims which related directly to the problems and drivers described. One more option was added on constraints on data

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<sup>8</sup> The Member States that have provided written comments were: France, Poland, the Netherlands, Belgium, the Czech Republic, Hungary, Finland, Sweden, Germany and Italy.

<sup>9</sup> Comprising of HOME, JUST, SG, LS, IAS, BUDG, HR, TAXUD (observer), OLAF and EEAS

processing (Option B1- merging the two existing AWFs into one), thus for each problem three alternative solutions are proposed. The presentation of the options (section 5.1) has been revised in line with the restructured problem definition and improved intervention logic. The actual contents of the options have been explained more in detail to allow for a better assessment of how effectively and efficiently they will address the problem identified. For the Option B2 (new processing environment), details on the legal aspects of the options were analysed in detail. The technical aspects were outlined. The IT architecture for this option has not been presented in detail as there are different technological solutions possible that would need to be carefully examined in a separate dedicated study by Europol once it is ready to achieve a single data repository. The report gives also a more transparent overview of the envisaged funding arrangements in the main text for the various options. Under the analysis of each option in section 6.1 and 6.2 a short summary table on costs and benefits has been presented. Costs and benefits have been quantified whenever possible.

- *Present the assessment of the relevant costs and benefits of the various policy options in a more transparent way, where possible in quantitative terms, and supported by evidence-* The report has fundamentally restructured its presentation of the costs and benefits for various options to show the concrete impacts, quantified whenever possible. This has been done in section 6.1 and 6.2. Costs have been broken down to present both costs for the EU and the national budgets as well as different costs categories (staff levels, material costs). Impacts have been presented in a transparent way relative to the baseline scenario. The qualitative indicators in the texts have been better explained and supported by evidence. The arguments with regard to the different options for future data protection arrangements (i.e. who should be the independent data protection supervisor of Europol) have not been further elaborated, as they do have general impact for the objective of Europol's reform, i.e. "lisbonisation" and becoming an information hub for law enforcement authorities in the EU. Anyway, as there are pros and cons of each of the two options (the Joint Supervisory Body or the External Data Protection Supervisor), the decision on the preferred option would be taken at political level.
- *Present the comparison of options more transparently by explaining how the qualitative indicators in the summary table relate to the presented evidence-* The report compares the options in section 7 on the basis of a clearly presented overview of expected costs and benefits for each options and by assessing their effectiveness and efficiency in achieving the objectives, and their coherence with related Commission policies. The presentation of the scores for comparison of options is more clearly linked to concrete evidence. For all factors for which a quantitative presentation is possible, this has been done in the summary table at the end of section 7.
- *The report should explain whether or not an ex-ante evaluation will be required-* In accordance with the IA guidelines, this impact assessment addresses all the points relevant to an ex ante evaluation.

### 3. PROBLEM DEFINITION

#### 3.1. The context

Providing security is the objective of Member States' police forces. They are confronted not only with domestic crime, but also with cross-border crime. Activities of criminals are getting more complex, diverse and international<sup>10</sup>. Large scale criminal and terrorist networks pose a significant threat to the internal security of the EU and its citizens<sup>11</sup>. National law enforcement services cannot anymore work in isolation, and instead need to cooperate with their counterparts in other Member States.

The creation of a common space of justice, freedom and security without internal borders, the adoption of a single currency, and the further integration of the European Union has greatly benefited the free movement of EU citizens; it had to be accompanied by a reinforcement of security measures to tackle cross-border crime. Consequently, the establishment of Europol – the EU organisation designed to help law enforcement authorities of the EU Member States to better cooperate with one another – is an instrumental step in this regard.

Europol was created in 1995 as an intergovernmental body by a Convention between Member States<sup>12</sup>, which was subsequently replaced in 2009 by a Council Decision<sup>13</sup>. The Council Decision conferred upon Europol the status of EU agency.

Europol provides assistance to national police forces in various ways:

- it enables the **sharing of criminal information** among Member States and between them and Europol. On the basis of information collected it produces **operational analyses** which help law enforcement services in starting or further developing transnational investigations. This constitutes Europol's main mission. Alongside the production of analyses (criminal intelligence<sup>14</sup>), Europol also offers **operational assistance to Member States** by providing expertise in support of cross-border investigations or coordinating them or giving financial support for euro-counterfeiting investigations. Europol may also be the instigator of a Joint Investigation Team and make its own agents available to assist in intelligence-sharing within such a Team<sup>15 and 16</sup>.

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<sup>10</sup> Europol Review, general report on Europol Activities, 2012, p.4

<sup>11</sup> Europol Review, general Report on Europol Activities, 2011, p.7

<sup>12</sup> Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), OJ C 316, 27.11.1995, p. 2–32

<sup>13</sup> The Council Decision entered into force on 1.1.2010.

<sup>14</sup> Criminal intelligence is information compiled, analyzed, and/or disseminated in an effort to anticipate, prevent, or monitor criminal activity.

<sup>15</sup> Last year Europol supported this way 694 Member States' investigations noting 48,8% increase of directly supported or initiated investigations compared to 2010.

<sup>16</sup> In 2011, Europol used its information capabilities and operational expertise to support competent authorities in EU Member States in 13,697 cases initiated; an increase of 17% over 2010. Europol initiated or actively supported a total of 694 (619 of which were ongoing) MS investigations (compared to a total of 416 in 2010). In order to support Member States' investigations Europol produced 716 hit notifications, 984 cross

- it plays a significant role in **strategic analysis**. The "Organised Crime Threat Assessment" (OCTA) prepared by Europol on the basis of information collected forms the basis for the establishment of the priorities at EU level in the fight against the most serious phenomena of organised crime affecting Europe.
- It also offers a **platform for specialist areas**, facilitating knowledge sharing and communication between various expert communities.

Examples on how Europol adds value to the fight against serious transnational crime in the EU by supporting Member States' law enforcement authorities are found in Annex 3.

**Europol has neither autonomous investigative capabilities nor coercive powers** so it is very distinct from national police forces or from federal law enforcement agencies such as the FBI.

Europol is also very different from Interpol in its functions and operation and the latter does not offer a viable alternative. Interpol is an organization that enables police authorities of its 190 member countries to assist each other through communication systems, data bases and capacity building. Unlike Europol, Interpol does not focus on real-time and on-the-spot analytical support to on-going investigations, but merely facilitates the bilateral exchange of information and provides for an alert system on fugitives, dangerous criminals and missing persons. Interpol is a body that brings together, on a voluntary basis, countries with very different political traditions from all continents (including, for instance, Zimbabwe and Somalia). The data protection safeguards are limited compared to EU standards. By contrast, Europol's focus is on crime affecting the EU and it provides a more complex data processing service – operational analysis - within a secure environment with very stringent data protection rules: it is specialized in the production of intelligence and analysis, in order to assess criminal threats, identify criminal patterns and networks and provide tailor-made assistance to the investigative services in the Member States.

### **3.2. Description of the problem**

Stakeholders at Member States' and EU-level increasingly see Europol as operationally relevant, as has been confirmed in the evaluation by RAND<sup>17</sup>. There was near unanimity among interviewees and focus group participants that the support provided by Europol has added value<sup>18</sup>. However, both the RAND report and the consultations of a number of stakeholders have allowed the Commission to identify several shortcomings preventing Europol from becoming a hub of information exchanges between law enforcement officers in the Member States as set forth in the Stockholm Programme.

#### **PROBLEM 1:**

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match reports, 376 knowledge products and 340 operational analysis reports. See: Annual Activity Report, Europol 2011, p. 7.

<sup>17</sup> RAND report, p. XVI

<sup>18</sup> RAND report, p. XVI

### 3.2.1. *Member States do not provide Europol with all the necessary information to fight serious cross-border crime*

Law enforcement cooperation within the EU cannot exist without an effective exchange of information and intelligence on crime between national law enforcement authorities in the EU. Recognizing that the access to and the sharing of relevant and up-to-date criminal information is critical for the effective fight against crime, the EU has placed initiatives to promote information exchange at the heart of its policies in the area of Home Affairs. These initiatives are both legislative<sup>19</sup> and financial.

Council included enhanced information exchange in order to obtain a better intelligence picture as a shared strategic goal for the eight EU crime priorities in the Council conclusions on setting the EU's priorities for the fight against organised crime between 2011 and 2013 in the framework of the EU Policy Cycle<sup>20</sup>;

Europol depends predominantly on Member States when it comes to collecting data and intelligence on serious crime<sup>21</sup>. The Council Decision requires Member States **to supply Europol with data** that falls within Europol's mandate<sup>22</sup>. For it to be meaningful, this data should be up-to-date, accurate and reliable.

However, according to the RAND report, there was consensus among interviewees across all stakeholders groups (including liaison officers and Heads of Europol National Units that are counterparts of Europol at the national level) that there was a scope to improve information sharing by Member States<sup>23</sup>.

On occasions, Member States do it but not in a timely manner<sup>24</sup>. Some Member States consulted in COSI on 11 April confirmed these findings.

Insufficient information sharing by Member States was **identified as a risk in the Europol work programme 2012**, and has been noted by academics and commentators<sup>25</sup>.

If a Member State does not share information on a given serious cross-border crime, Europol is incapable either of identifying patterns and links with crime phenomena in other countries or of coordinating joint investigative actions at the EU level.

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<sup>19</sup> The overview of such initiatives could be found in the Communication from the Commission to the European Parliament and the Council "Overview of information management in the area of freedom security and justice", COM (2010) 385 final.

<sup>20</sup> Council conclusions of 9 and 10 June 2011.

<sup>21</sup> Wills A., Vermeulen M., Born H., Scheinin M. and Wiebusch M. (2011), Parliamentary Oversight of Security and Intelligence agencies in the European Union. Brussels, European Parliament, p.47

<sup>22</sup> Article 8 of the Council Decision.

<sup>23</sup> RAND report, p.47. Also the representatives of the Member States, including liaison officers and Heads of Europol's National Units shared this view. RAND report, p. 47 RAND asked its interviewees "What is the extent of Member States' commitment to share information with Europol?". The most common replies were "to a very limited extent" (34%) or "to some extent" (33%). Compared to other questions in the survey, a very small proportion of respondents answered "don't know". See: RAND report, p. 48.

<sup>24</sup> Ibidem.

<sup>25</sup> De Moor and Vermeulen, 2010a, p. 1099; Fägersten, 2010; Wills et al., 2011, p. 47.

The RAND report findings and stakeholders' views are supported by statistics:

- The supply of data into Europol's databases varies substantially in absolute terms between Member States<sup>26</sup>. The Council noted such a wide variation in the use made of the Europol Information System when it comes to providing information to the system<sup>27</sup>. The scale of the discrepancies implies that some of them do not provide all data they should and that there is room for improvement.

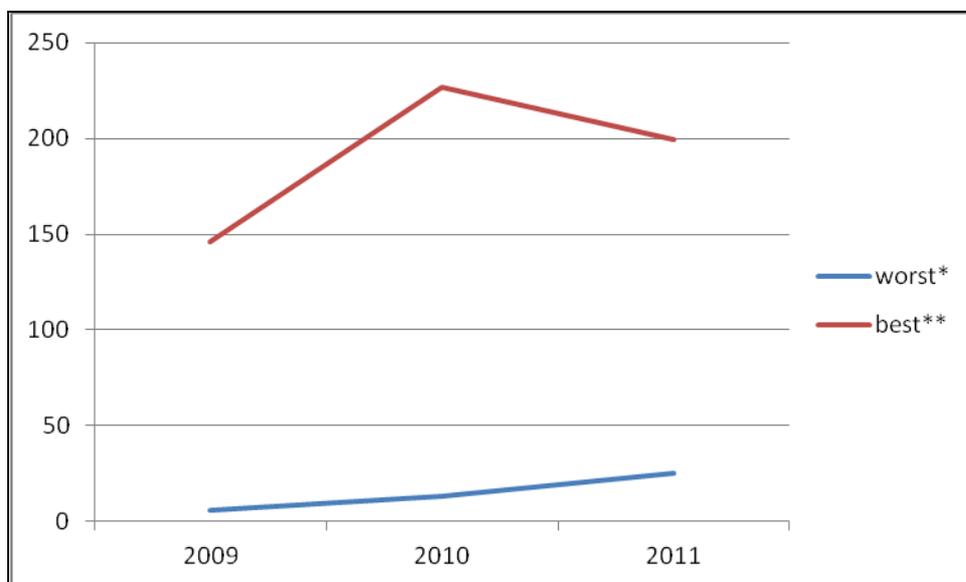


Table 1: Contributions to AWFs by MS per million of inhabitants in 2009-2011, source: Commission on the basis of statistics provided by Europol

\*worst- 5 Member States that have provided the least contributions per million of inhabitants

\*\* best- 5 Member States that provided the most contributions per million of inhabitants

2009 2010 2011

<sup>26</sup> The five Member States which have provided the most information to the **Europol Information System (EIS)** so far have on average uploaded data on 1753 objects [information on e.g. persons, type of offences committed, registration plates] per million inhabitants. At the same time the five Member States which have so far supplied the fewest data have on average uploaded data on only 35 objects per million inhabitants.

Moreover, in 2011, the five Member States that conducted the highest number of searches in the EIS made on average 1096 searches per million inhabitants. The five Member States that conducted the lowest number of searches made in average 12 searches per million inhabitants (See: EIS report 2011).

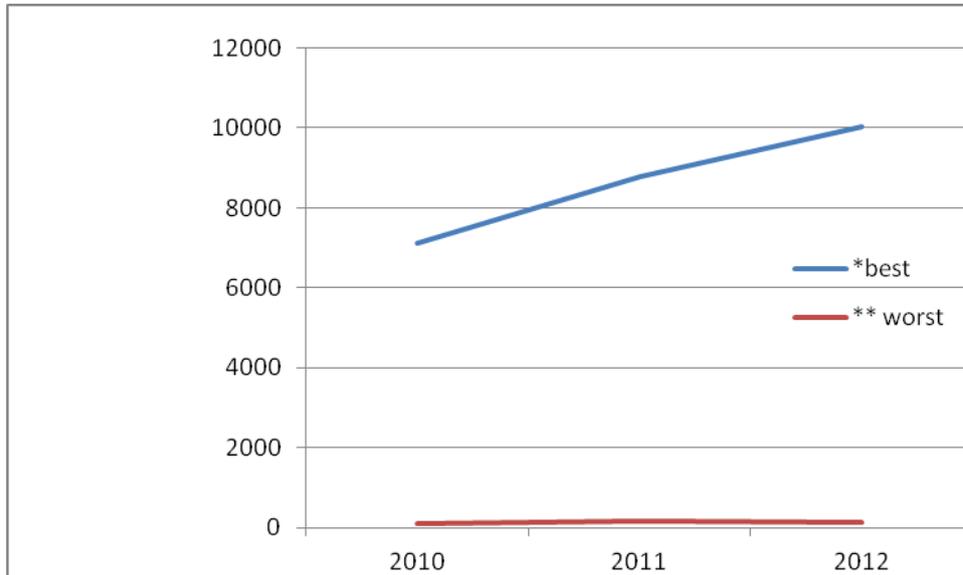
Similarly, the levels of contribution by Member States to the **Analysis Work Files (AWFs)**, the most important of Europol's current databases combining data with intelligence, show a considerable discrepancy. Five Member States provide more than half of all information that is fed to AWFs by Member States, third countries and European agencies. Contributions by 11 Member States account for almost 80% of information fed into AWFs (Source: Statistics provided by Europol).

To further corroborate concerns about information sharing by Member States, Table 1 presents two of the multi-annual key performance indicators (KPIs) used by Europol to monitor the implementation of its Multiannual Strategy. This shows that in 2010, targets were met for indicators on the number of objects in the EIS, but the target for searches by Member States was not reached (see detailed data in Annex 4).

<sup>27</sup> Council Conclusions on the increased and more effective use of the Europol Information System, in the fight against cross-border crime, 7-8 June 2012

*best*      145.9582   226.6259   199.1948

*worst*     5.670983   13.20036   25.24874



*Table 2: The number of objects inserted in the EIS per million of inhabitants in 2009-2011, source: Commission on the basis of statistics provided by Europol*

*\*worst- 5 Member States that have provided the least objects per million of inhabitants*

*\*\* best- 5 Member States that provided the least objects per million of inhabitants*

	<b>2010</b>	<b>2011</b>	<b>2012</b>
<i>the best</i>	7126	8767	10017
<i>the worst</i>	89	174	146

- In less than half (48,2%) of the messages sent in 2011 through **SIENA** (a secure information exchange channel that Member States use for communication with Europol or among themselves or other partners<sup>28</sup>), Member States addressed or copied

<sup>28</sup> SIENA could be used to send data which falls within or outside of Europol's mandate. If data concern crimes which are not covered by Europol's mandate, then the transfer does not involve Europol. It is estimated though that number of such cases is overall marginal comparing to whole volume of data sent via SIENA, as the mandate of Europol is very broad.

Europol. This means that for over a half of all crime-related messages, Europol was not aware of their content<sup>29</sup>When information is shared this way, bilaterally, it is not available to feed into Europol's analyses. Europol has identified this as a serious operational deficit<sup>30</sup>.

The deficit of information which affects Europol can be linked to several underlying **drivers**:

**Driver 1: Lack of precision of the legal provisions leading to contradictory interpretations motivated politically:** The legal provision obliging Member States to provide data is not formulated in an explicit way, thus leaving room for speculation and doubt<sup>31</sup>. In these circumstances, some Member States do not even recognize the existence of an obligation<sup>32</sup>. The reason for non-recognition of an obligation is mainly politics and perception of sovereignty. An additional factor which contributes to this is the intergovernmental past of Europol- for years Member States alone were deciding on all Europol-related issues and provision of information. In addition, some Member States claim that they are **not sure of the type, level of detail, nature and extent of information that should be sent** to Europol<sup>33</sup>.

**Driver 2: Sociological and cultural drivers: Low awareness, lack of knowledge, insufficient training and a policing culture** which encourages law enforcement officers to be **cautious about information sharing**<sup>34</sup>. Natural reluctance to share information is a rooted and widespread phenomenon. This explains why EU policies have been directed towards encouraging cross border information sharing between law enforcement authorities<sup>35</sup>. Besides,

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<sup>29</sup> In other words this means that Europol's databases have not been checked nor its operational units consulted, and that Europol was not informed about bilateral exchanges of information between Member States.

<sup>30</sup> Europol's Annual Report 2011

<sup>31</sup> Article 8 of the Europol's Council Decision contains several provisions in this respect which should be read jointly, e.g. Article 8 point "Member States shall take the necessary measures to ensure that their national units are able to fulfil the tasks...", Article 8 point 4 "The national units shall supply Europol on their own initiative with the information and intelligence necessary for it to carry its tasks". The words "on their own initiative" are a synonymous with "spontaneous" provision of information. RAND report also implies that there is no obligation upon Member States. The Commission does not share this view.

<sup>32</sup> Some Member States (minority) do not share the Commission's and other Member States' interpretation of Article 8 of the Council Decision which is described in the footnote above.

<sup>33</sup> COSI meeting on 11 April and written contributions of some Member States.

<sup>34</sup> RAND report, p. 50

<sup>35</sup> Examples of initiatives (legislative and non) in the field:

- Framework Decision 2002/465/JHA on Joint Investigation Teams – one of its most notable advantages is the direct sharing of information between members
- Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the EU;
- Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross border crime –this instrument aims to introduce procedures for promoting fast and efficient

some Member States are still more accustomed to traditional and well-known channels for the exchange of information – e.g. bilateral agreements.

**Driver 3: Organisational drivers:** Several organisational impact upon the performance and effectiveness of the Europol National Units (ENUs), set-up in each Member State to be the contact point for Europol and its data provider. ENUs are quite heterogeneous: they vary in size, location, staffing, resources, seniority and prestige of their Heads and links to other law enforcement authorities within the Member States. The attitudes and the good will of individual law enforcement officials within Member States also play an important role.

Reluctance to transmit information prevents Europol from creating a complete and up-to-date criminal intelligence picture throughout the EU. As a result, as Member States do not see sufficient added value in Europol's findings, they are less motivated to supply information to Europol. This perpetuates the vicious circle.

### 3.2.2. PROBLEM 2

#### **A system of separated and pre-defined databases which does not allow Europol to fully assist Member States in preventing and combating crime**

Europol has currently three main databases to store and manage data on criminal networks and their activities; the Europol Information System (EIS) and two Analysis Work Files (one on Serious and Organised Crime (AWF SOC), the other one on Terrorism (AWF CT))

In addition it has two '10.4 databases' which are used to determine whether the data provided are relevant for Europol's tasks and whether they should be put to the EIS or one of the two AWFs.

Europol processes data stored therein in order to assist Member States, i.e. it builds operational analysis concerning specific investigations and drafts threats assessments and other operational and strategic analysis products.

The most important for the work of the analysts are the EIS and the 2 AWFs.

The Europol Information System (EIS) is a reference database used for **cross-checking** purposes. It stores personal data about those suspected of crimes falling within Europol's mandate and about persons for whom there are serious grounds to believe that they are likely to commit such crime in the future<sup>36</sup>. These data are for example: names, date of birth,

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means of data exchange on automated DNA analysis files, automated fingerprint identification systems and vehicle registration data.

- Within the "General Programme on Security and Safeguarding Liberties" (2007-2013), the specific financial programme "Prevention and fight against Crime" has systematically included its annual work programmes priorities linked to enhancing information exchange. Calls for proposals encourage the submission of projects geared towards improving Member States' exchange of data between each other and also with Europol.

<sup>36</sup> Article 12 par. 1 ECD

nationality, sex, driving licences, ID or passport number, previous convictions, etc.<sup>37</sup>. Input and access to data are authorised to Europol staff, Europol National Units<sup>38</sup> and Europol liaison officers.

Analysis Work Files (AWFs) are databases for **analytical operational purposes** and for assisting live investigations. AWFs combine hard data used for identification (personal data) with intelligence. Only Europol staff has access to AWFs; there are additional data protection and data security safeguards.

A Member State (or third party) decides, upon inputting the data, the purpose for which it is transmitted to Europol (for simple cross-checking purposes in the EIS, or for specific analysis purposes in one of AWFs); in addition, it can decide through handling codes<sup>39</sup> who can access them and what use can be made of them.

The reason why data are stored in different databases is of a historical/technological nature:

- In view of protection of personal data, it should be ensured that data are processed for a specific purpose (purpose limitation), and only when this is necessary and proportionate. A limited number of persons should have access to data on a "need-to-know" basis; data security and other safeguards have to be ensured.
- Due to the IT technology possibilities available in the nineties (when the data management of system for Europol was designed<sup>40</sup>), the way of implementing these requirements was by establishing several separated databases. These databases would have different purposes, would be accessed by different categories of persons and would be ruled by specific data provisions on collection, storage and types of data stored.

The Europol Council Decision of 2009 simply codified the status quo of Europol separate information systems without links between them<sup>41</sup>.

On the basis of the evaluation made of Europol<sup>42</sup> and Europol's input, the Commission has identified the following drivers of the problem:

**Aspect 1 of the problem: Europol's analysts cannot fully support Member States as long as they could not link and make analyses of relevant pieces of data spread over different databases**

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<sup>37</sup> Article 12 par.2 contains the whole and exhaustive list of personal data that could be stored in the EIS.

<sup>38</sup> The Europol Council Decision has come up with a possibility for national competent authorities to access <sup>in</sup> directly EIS.

<sup>39</sup> Handling codes are means of protecting information source. The codes ensure security of the information and its safe and adequate processing, in accordance with the wishes of the owner of the information, and with full respect to the national legal rules of the Member States. The handling codes indicate what can be done with given information and who has access to in the future.

<sup>40</sup> The data management system for Europol was established in 1999 on the basis of the Europol's Convention.

<sup>41</sup> RAND report, p. 83

<sup>42</sup> RAND p. 81-83

The databases of Europol are technically separated with specific rules on their purpose and access rights. In practice this approach works towards creating information silos. This is a serious operational inhibitor in gaining an overall and broader picture, as the analysis could be performed only within each AWF. Thanks to a triggering mechanism (Index Function), it is possible to detect (cross-check) that the same entities (e.g. name of Mr X) are present in different databases. However, this mechanism does not provide any information on why the entity is in that system, who provided it and, more importantly, to what it is linked to (telephone numbers, associates, contacts, vehicles). Only linking of entities allows an analyst to give a meaning to information about criminal or terrorist organisations, e.g. to allow for a hypothesis on the role of the individual perpetrator in the hierarchy of a criminal group involved e.g. in both serious crime and terrorism (e.g. smuggling drugs or weapons to sponsor terrorist activities). Without linking there is no criminal analysis. At present, in principle, no analysis can be conducted between serious and organised crime and terrorism.

As the EIS has its own separate purpose- that of reference database- it does not permit any analysis of data stored there in, nor any possibility to establish or store links between information contained in the EIS and in the AWF. To see a practical example illustrating the problem identified, see Annex 4.

The only solution for an analyst to circumvent (partly) this problem is to ask the data provider to agree to include the data detected in another database (and if possible also the data to whom they are linked) also in the database to which the analyst has access. Such an authorisation or sets of authorisations for each individual item of data takes, according to Europol analysts, from a few weeks to a few months<sup>43</sup>.

An additional difficulty is that cross-matching is possible only in case of a "full-match"- where there are two identical sets of data in both databases. But analytical work is about making assumptions, building hypothesis and links between not obvious cases. If in one database persons A and B linked to X and in another A and B are linked to Y, it is possible that X and Y know each other or are the same person. But this could not be detected by the analyst as he could only cross-check A and B.

As a result, Europol cannot produce intelligence reports on criminals, terrorists and their links, which can be necessary for Member States' investigations.

### **Aspect 2 of the problem: Multiplied storage of data**

Data sent by a Member State can be intended both for sharing in the EIS and for analysis in the AWFs. The technical separation implies that the data must be stored at least twice (actually three times, as information for the AWFs comes in via SIENA- the operational information channel) with duplicated efforts and obligations for the data owner as well as for Europol to maintain (update, delete) the data, and risks of introducing differences between

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<sup>43</sup> Interview with an analyst at Europol.

originally equal data sets. AWFs sometimes receive information which does not fall completely into their scope or is not relevant for analysis. In such case, Europol cannot autonomously transfer the data. It has to request the data provider to insert the information into the EIS instead. Often this does not take place, resulting in a loss of information.

### **3.3. WHO IS AFFECTED, IN WHAT WAYS AND TO WHAT EXTENT**

The following groups are affected:

- Law enforcement officers in the Member States fighting serious cross-border crime fail to get the level and quality of support they need from Europol for their operational activity.
- Citizens are affected because incomplete crime analyses and less than optimal Europol services compromise the effectiveness of fight against serious cross-border crime. Crime is one of the five main concerns of EU citizens<sup>44</sup>. Asked about the areas on which the EU institutions should focus their actions, they mention the fight against crime in fourth place<sup>45</sup>. EU citizens are also potentially affected by breaches to their fundamental rights caused by the processing of personal data or by police activities carried out on the basis of information processed by Europol.

### **3.4. THE BASELINE SCENARIO**

Preserving the “status quo” is impossible in view of the entry into force of the Treaty of Lisbon. Therefore, the baseline scenario here presented shows how the core problems and their drivers are expected to develop if only the pure “lisbonisation” and aligning Europol's governance with the Common Approach on EU decentralised agencies take place.

The scrutiny of Europol's activities foreseen by the Treaty of Lisbon would allow the European Parliament and national parliaments to have a better insight into the work and challenges of the agency. Better informed, they would be able to exercise better political pressure to make Europol more effective, e.g. by addressing resolutions, interpellations, written and oral questions to the governments of Member States. This could have a positive impact, in particular on the provision of information by Member States to Europol.

The new governance structure of Europol aligned with the Common Approach is expected to have overall minimal positive impact on Europol becoming a hub for information exchange between law enforcement authorities of the Member States. The Commission having two

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<sup>44</sup> See : Eurobarometer 75, Spring 2011, p. 13

<sup>45</sup> See: Eurobarometer 75, Spring 2011, p. 58.

representatives would have better opportunities to address the problem of insufficient provision of information by Member States or to propose solutions on data management.

However, as regards the possible evolution in the exchange of information with the **Member States**, there are, according to Europol, too many variables and dependencies to take into account to make any forecasting reliable, not least of which are the national priorities within the Member States. One can however, based on previous year activities, known enhancements to the systems and new initiatives assume that the positive upward trend in contributions is likely to continue. By demonstrating its added value, Europol would gain further trust of the Member States and encourage them to cooperate with Europol. However, without the EU clarifying the legal provision on provision of information, some Member States would continue to misinterpret the legal provision or remain unclear of its nature and extent. The level of discrepancies on provision of information between the top and the least efficient providers of data will persist although precise indications cannot be quantified. Council conclusions on June 2012 noting variations among Member States and calling for increased use and provision of information to Europol Information System could improve partially the situation. The Council assesses that if all Member States would provide the automatic data uploads systems, by the end of 2014, with a number of data corresponding, for instance, to half of the average number of data per million inhabitants provided by those Member States using the Europol Information System most, the effectiveness of the system as an important tool in cross-border law enforcement investigations all over Europe could significantly improve. The question of contributions to AWFs has not been addressed by the Council.

Consequently, Europol will continue to have a fragmented picture on Union-wide serious criminality and difficulties with identifying all trends and patterns. As a result, it will provide insufficient support to Member States investigations with, at the end, a negative effect on security in the EU. The precise implications cannot be quantified though. Without links between training delivered by CEPOL and the operational work of Europol, law enforcement officers risk to receive sub-optimal targeted training on cooperation with Europol.

The creation of two new AWFs next to the EIS by merging 23 specific crime-oriented AWFs a few months ago does not allow yet for statistics showing an evolution in the analysis made by Europol and an impact on its practical results. Making projections is not possible.

However, it can be safely said that whereas Europol's analysts would to a large extent be able to swiftly identify trends and patterns across different crime types, they will still not be able to do so between organised crime and terrorist networks (stored in different AWFs). Delays in identifying trends and patterns in this context will persist, resulting in incomplete reports on the links between organised crime groups and terrorist networks. Storing data in databases technically separated will continue to limit Europol's capacity to deliver comprehensive analytical reports to Member States. European police forces risk being uninformed about the scale of links between organised crime groups and terrorists, although precise quantification is impossible. The question of linking data coming from the EIS and the AWF would remain a problem. A possibility of multiple storage of personal data in two or three places would continue, duplicating the efforts of the data owner and Europol to maintain (update, delete)

the data. This would adversely impact efficiency and human resources involved, while raising risks of data protection violations.

### 3.5. WHY IS THE EU BETTER PLACED TO TAKE AN ACTION

#### 1. Legal basis for an EU action

Article 88 of the TFEU prescribes a new legal basis for Europol to be adopted by co-decision<sup>46</sup>. It requires that the new regulation introduce procedures for the scrutiny of Europol's activities by the European Parliament together with national parliaments.

#### 2. Why is the EU action needed, subsidiarity and proportionality

In the light of Article 88 of the TFEU, EU action is necessary. There is also a need to align Europol with the common approach on governance of decentralised agencies<sup>47</sup>.

The problem analysis section (3.2) suggests that the current legislative set-up prevents Europol from being fully effective.

As Europol is an EU agency, its legislative reform has to be made at EU level by the co-legislator. It cannot be carried out at national, regional or local level or addressed by Europol itself through internal action. There is also a need to align Europol with the common approach on governance of decentralised agencies.

Effective prevention and fight against cross-border crime cannot be successfully conducted by national police forces alone. It requires a coordinated and collaborative approach together with public and private stakeholders. This is an area where Europol can add value<sup>48</sup>.

The cross-border nature of today's serious criminality, compounded by *less than optimal* law enforcement cooperation, justifies the necessity of action at EU level.

The EU is both entitled to act and better placed to do so than the Member States. The problem analysis and the views of stakeholders demonstrate that the reform should not substantially

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<sup>46</sup> Art.88 par.2 of the Treaty states: The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:  
(a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;  
(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

<sup>47</sup> Parliamentary scrutiny and governance are not dealt with in this impact assessment. For parliamentary scrutiny, see footnote 2. As to governance Europol will need to comply with the common approach on decentralised agencies reached by the three EU institutions on 12 June 2012.

<sup>48</sup> See: section 4.3.1 of the Stockholm Programme. In the same section of the document the European Council invited for example the Commission to "examine how it could be ensured that Europol receives information from Member States law enforcement authorities so that the Member States can make full use of Europol capacities".

change Europol's mission and should not go beyond what is necessary to achieve better efficiency and effectiveness of the agency, thus respecting the principle of proportionality.

## **4. POLICY OBJECTIVES**

### **4.1. Objectives**

The general objective of Europol's reform is:

*Increasing security of the EU by making Europol a hub for information exchange between law enforcement authorities in the Member States so as to better support Member States in preventing and combating serious cross-border crime and terrorism*

This general objective can be translated into the following specific and operational policy objectives:

Specific objective 1: To increase provision of information to Europol by Member States

- a. *To increase volume and quality of information provided to Europol by Member States*
- b. *To reduce discrepancies in level of information provision by Member States*

Specific objective 2: *To establish a data processing environment that will allow Europol's analysts to fully assist Member States in preventing and combating serious cross-border crime and terrorism*

Operational objectives:

- a) *To ensure that Europol's analysts could link and make analyses of all relevant pieces of data*
- b) *To reduce delays in identifying trends and patterns*
- c) *To reduce multiple storage of data*

### **4.2. Respect for fundamental rights**

The impact on fundamental rights has been examined in line with the Fundamental Rights "Check List"<sup>49</sup>.

Europol collects, exchanges and may analyze personal data of individuals to assist Member States in the prevention and fight serious cross-border crime and terrorism. As such, this processing has an impact on the fundamental rights to the protection of private life and to the protection of personal data<sup>50</sup>

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<sup>49</sup> COM (2010) 573 of 19 October 2010.

<sup>50</sup> See Article 7 and 8 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention of Human Rights, as well as Article 16 of the Treaty on the Functioning of the European Union.

The right to private life and to the protection of personal data are not absolute. *Interferences are permitted* in so far as necessary and if they genuinely meet the objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others. As long as proportionate and “necessary in democratic society”, the proposed measures on Europol would certainly comply with these requirements, since such measures are intended for the purpose of effective prevention and fight against serious cross-border crime and terrorism, and would be laid down in a legislative act. Important safeguards, such as the internal Data Protection Office function and the external supervisory authority, are embedded within Europol's legal framework and working practice and are an essential feature in guaranteeing the respect of fundamental rights. Europol's data protection regime will be aligned on the principles of proposed Draft Directive on data protection whilst taking into account the specificities of the agency's mission and operation.

It should be noted that in the performance of its mission, the operational successes achieved and the expertise that Europol has built constitute an important landmark in the EU's continued efforts to ensure the protection of the fundamental rights to human dignity, to life, physical integrity and the protection of victims, in particular children.

## **5. POLICY OPTIONS AND TRANSVERSAL ISSUES**

### **5.1. Policy options**

In order to achieve the policy objectives mentioned above, the Commission considers that there are two policy options.

The option “Status quo sensu stricto”- leaving the Europol Council Decision untouched - is discarded in the light of the entry into force of the Lisbon Treaty

#### *5.1.1. Option 1: Baseline scenario/"Pure lisbonisation"*

This option involves no action being taken at the EU level beyond what is required by the Lisbon treaty and, in particular, its article 88.

#### *Insufficient provision of information from Member States*

Europol in cooperation with CEPOL and the Commission will continue to apply "soft measures" - awareness raising in the form of road shows, training promotion of good practices of ENUs, - to garner more contributions from Member States. Several Member States consulted by the Commission have acknowledged that Member States should provide more information to Europol. Some other Member States are not expected to recognize the obligation of MS to provide data to Europol. This option will address only Driver 2 (socio-cultural aspects- lack of awareness, lack of knowledge, police culture which is careful to share information) and Driver 3 (organisation and effectiveness of ENUs)

#### *Constraints on data processing*

With regard to data management, the shortcomings in linking and analysing data scattered around different databases will persist, especially with regard to linking the data concerning serious organised crime and terrorism.

### 5.1.2. *Option 2: Making further legislative amendments through the Europol regulation*

#### **A. Options addressing the insufficient provision of information from MS**

##### **A.1 Strengthening obligations and introducing incentives**

This option has several different components addressing in a comprehensive manner all drivers to the problem:

- Continuation of "soft measures" as in the baseline scenario:
  - **training and awareness activities** by Europol in close cooperation with CEPOL, advertising Europol's goals and added value (this addresses Driver 2: socio-cultural (lack of knowledge, lack of awareness, insufficient training, police culture which is careful about information sharing),
  - promoting good practices of ENUs (this will address Driver 3: organisational driver).

In this context, it is worth underlying that a merger with CEPOL aiming to exploit synergies between training and operational work, would allow providing a higher number of targeted training on cooperation with Europol to law enforcement officers across the EU.

- **Legal clarification** that Member States are obliged to provide data to Europol, clarifying the extent of such an obligation (this addresses Driver 1: Lack of clarity of the legal provision)
  - The regulation will make explicit that each Member State is indeed obliged to share information with Europol, and in particular to send Europol **a copy of all information** on crime falling within Europol's mandate **actually exchanged with another Member State**<sup>51</sup>.
  - The regulation would prioritise the EU fight against serious cross-border crime, by focusing the Member States' obligation to provide data to Europol on the **priorities established in the EU Policy Cycle** for organised and serious international crime.<sup>52</sup>

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<sup>51</sup> The RAND report also seems to go as well in the direction of exploiting the possibilities offered by the Swedish Initiative and other information sharing instruments. See: RAND report, Recommendation 4, p. XXV.

<sup>52</sup> The EU policy cycle for organised and serious international crime is a tool to streamline the EU response to crime. This policy cycle identifies the Organised Crime Threat Assessment made by Europol as the

- To ensure better enforcement of the obligation, it will lay down a **monitoring mechanism**, mandating Europol to submit a detailed annual report to the European Parliament and the Council on information provision by individual Member States and performance of ENUs (this will address also Driver 3-organisational driver).
- To encourage Member States to share more information and to increase awareness, the regulation would **extend the possibility for Member States to receive via Europol targeted financial assistance to support investigations in crime areas other than Euro counterfeiting**<sup>53</sup>. This will encourage MS to share more information and to involve Europol in its investigations, addressing in the longer run Driver 2 (socio-cultural driver- police culture).

## **A.2. Giving Europol access to law enforcement databases of Member States**

This option would grant access to law enforcement databases of Member States on a "hit-no-hit" basis<sup>54</sup>.

In this way Europol will be able to detect that a Member State is in possession of information which is relevant to its mandate<sup>55</sup>. Then, following a "hit", Europol could request this information from the Member State concerned<sup>56</sup>. Member States would keep full control of their data as Europol can only use data (including the hit) after the explicit approval and authorisation of the transfer.

This system will require a new IT architecture: 1) a forwarding system for Europol which would send queries to Member State databases and assemble the replies on hits, 2) investments of Member States to reorganise their databases to separate data falling within Europol's mandate (only this data would be then accessed) and others or setting up a forwarding database, as well as to provide appropriate IT connections.

## **B. Option on data management:**

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basis for the identification of EU crime priorities. Thereafter, a coherent EU response is elaborated by the Member States, EU institutions and agencies in order to address those priorities. Council conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime, 3043rd JUSTICE and HOME AFFAIRS Council Meeting, Brussels, 8 and 9 November 2010

<sup>53</sup> The financial support for euro-counterfeiting area suggests that small amount of money to pay e.g. informers, fictitious purchases, to offer flash money strengthen the will of Member States to share information with Europol. This in turn has proven to both convince Member States on the quality of Europol's products and services and created a practice of close cooperation.

<sup>54</sup> This concept is based upon the concept used for the access of Europol to the Schengen Information System.

<sup>55</sup> The "hit-no-hit" system informs only if and which Member State has data. It does not deliver data itself. A follow-up request is necessary to receive the content of data. This request has to have an appropriate legal basis.

<sup>56</sup> Under Article 8 par.4 b of the Europol Council Decision provides already a possibility for Europol to request Member States for information. This provision would be replicated in the new regulation.

## **B1: Merging the existing two AWFs into one**

Under this option, the two existing AWFs are merged into one and the EIS remains separated.

## **B.2. New processing environment**

This option foresees that future Europol regulation, contrary to the current Council Decision, does not define individual Europol's databases in an exhaustive manner.

Instead, there will be procedural safeguards aiming at due implementation of recognized data protection principles with particular emphasis on 'privacy by design' and full transparency towards the Data Protection Officer of Europol and supervisory authorities. "Privacy by design" means that Europol would take all the data protection requirements into account from the outset when designing specifications and architecture of communication systems and technologies.

In particular:

- The Regulation would not concern systems, but spell out strong data protection and data security rules that apply to any future system depending on the specific type of information.
- Purpose limitation would be ensured by referring to a specific processing operation: the data supplier would determine from the outset the processing purpose for which data are shared with Europol (cross-checking, operational analysis, general analysis);
- The degree of access rights would be differentiated, in particular, when providing information to Europol, Europol's partners agree that Europol's analysts have access to data needed to perform the tasks on the "need to know basis" and capacity to see the links between data entities.
- By respect of the principle of ownership of data, Europol's partner providing the data would still be entitled to impose restrictions to access and use - by other Member States or third partners - of specific items of information.

Consequently, Europol would have some flexibility on setting up gradually an IT architecture that would adapt to upcoming business needs requiring the establishment of innovative data processing solutions. As the new processing rules do not prescribe the specific technical or IT implementation, the current databases of Europol do not need to be immediately replaced. There could be a gradual transition to a single data repository.

## **5.2. Transversal issues**

There are a number of issues which arise from the consultations with stakeholders that are not presented in this report either because they do not have an impact on the general objective of

Europol's reform, or because there is a general consensus on them, or because an alternative approach is not considered realistic. However, for the sake of transparency, an overview of these issues is presented below.

#### *5.2.1. Parliamentary scrutiny over Europol*

Art. 88 par.3 of the TFEU requires the introduction of procedures for the scrutiny of Europol's activities by the European Parliament together with national parliaments. This issue has been carefully debated in other *fora*, beginning with the Commission Communication of 17 December<sup>57</sup>. This will be a very important mechanism to Europol's accountability.

The reform of Europol will have to implement Art. 88 par. 3 of the Lisbon Treaty.

#### *5.2.2. Europol's governance*

Europol's governance will be adapted to the Common Approach on EU decentralized agencies<sup>58</sup> whenever relevant. The approach includes provisions on the role and position of agencies in the EU's institutional landscape, including their structure and governance, programming of activities and resources, accountability, controls, transparency and relations with stakeholders. The merger with CEPOL could achieve the effect of synergies between training and operational work of law enforcement. This issue is subject to a detailed examination in the impact assessment on the merger of the two agencies.

#### *5.2.3. Europol's external and independent data protection supervisor*

As regards options on the external data protection supervision, they range from strengthening the existing Joint Supervisory Body (JSB) to entrusting the European Data Protection Supervisor with this task<sup>59</sup>.

As Europol handles a large amount of personal data it is necessary to ensure that its external supervisory data protection authority is independent and effective<sup>60</sup>. This is one of the

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<sup>57</sup> the Commission Communication of 17 December 2010 COM (2010) 776 final.

<sup>58</sup> Endorsed 2012 by the three institutions in July 2012

<sup>59</sup> One could also imagine another option- that JSB in view of its expertise supervises processing of operational data by Europol, whereas EDPS supervises processing of staff data. EDPS supervises protection of data of staff of other agencies, and the rules applied to Europol's staff are the same like those applied to the other agencies.

<sup>60</sup> Obviously other data protection issues are also important and will be also covered in the Regulation, i.a. the rights of the data subject (e.g. the right for access, correction, deletion, and appeal to the independent data protection supervisor, redress and compensation), data security, logging, documentation, etc. However, as Europol enjoys already a robust data protection regime, they would build upon the existing regime. Therefore, their impact assessment is redundant. The future Regulation will also specify that the Court of Justice has jurisdiction to hear all disputed which relate to the provisions of this Regulation, including claims for damages, as this is required by Article 10 par.2 of the Protocol 36 on transitional provisions attached to the Treaty of Lisbon. As Europol will be aligned with other institutions and agencies, a natural or legal person will have judicial remedies against Europol's acts under Article 263 par.4 of TFEU (a right to institute proceedings in front of the Court of Justice against an act addressed to that person or which is of direct and individual concern to him). Any person who has suffered damage because unlawful processing operation or any action incompatible with the Regulation on Europol will have a right to have the damage made good in accordance with Art. 340 of the Treaty.

fundamental principles stipulated in Article 8 of the Charter of Fundamental Rights and Article 16 of the TFEU.

Article 88 of the TFEU does not require any specific change with regard to the external data protection supervision over Europol. However, the recent case-law of the European Court of Justice<sup>61</sup> has developed stringent criteria on the independence of data supervisors which the JSB fulfils only partly<sup>62</sup>, such as its budgetary independence: the JSB budget is a part of the budget of Europol. Moreover, there are concerns over the JSB lack of enforcement powers<sup>63</sup>. If the JSB considers that a decision by Europol on the processing of data is not compatible with the Council Decision, it can only complain to the Director of Europol and, in case of escalation, refer the matter to the Management Board. Along the same lines, the JSB does not have the power to order rectification, blocking, erasure or destruction of data or to impose a temporary or definitive ban on processing. The JSB cannot refer the matter to the Court of Justice either.

Some stakeholders have also raised an argument of a more institutional nature, pointing out that the JSB comprises two members of each of the independent supervisory bodies appointed by each Member State<sup>64</sup>. This would mean that an EU agency is supervised by national data protection authorities.

At the same time, the supervision of other EU institutions, bodies and large-scale IT systems related to home affairs is carried out by the European Data Protection Supervisor (EDPS)<sup>65</sup> including the Commission, the Commission, OLAF, VIS and SIS. However, until now the EDPS has not yet supervised any agency or body dealing with police and judicial cooperation,

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<sup>61</sup> See: Case 518/07 *Commission v. Germany*

<sup>62</sup> The ECJ stated that "independence precludes not only any influence exercised by the supervised bodies, but also any directions or any other external influence, whether direct or indirect, which could call into question the performance by those [supervisory] authorities of their task consisting of establishing a fair balance between the protection of the right to private life and the free movement of personal data". See: Case 518/07 *Commission v. Germany*, point. 1

<sup>63</sup> It is interesting to note that the Joint Supervisory Body of Eurojust, contrary to the Europol's one, has the effective enforcement powers- Art. 23 par.7 stipulates that "if the JSB considers that a decision taken by Eurojust or the processing of data by it is not compatible with this Decision, the matter shall be referred to Eurojust, which shall accept the decision of the JSB". Par.8 adds that "Decisions of the JSB shall be final and binding on Eurojust".

<sup>64</sup> Article 34 par.1 of the Europol Council Decision

<sup>65</sup> The European Data Protection Supervisor is established on the basis of the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data

whereas the JSB has a well-established record in supervising the protection of personal data<sup>66</sup> in areas which require a knowledge of law enforcement specificities<sup>67</sup>.

The consultation process has demonstrated that Europol and the Member States highly regard the JSB, in view of its experience, thoroughness and expertise both in the field of data protection and law enforcement. They claim that the specific nature and sensitivity of data processing in the area of police cooperation require a tailor-made supervision for Europol. It is worth noting also that Declaration 21 attached to the Lisbon Treaty recognizes that police cooperation might require specific data protection arrangements. On the other hand, as highlighted by the European Data Protection Supervisor, streamlined and consistent data protection supervision over all EU agencies by an EU data protection body could also be seen as advantageous.

Therefore, it seems that there are equally strong arguments for either JSB or EDPS. The final decision would be then of a political choice.

With regard to the costs, it is estimated that the EDPS would be slightly more efficient.

The supervision by a more independent and effective JSB is estimated at an average of 500 000 EUR per year<sup>68</sup>. The cost of the supervision by the EDPS is estimated at an average of 250 000 EUR<sup>69</sup> per year.

There would not be any new costs for Member States compared to the status quo.

#### 5.2.4. *Possibility of merger between Europol and CEPOL*

As mentioned in section 1, this issue is analysed in details in the impact assessment on CEPOL.

## 6. ANALYSIS OF IMPACT

Likely positive and negative, direct and indirect impact of these options is described with reference to three criteria:

1. Increasing security in the EU and cooperation of law enforcement authorities of Member States

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<sup>66</sup> Art.34.par.1, sentence 1 and 2: “The independent Joint Supervisory Body shall be set up to review the activities of Europol in order to ensure that the rights of the individual are not violated by storage, processing and use of the data held by Europol. In addition, the Joint Supervisory Body shall monitor” the permissibility of the transmission of data originating from Europol”.

<sup>67</sup> These are in particular: examining and commenting on the opening of specific analysis work files; monitoring the permissibility of the transmission of data originating from Europol; examining questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and use of personal data; monitoring the transmission of personal data to third partners; and drawing up harmonised proposals for common solutions to existing problems.

<sup>68</sup> The budget of JSB foreseen for 2013 amounts to 460 000 EUR. This covers all activities of members of the JSB. In addition, we need to add the costs of the two administrative staff which are currently paid by the Council..

<sup>69</sup> This is based on the assumption that the EDPS would need to employ additional staff at the equivalent of 1 FTE.

2. Protection of personal data
3. Costs for the EU and national authorities budgets, including total direct costs of implementing the policy option and administrative burden and indirect costs for law enforcement authorities.

<b>Table of symbols (using (-) for negative and (+) for positive impacts)</b>	
<b>Small impact</b>	-/+
<b>Medium impact</b>	--/+++
<b>Significant impact</b>	---/++++
<b>No impact</b>	<b>0</b>

### **6.1. Impacts of the Option 1: Baseline Scenario/"pure lisbonisation"**

This policy option entails only the necessary changes required by the Lisbon Treaty. These are the parliamentary scrutiny over Europol and the suppression of Europol's competence to conclude international agreements with third countries concerning exchanges of data. Europol's legal basis would also align the agency with the common approach required by the Joint Statement on regulatory agencies and ensure that the agency's data processing is supervised by a fully independent external data protection authority.

**Increasing security in the EU (0<sup>70</sup>):** A "no action" policy will impede the full ability of the EU to fight serious cross-border crime and hence have a negative effect on security. This would mean that full advantages offered by Europol as a hub for information exchanges for the law enforcement authorities in the EU would not be attained. As the differences between Member States in provision of information would persist, Europol would not be able to build a full picture on activities of criminals in Europe. Data management restrictions would prevent Europol's analysts from exploiting information already in possession of Europol. Consequently, Europol would not be able to identify all trend, patterns and links between criminal activities that could assist Member States in their law enforcement efforts.

**Protection of personal data (0):** "Pure lisbonisation" of Europol would have no impact on protection of personal data compared to the status quo, nor a positive indirect impact on the right to life.

**Costs for the EU and national authorities' budgets (0):** This option will not entail new costs compared to the status quo either for the EU or national authorities' budget.

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<sup>70</sup> To make the further comparison of different options ratings of different impacts of the baseline is '0' although in comparison with the status quo baseline option would have different ratings.

## **6.2. Impacts of the Option 2: Making further legislative amendments to the Europol regulation**

### *6.2.1. Impacts of the options addressing the provision of information from Member States (Policy option A)*

#### 6.2.1.1. Strengthening obligations and introducing additional incentives (option A1)

**Increasing security in the EU (+++):** This option would positively impact on identified shortcomings by better meeting the operational objectives. It would increase both the volume and the quality of information sent by Member States.

It is anticipated that Member States would send additional and more relevant information to Europol. Focusing on the goals of the EU Policy Cycle and sharing with Europol information that they exchange bilaterally would result in a higher in-flow of data to Europol on the most important threats.

Monitoring the performance of ENUs and the provision of information by each Member State, would create peer pressure on the worst performing. This would encourage good practices, including on efficient organisation of ENUs, awareness raising and strengthening cooperation between ENUs and national law enforcement.

If Member States cross-border investigations received financial support, this would constitute an incentive for Member States to involve Europol more and share more information. Experience with financial support for Euro-counterfeiting investigations has been very positive. It amounts to 200.000 € (budget 2012) per annum and is used for targeted assistance.

These funds assign small amounts (on average 5000 € per investigation) to individual investigations, in order to pay informants, or to provide so-called "flash money" or to make a fictitious purchase. Several recent operational successes (see annex 8) suggest that the added value of such targeted aid is quite significant. Several Member States indicated that this assistance encourages them to initiate an investigation which they would otherwise not be willing to undertake<sup>71</sup>. This has helped to create a practice of "using" Europol's high-quality products<sup>72</sup>.

Ultimately, the option would contribute substantially to the increase of security in the EU.

**Protection of personal data (0):** This option would have no impact on the protection of personal data compared to the baseline. The safeguards are the same.

### **Costs for the EU and national budgets (--)**

#### *Costs for the EU budget*

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<sup>71</sup> At the meeting with law enforcement experts of 12 March with law enforcement experts and at dedicated meetings with Europol experts between September 2011 and April 2012 this aspect was highlighted.

<sup>72</sup> Almost all Member States and national Parliaments consulted welcomed unconditionally the idea of financial incentives and a monitoring mechanism, as long as the latter does not imply costs. The idea of strengthening the obligation divides them.

Costs for the EU budget are considered as moderate. Direct costs for the Europol's budget are estimated at EUR 1.77 m over the period from 2015 to 2020. This would reflect the costs of 6 staff (FTE) needed for processing higher volume of data sent to Europol by Member States, of which 3 FTE will come from internal redeployment and another 3 FTE will be recruited between 2015 and 2020. However, approximately two thirds of these costs will be offset by the savings resulting from the merger of CEPOL: two (2) FTE will be secured as a result of the merger and can be redeployed for the purposes outlined above.<sup>73</sup> The Commission based on the input of Europol estimates that up to 5% increases in the amount of information provided to Europol could be processed by existing 23 data handlers (verifying relevance of information, cross-checking) and 74 analysts thanks to a prioritisation of work so as to focus on the crime areas selected through the EU Policy Cycle. However, this policy option is estimated to increase the volume of data by 50% in 3 years at the earliest. Given the upward trend observed in the recent past, a rise between 15 and 20% could take place each year over 3 consecutive years. According to Europol's estimation this would require 6 additional staff (FTE) – 3 data handlers (verifying relevance of information, cross-checking) and 3 analysts. Europol will not incur any material costs, i.e. buying new equipment, adapting the existing IT structures, etc.

Replicating the scheme of financial support for Member States' investigations beyond Euro-counterfeiting would require, in order to reach a critical mass of funding, a total of 800.000 € per annum.

This additional cost could be offset by the savings generated from reducing certain administrative costs, i.e. without affecting operational expenditure. It is recommended that the Management Board consider cuts in the following sectors, which do not seem to concern priority areas:

- certain sports activities
- non-core business training activities
- using videoconferences to replace some of the Management Board and working group meetings, reducing the number of Management Board meetings from 4 to 3 and holding them only in The Hague
- discontinuing the practice of simultaneous interpretation in all 23 official languages as well as the interpretation in 5 languages of the working groups (which amounted to 600.000 in 2012).

Finally the levels assigned to "current administrative expenditure" should also be re-examined by the Management Board. In any event, the Commission will make sure that in the course of the forthcoming budgetary procedures such reductions are achieved.

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<sup>73</sup> For details see the Impact assessment on merging the European Police College (Cepol) and the European Police Office (Europol) and implementing a European police training scheme for law enforcement officials, accompanying this proposal.

### *Costs for the national authorities' budgets*

The material costs to be incurred by national budgets are considered minimal. ENUs are already obliged to have access to all relevant databases. The burden of sending a greater amount of information is considered minimal, given that the transmission is electronic, often aided by IT tools (e.g. data loaders) and that SIENA, a secure channel of information sharing, is in place.

However, in order to fulfil its obligation to provide data, Member States might need to undertake some further steps. The catalogue of such actions would vary on a case-by-case basis. This could entail reorganisation of ENUs in line with good practices or the national system of information flow. This could be also training of those who are responsible for information sharing at the basic level: managers or officers having leading positions in investigations or other law enforcement activities in this area where sharing information with Europol would be relevant. There is no available statistics on how many out of 1.7 million of police officers in the EU<sup>74</sup> have such positions. Therefore, the Commission has made an educated, reasonable guess informed by discussions held with experts in the law enforcement field, coming with three scenarios: they are 1, 5 or 10% of the overall population of police officers.

According to the estimates of the Commission on costs of training in two Member States selected on the basis of variety in GDP<sup>75</sup>, the average costs of a one day training of a law enforcement officer would be 36 EUR per day of training. Thus, taking into account the three scenarios in question, the average costs for “training the trainers” are assessed at EUR 600K, EUR3 M or EUR 6M for the national budgets. These costs could be reduced by aligning this training with training under the European Law Enforcement Training Scheme LETS for law enforcement officers (LETS). The LETS will include awareness and knowledge on Europol on different levels. Basic awareness of and knowledge on Europol will be part of strand 1 and will apply for all law enforcement officers. More in depth knowledge on information sharing with Europol will be covered by stand 2 and information sharing with Europol within specific policing themes should be part of training under strand 3<sup>76</sup>.

Nevertheless, the benefits of this option for Member States would prevail and amount to millions of EUR in the period 2015-2020 by reducing crime in the EU thanks to the better cooperation of national law enforcement and Europol. Specific quantifications are not possible though.

#### *6.2.1. Estimated costs and benefits*

*Table 3: Costs and benefits Option 1*

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<sup>74</sup> Data for 2009, [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim\\_plce&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_plce&lang=en)

<sup>75</sup> See Annex 8.

<sup>76</sup> Communication on European Law Enforcement Training Scheme, to be adopted together with the proposal for the regulation on Europol.

Measure	Costs	Benefits
Strengthening obligation of MS to provide data and financial incentives	<p>Costs of Europol:</p> <ul style="list-style-type: none"> <li>- 3 new FTE to handle a higher inflow of data from MS</li> <li>-EUR 800 K for financial incentives (offset by cutting activities of the Management Board)</li> </ul> <p>Costs to Member States for one-time training of law enforcement officers dealing with serious cross-border crime: EUR 600K, EUR 3M or EUR 6M.</p>	<p>Increase in effectiveness of the fight against serious cross-border crime-millions of EUR in 2015-2020</p> <p>Direct benefits for Member States-financial support for their investigations (EUR 800K)</p>

#### 6.2.1.1. Giving Europol access to law enforcement databases of Member States (option A2)

**Increasing security in the EU (+++):** This option would partially overcome the lack of knowledge, ineffective ENUs or low awareness of Member States' law enforcement agents. Europol would be able to pro-actively search for complementary information which are in the hands of Member States. Member States will retain control over data as they would authorise the transfer of this data to Europol. They would be in a position to object information sharing which could hamper an on-going investigation at national level.

A greater amount of more relevant information will reach Europol in comparison to the baseline. In return Europol would be able to offer better quality products to Member States.

Stakeholder consultations suggest that some Member States would be very reluctant to grant Europol such an access before they themselves obtain access to other Member States' databases. Member States' reluctance could result in practical implementation problems and failure.

**Impacts on the protection of personal data (0):** This option would not entail negative impacts. The access to national law enforcement databases would be done on a hit-no-hit basis. This means that Europol would only receive a confirmation that there is information on a person or item searched. To receive the content of the information it would need to address a request to the Member State. The Member State before transmission would ensure all safeguards and they would be subject to national data protection supervisors.

**Impact on costs (---):** This option would require investments both from Member States and Europol with regard to IT connections and applications of the "hit-no-hit" system. The costs for the EU budget of a semi-central model relying on a central forwarding system to which all relevant Member States' databases would be connected and through which Europol would query Member States databases would amount to a EUR 1,78M one off investment and EUR 1,46M of yearly recurring investments. Each Member State would on average cover EUR 660,000 one-time investments for the adaptation of their IT systems and connection to the forwarding system. In addition, they would need to bear the costs for recurring investments of EUR 1,2M annually. Costs on staff are reduced as it would be partly automated process. It is

estimated that ENUs staff would be able to process Europol's requests following the hit, subject to an increase of 1-2 staff.

### 6.2.2. *Estimated costs and benefits*

*Table: Costs and benefits Option A2*

<b>Measure</b>	<b>Costs</b>	<b>Benefits</b>
Grant Europol access to national law enforcement databases (semi-central model)	<p>Costs for the EU budget:            EUR 1,78M one off investment and EUR 1,46M of yearly recurring investments.</p> <p>Costs for the MS budgets:</p> <ul style="list-style-type: none"> <li>- EUR 660,000 one-time investments for the adaptation of their IT systems and connection to the forwarding system,</li> <li>- Recurring investments of EUR 1,2M annually</li> <li>- Costs of additional 1-2 staff (the amount vary depending on a MS)</li> </ul>	<p>Increase in effectiveness of the fight against serious cross-border crime-millions of EUR in 2015-2020</p>

### 6.2.3. *Impacts of the option on data management:*

#### **Merging of two AWFs into one**

**Increasing security in the EU (++):** This option would potentially entail a faster identification of trends and patterns as well as links between criminal groups involved also in terrorism.

Thanks to broadening of scope of an AWF to cover both serious organised crime and terrorism, Europol's analysts would be able to visualise all links between information provided to the merged AWF.

Nevertheless, linking the data from EIS system with those in the AWF will still not be possible, as EIS does not allow for such an operation (due to its purpose limitation). Europol analysts would therefore have a possibility only to have data from his AWF cross-checked with EIS data without seeing the data linked to the data cross-checked.

**Impact on protection of personal data (0):** There will be no impact on protection of personal data compared to the baseline. Information provided to Europol by its partners would end up in EIS where it will be used for cross-checking purposes or in AWF used for criminal analysis. Within the one AWF, like nowadays in AWF SOC and AWF CT, there will be Focal Points and Target Groups as means to specify further purpose limitation on specific analysis projects. A Focal Point would be an area within the AWF which focuses on a certain phenomenon from a commodity based, thematic or regional angle (e.g. child exploitation, drug trafficking through the Western Balkans, etc.). It would allow providing analysis, to prioritise resources, to ensure purpose limitation and to maintain focus on expertise. A Target Group would be an operational project with a dedicated team to support an international criminal investigations or criminal intelligence operation against a specific target (an identified individual criminal group, e.g. a criminal organisation from Kosovo). However, this option would only partly reduce the problem of the multiple storage of data as data intended by the data provider to serve both the purposes of cross-checking and for analysis would need to be stored twice- in the AWF, in the EIS, and sometimes also in SIENA. Multiple storage raises data protection concerns.

**Costs for the EU budget (0):** Merging the two AWFs would entail minimal costs as the two AWFs to be merged are supported by the same technological solutions. It can be assumed that they could be borne by Europol’s IT budget as the recent merger of 23 small AWFs into 2 big ones. The necessary investments and consultancy work<sup>77</sup> were done by preparing the recent merger, therefore its results could be reused.

**Costs for the national budgets (0):** As this is a question of internal organisation of Europol’s databases, costs borne by Member States would be minimal, as the transmission channels are already established.

Measure	Costs	Benefits
Merging two AWFs into one	Costs for the EU budget: 0; Costs for the MS budgets: minimal	Better services for Member States to support their fight against criminality: building better informed and higher quality analytical reports on cases where serious criminality and terrorism interlink

6.2.4. *New processing environment (policy option D)*

**Increasing security in the EU (+++):** This option would allow Europol in a longer perspective to build a bridge between all aspects of the fight against organized crime and

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<sup>77</sup> The consultancy budget was 57 140 EUR.

terrorism; within a single processing environment Europol would be able to better identify, analyse and define the structures linking organized crime groups and terrorist networks, for instance through financial trails.

The Europol analyst would get access to all data provided by Europol's partners for cross-checking, operational analysis or strategic analysis to the extent that is necessary. There are several technical solutions to achieve this aim. Anyway, the single processing environment would allow linking information whenever links are identified. It would have a positive impact on identifying trends and patterns across all criminal areas falling under Europol's mandate. This would also result in increase in early warnings on new detected threats. The fact that Europol's analysts would be able to see this information does not mean that they would distribute it widely. Information leaving Europol will only be sent with the authorisation of the data provider (so as to respect "ownership of data"). If an operational analysis report is written by Europol and based on information from country A, B and C, it will be sent only with the permission of all these three countries. If e.g. country B is against dissemination of the report, its part will be taken out of the report.

Its benefit, in other words, is increased visibility and accessibility, for Europol analysts and experts, over the data actually stored at Europol which is a prerequisite for Europol to perform its criminal analysis efficiently.

#### **Impacts on the protection of personal data (0):**

At least the same level of data protection as in the baseline scenario would apply. Data protection and data security safeguards would no longer be linked to individual pre-defined systems but would be attached to the purpose for which the piece of information was provided. The physical location of a piece of data would not matter as it would not change the conditions attached to it, such as, for instance, owner principle, purpose limitation or storage times.

'Privacy by design' principle would fully apply, thus Europol would be obliged to take data protection requirements into account ahead of any processing operation. The Data Protection Officer and the external supervisory authority will be closely involved in the definition and opening of Focal points or Target groups and in every aspect of data processing.

Such an approach has received a positive opinion of the Data Protection Officer at Europol who recognized that procedural safeguards aiming at implementation of recognized data protection principles are an alternative way to the status quo<sup>78</sup> (creating separate databases with different purposes, access rights and limiting processing operation) and guarantee high level of personal data protection.

The advantage is also that data would not need to be stored in several places - physically it is not important where the data is, what counts is who has access to it and for which purpose.

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<sup>78</sup> RAND report, p. 83-84.

**Impact on Costs (0):** This option would not entail any immediate additional expenditure compared to the baseline, as the Regulation does not prescribe any specific technical implementation. Several technical proposals could be put in place. Having said that, it can be assumed that such a solution of an integrated system would replace all the current databases (AWFs, EIS, 10.4 databases) and therefore the costs of those systems would be deducted.

In this case, too, no immediate expenditure should be incurred by Member States. Any adaptation to data loaders (automated uploading of data in the EIS) would be limited to the routing inside Europol and in terms of resources it would be minor and virtually cost-free.

Measure	Costs	Benefits
New processing environment	No immediate costs for the EU budget;  No costs foreseen for MS budgets	Gradual transition towards a single data repository that would allow Europol analysts to fully equip the MS law enforcement for the fight against crime by delivering high quality analytical reports, detecting all necessary links between the criminal phenomena; reducing delays in detecting trends and patterns,

**7. COMPARISON OF OPTIONS**

This section compares and ranks the options using the criteria of impact relative the objective (effectiveness), economic impact (efficiency) and consistency with other initiatives in the field of internal security (coherence).

Policy option 1 on “pure lisbonisation” would present very limited advantages on increasing the security of the EU but otherwise would implement the Treaty requirements on parliamentary scrutiny and would align Europol's governance with that in the Common Approach on EU decentralised agencies. These changes would bring about transparency and accountability but would have marginal impact on the operational objectives. Regarding coherence with other Commission policies, Policy Option 1 does not offer much progress in terms of enhancing the internal security of the EU and does not allow Europol to make a qualitative step forward in becoming the hub for information exchange as required by the Stockholm Programme.

The sub-options under Policy Option 2 address problems which cannot be tackled without a legislative intervention that goes beyond what is required by the Lisbon Treaty. Whatever combination of sub-options is chosen, taking legislative action is preferable to refraining from any action because it presents a clear advantage of significantly increasing Europol’s capacity to support Member States’ law enforcement authorities in preventing and combating crime.

Both options under Policy Options A on increasing provision of information by Member States are effective and would result in a significant increase in flow of data to Europol. Giving Europol access to national law enforcement databases (Option A2) would present advantages of more targeted and relevant information than Option A1 (strengthening of obligation, incentives and monitoring). However, this could be regarded as too strong a change to Europol's mission and tasks. Option A1 could appropriately address the problem of insufficient provision of information from Member States and discrepancies in such provision between Member States through a mix of compulsion, incentives and monitoring. It would generate costs of 6 FTE (3 of which would be new staff, while 3 would be redeployed) at Europol to handle an increased flow of information to Europol. There would be also some costs to be borne by Member States on the case-by-case basis; the costs of training, possible reorganisation of ENUs and system of information flow. These costs would however be counterbalanced by benefits. Increased provision of information and reducing discrepancies in contributions by Member States would allow Europol to deliver better informed and well-grounded products to add value to Member States efforts in tackling serious criminality.

The security advantages for Option A.2 would be outweighed by the disadvantages in terms of costs, not only one –time costs to set up a system to grant Europol access to national databases but also annual investments to keep the system running. These costs add up to the costs of staff (3 new FTE) that would need to be employed at Europol and Member States to process requests for data and increased information flow at Europol. Comparing the costs to the objectives suggests that Option A2 would be disproportionately costly, thus inefficient.

Both Options A1 and A2 are consistent with this strategic objective and fall within the scope of the Internal Security Strategy's objective to disrupt international criminal networks<sup>79</sup>. They are complementary to the policy aimed at improving bilateral exchanges between law enforcement authorities across Member States. This policy also recommends the use of the Europol channel as the preferred way of communicating data.

Option A.1 could have synergy effects with the CEPOL reform and the future European Law Enforcement Training Scheme designed to offer training on areas of EU cooperation.

As to data management, option B2 whereby the legal provision would pave a way for a gradual establishment of a single data repository presents in a longer run some advantages for the security and support for law enforcement cooperation in the EU compared to Option B1 (merging two AWFs). Although Option B1 would alleviate some problems by allowing for identifying links and making analysis between data stored in one AWF, it would prevent linking these data with data from the EIS.

Instead, Option B1 has a potential of removing all remaining barriers to the possibility of making links and analysis between data. There are different IT ways to achieve this technically. A single data repository would allow Europol to have an accurate overview of all the information stored. This option would increase the information "de facto" available to

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<sup>79</sup> COM (2012) 673 final of 22.11.2010

Europol without jeopardising the sense of security given to Member States by the "ownership" principle of data. A secondary impact of this option is likely to be an increased customer satisfaction and therefore an incentive, on the part of Member States, to intensify their flow of information to "get back" even better analytical services.

As to the costs, Option B1 results in no costs, as the merger of the two AWFs into 1 would follow the pattern of the last year merger of 23 AWFs into 2. Necessary investments have already been done. Option B2 does not generate any immediate costs.

Both options under B are in line with the data protection package and preserve the principles of purpose limitation, proportionality and accuracy into the proposed processing environment.

*The presentation of the scores for comparison of the options should still be more clearly linked to concrete evidence. For all factors for which a quantitative presentation is possible, this should be done in the summary table.*

### Summary table of the impacts of the policy options

Impacts of policy options	Option 1 Baseline/ Pure lisbonisation	Options A addressing the provision of information from MS		Options B Addressing the problem of constraints on data processing	
		Option A1 Strengthening obligations and introducing incentives	Option A2 Giving Europol access to MSs' law enforcement databases	Option B1 Merging two AWFs into one	Option B2 New processing environment allowing for gradual implementation of the single data repository
		Increasing security in the EU (effectiveness)	0	+++	+++

Impact on the protection of personal data	0	0	0	0	0
Costs (efficiency)	0	-- Estimated costs for the EU budget: -3 new FTE needed - EUR 800K for financial incentives to support MS investigations (offset by administrative savings) =0 Estimated costs for the national budgets: Between EUR 600 K and EUR 3 M, to be partially reduced by implementation of LETS	--- Estimated costs for the EU budget: -3 new FTE - EUR 1,78M one off investment, EUR 1,46M of yearly recurring investments Estimated costs for national budgets: EUR 660,000 one-time investments for the adaptation of their IT systems and connection to the forwarding system, - Recurring investments of EUR 1,2M annually Costs of additional 1-2 staff (the amount vary depending on a MS)	0 <b>No costs</b>	0 <b>No immediate costs</b>
Coherence with other Commission policies	0	+	+	+	+

<b>Preferred policy option</b>		√			√
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## 8. PREFERRED POLICY OPTION

The preferred policy option is further legislative changes than those required by the Treaty of Lisbon (Option 2).

It responds more adequately to the operational objectives we have set:

- To increase the flow of information from Member States
- to allow Europol to gradually implement the single data repository that would visualize the information in its possession and establish links between data so as to carry out analyses,

The preferred Option 2 will consist of the combination of the policy options A.1, and B.2, since it would provide better means of increasing security in the EU, while ensuring that interference with the protection of personal data is kept to a minimum and that costs are kept at an acceptable level.

Thanks to incentives and the strengthening of the obligation to provide information, Member States would have more clarity and would become more motivated to send data.

The new rules on data management, would allow Europol's analysts to determine links between information in Europol's possession and to identify trends and patterns in criminal activities. Europol would offer more relevant and up-to-date products and services to Member States.

Contrary to status quo, the preferred policy option introduces "variable geometry" on the basis of Protocols 21 and 22 TFEU establishing the "opt out" regime for Denmark and the "opt in" regime for Ireland and UK.

The impact on costs of the preferred policy option compared to the baseline would be as follows:

Extending financial support offered by Europol to Member States' investigations other than euro-counterfeiting would require 800.000 € per annum, to reach a critical mass of funding. These funds will be borne by Europol and will be found by means of reprioritisation of Europol's budget.

The total staff that Europol needs to implement this reform is 6 FTE who are needed to handle a higher inflow of information from Member States. However, since Europol loses its capacity to conclude international agreements, 3 staff could be redeployed from the unit that has been preparing the international negotiations. Therefore, it will be necessary to employ only 3 new staff (FTE). The total staff costs would then reach EUR 1.77 m assuming that they will all be temporary agents and will be recruited mid-year in the following way 2015: +1, 2016: +1; 2017: +1. However, approximately two thirds of these costs will be offset by the savings resulting from the merger of CEPOL: two (2) FTE will be secured as a result of the merger and can be redeployed for the purposes outlined above.

Regarding the burden on Member States of sending a greater amount of information, given that the transmission is electronic, often aided by IT tools (e.g. data loaders), additional costs can be considered minimal. The costs of training for law enforcement officers for the national budgets would vary between EUR 600 K and EUR 3 M but could be substantially reduced once the European Law Enforcement Training Scheme is designed and implemented. Any administrative burden is likely to be counterbalanced by the benefits they would gain from the improved services that Europol can offer to police officers in Member States.

## **9. MONITORING AND EVALUATION**

To regularly monitor provision of information by Member States, the new regulation would oblige Europol to report annually to the Parliament and the Council on the performance of each individual Member State. Such reports will contain specific quantitative and qualitative indicators and demonstrate trends.

The new regulation would also lay down the rules on the parliamentary scrutiny by the European Parliament and national parliaments, i.e. ultimately on the implementation of Europol's work programme and execution of the budget.

In accordance with the Common Approach on decentralised agencies, EUROPOL will also:

- accompany its activities included in its working programme by key performance indicators. This allows for monitoring based on the Annual Report. This is foreseen by the Financial Regulation. The Annual Activity Report illustrates progress towards targets through key performance indicators e.g. proportion of the SIENA messages sent by MS involving Europol, number of investigations initiated or actively supported by Europol, number of EIS searches by Member States, number of objects in EIS),
- provide for a periodic overall evaluation, to be commissioned by the Commission<sup>80</sup>.

The Management Board of Europol is responsible for supervision of the administrative operational and budgetary effective and efficient management of the Agency. The Council and the Parliament, in particular as budgetary authority of the Agency, will be in a position to monitor effectiveness and efficiency of Europol.

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<sup>80</sup> The 1st evaluation would take place 5 years after the agency has started its operational phase. Subsequent evaluations will then be conducted every 5 years and on the occasion of every second evaluation, the sunset/review clause should be applied.

## Annex 1

### Executive summary of the RAND report

Europol is the European Police Office – an international police organisation formed to promote and strengthen cooperation among law enforcement agencies in the European Union (EU). Europol's mandate includes terrorism and serious and organised transnational crimes affecting two or more Member States, including drug trafficking, terrorism, illegal immigration, human trafficking, cybercrime, financial crime and counterfeiting.

As a result of the Europol Council Decision (ECD), from 1 January 2010 Europol has been transformed from an intergovernmental organisation, established by a Convention<sup>81</sup>, to an EU entity funded from the general budget of the EU. Although the ECD is a fairly recent instrument, Europol will be given a further new legal basis within the next two years in a Europol Regulation.

This report sets out the findings from an evaluation of Europol. The objective of this evaluation was to conduct an independent and external assessment of the way in which Europol has implemented the ECD, and of the programmes and activities carried out by Europol. In addition, the evaluation assesses the impact of the ECD and the legislative framework on Europol's performance, and identifies the strengths and weaknesses of the ECD in order to inform decision making about the content of a future Europol Regulation. The evaluation looked at 40 research questions, specified by the Europol Management Board (MB). This short summary presents an overview of the evaluation and its main findings and conclusions.

#### Data collection and approach to the evaluation

Four data collection activities were employed in this evaluation: a document review; focus groups; interviews and a web-based survey. The research approach ensured that information was gathered from a wide range of stakeholders, strengthening the balance and breadth of perspectives, including stakeholders in Europol, other EU agencies, Member States and third States.

The limitations of the research approach stem from the scarcity of data such as statistical, financial and administrative reports, legal analysis and case histories which test, challenge and validate the expert judgements and stakeholder opinions collected through focus groups, interviews and the web-based survey. In most cases where validation was sought but not obtained, it appears that such information does not exist in a readily available form and could not be generated within the scope of this research.

Another limitation stems from inviting evaluation participants to select which of the 40 questions to discuss or respond to in the time available. In part this provided an opportunity for participants to select those questions on which they were most knowledgeable. However, this approach also means that some questions were more popular than others, and more data has been collected on some issues than on others. The evaluation team has drawn conclusions and recommendations on the basis of the data collected or otherwise available. Inevitably,

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<sup>81</sup> Europol Convention O.J 1995, C 316/2

therefore, some of the conclusions articulate the need for further, in-depth investigation and other conclusions are tentative or include some caveats.

**The evaluation found very positive views among stakeholders: Europol is perceived to be fulfilling its mandate.**

Overall, the findings of this evaluation suggest that Europol's stakeholders at Member State and EU-level increasingly see Europol as operationally relevant. The question 'To what extent has Europol fulfilled its objective under the ECD ... to enhance law enforcement cooperation at EU level?' received the most positive response among respondents to the web-based survey administered as part of this evaluation, and there was near unanimity among interviewees and focus group participants that the support provided by Europol has added value to Member State law enforcement.

Europol's network of liaison officers, the platforms that Europol provides for information exchange with and between Member States, and Europol's speciality criminal intelligence analysis, are some of the services which are perceived to add value to Member States and make the support offered by Europol unique. The ECD has not had a significant impact on these factors or the day-to-day support that Europol provides to Member States. Rather, the ECD grants Europol a new legal basis which can be amended more easily in the future, without ratification by 27 Member States, in preparation for a Europol Regulation.

**Many of the issues raised in the evaluation demonstrate an underlying tension stemming from the fundamental design principle of Europol.**

The tension is between, on the one hand, the desire for Europol to be more operationally supportive to Member States and improve its operational focus, but on the other hand, an insistence on the primacy of Member States. As stated in the Treaty on Functioning of the EU (TFEU), Europol's *raison d'être* is to support Member States' law enforcement authorities and it has no coercive powers. Whether Europol is effective and has an impact is determined largely by the policies and actions of Member States which provide Europol with information and decide whether to use Europol's outputs and expertise in domestic law enforcement. Although some interviewees saw the advantages of a proactive Europol with executive powers, the consensus was that the current design principles would be maintained: Europol would not be granted executive powers and would continue to operate through its relationships with Member States.

The gatekeepers to this relationship are the Europol National Units (ENUs). Given the variation between ENUs in different Member States, this report recommends taking action to increase homogeneity in the operation of ENUs through the possible inclusion in a future Regulation of a system for reviewing the activities of ENUs and arrangements for identifying and sharing good practice in their regard.

**The evaluation has identified a number of key issues for further, in-depth analysis.** As is expected from an evaluation which addressed such a large number of research questions covering such a wide range of research topics, some of the conclusions and recommendations call for further, in-depth analysis of issues which have been identified as important, but where

focused work is needed to arrive at a precise definition of the problem or to understand practical and legal implications. For example:

- evaluating whether and how the requirement contained in Article 8(4) of the ECD (for Member States to share information with Europol) is implemented, and therefore identifying opportunities for enforcing the Article 8(4) call for information supply more effectively;
- understanding the scope for further involvement by Europol in Joint Investigation Teams (JITs);
- collecting information about the impact of the Staff Regulations on Europol's operations; and
- identifying any possible ways in which the current process of negotiating operational agreements could be streamlined in preparation for a new Regulation.

### **Opportunities, risks and challenges for Europol.**

This evaluation has taken place at a time of significant changes in the area of Justice and Home Affairs (JHA), a number of which are described here:

- Reform to the legal basis for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) has been recently completed and is now in the process of implementation, and amendments to Eurojust's legal basis and competency are likely. Reforms to Frontex, Eurojust and Europol introduce risks of duplication, overlap and lack of coordination. Cooperation between the European External Action Service (EEAS) and Europol is at an early stage of development, but there are many opportunities for future partnership.
- Supervision of JHA agencies is increasingly under discussion and the role of the European Parliament in this respect is likely to be developed in the coming years. Many benefits could flow from parliamentary supervision, but at the same time there are concerns about the supervision of operational matters.
- The climate of austerity means restrictions on Europol's budget and the possibility of severe cuts to the budgets of national law enforcement agencies. However, at the same time Member States' demands for support from Europol are growing, and Europol's status as an entity of the EU has led to increased requests for analysis and other forms of support from the European Commission and Council working groups.

Given this environment, some of the conclusions of this evaluation relate to the way in which Europol monitors its environment in order to have the best possible information about the risks, opportunities and demands coming its way. For example:

- Europol should continue to monitor closely the demands placed upon it by EU and Member State stakeholders;
- the risk of overlap, duplication and even contradiction with other JHA agencies should be monitored, as should proposed changes to other agencies;

- consideration should be given to developing a strategy which anticipates future changes to how Europol is held to account, and in particular, possible changes to the role of the European Parliament.

The evaluation draws up a short list of possible changes to Europol's legal basis to facilitate information sharing and improved data management. While the evaluation does not support the proposition, advocated by some participants in the research, of imposing information-sharing obligations on Member States, some changes are recommended. These are listed briefly below, with important limitations and caveats explained elsewhere in the report.

- Consideration should be given to removing statutory definitions of separate data processing systems in a future Europol Regulation, in order to introduce flexibility regarding the design of processing environments.
- Consideration should be given to amending the provisions in Article 25(4) of the ECD to possibly allow Europol to share personal data gathered from publicly available sources with third parties where there is no operational agreement, provided that certain safeguards and conditions are met.
- Consideration should be given to amending Article 10(3) of the ECD in order to allow new systems for processing personal data to include sensitive, personal data, with the necessary data protection safeguards.
- Consideration should be given to the possibility of permitting direct information exchange with private entities in some prescribed circumstances.

**Of all the evaluation questions, issues regarding Staff Regulations at Europol received the most negative response.**

There was a strong consensus that the EU Staff Regulations are not fit for purpose and that they impede the ability of Europol staff to support 24/7 operational policing in Member States. As well as a need for better quantification of the impact of the Staff Regulations, the following recommendations were made by the evaluation team relating to staffing at Europol.

- Europol should consider whether it is making best use of law enforcement officials who have worked in Europol and have now returned to their Member States – such individuals could play a role in awareness-raising.
- An analysis of the incompatibilities in career progression structures between Europol and national law enforcement authorities should be conducted to allow Europol to work with Member States to ensure that there are incentives for the most highly skilled law enforcement officers to spend time at Europol.

**The evaluation identifies some areas in which Europol's competency could be expanded.**

The evaluation expresses caution regarding potential extensions of Europol's mandate.

Article 88 TFEU states that Europol should support Member States, and the principle of subsidiarity is important in evaluating potential changes to Europol's mandate. Further, there is a risk that any evidence collected by Europol would not comply with Member State-level

procedural rules governing the admissibility of evidence, which would diminish the value of such information for operational law enforcement within Member States.

With these caveats in mind, the report includes the following two recommendations:

- the future Europol Regulation should provide greater powers for Europol to support investigations and operational activities, possibly with a capability to provide funding;
- the decision to host the European Cyber Crime Centre (EC3) at Europol will create new demands upon the organisation. The European Commission should evaluate whether Europol's current legal framework enables an EC3 to fulfil its objectives and carry out planned activities.

More information about each of these recommendations and conclusions can be found in the report summary, and in each of the substantive sections of the report. The evaluation has focused on the implementation of the ECD and the activities carried out by Europol. It has engaged with a range of stakeholders in relation to topics spanning Europol's function, legal basis and activities. This report is complemented by recent debates in the Standing Committee on Operational Cooperation on Internal Security (COSI) on the future requirements of Europol in the context of the European Internal Security Strategy. These debates seek to develop a 'visionary approach on Europol's future role and tasks'. Many of the issues identified and explored in this evaluation are articulated in those debates.

## Annex 2

### Summary of the stakeholders' consultations

#### Summary of the stakeholders' consultations

##### External stakeholders:

Law enforcement representatives from the Member States' were consulted on 17 February and on 11 April in the Standing Committee on Internal Security (COSI) and on 12 March in the context of a meeting of experts. Whilst the first meeting was a pure orientation discussion on the requirements of the "users" of Europol, the second and third meeting focused on a number of preliminary ideas put forward by the Commission services in the context of its internal reflections. Document 8261/12 JAI of 29 March 2012 was issued to members of the COSI with the purpose of guiding a brainstorming on the objectives that a future Europol should achieve. It was part of the systematic exchanges between DG HOME and one of its main interlocutors in the Council.

These consultations produced the following responses:

- No MS requested a widening in Europol's mandate
- Several MSs acknowledged that MSs should provide more information to Europol and that the latter is not exploiting its full potential in the area of data processing
- Most MSs favour the notion of financial incentives targeted towards investigations, rather than mandatory provisions, however concentrating the efforts on priority crime areas was welcomed by some.
- Most MSs wished to ensure that if Europol's access to private sector-held information is facilitated, the ENUs should not be bypassed.
- For most MSs, data management should be technically open for Europol to arrange, provided data protection safeguards are ensured.
- For most MSs, it is essential that Europol can continue to exchange data with 3rd countries.
- the EDPS indicated that it should be entrusted with the external supervision of Europol's data processing activities
- the JSB indicated that it has contributed over the years to strengthening the application of Europol's data protection regime on a day-to-day basis. It underlined its own specific expertise of the field of data processing for law enforcement purposes.
- Representatives of the LIBE Committee agreed to the need to stimulate more information sharing with Europol; cooperation with third countries should be ensured and follow a more simple mechanism. High data protection standards should be guaranteed and Europol should be subject to greater parliamentary controls.

Representatives of national Parliaments recognized the need to improve information sharing with Europol; incentives of a financial nature were considered more desirable than mandatory provisions. Direct exchanges with the private sector were considered valuable to fight,

notably, cybercrime. Europol's cooperation with 3rd countries should not replace bilateral agreements.

Internal stakeholders:

Apart from SG, SJ and BUDG, DG JUST, DGHR, OLAF, DG TAXUD and EEAS were members of the interservice group for the steering of the Impact Assessment. A first discussion on policy options took place on 8 March. This allowed to better identify the problems that need addressing through Europol's reform and to begin formulating objectives. A preliminary draft impact assessment was submitted to the group ahead of the meeting on 2 May. In the meantime, members had received the second interim report by RAND. On 11 June, a discussion on a new version of the draft impact assessment took place and following on from written comments provided by JUST, EEAS and SJ, the text was further amended.

## Annex 3

### Examples on how Europol supports the Member States' law enforcement authorities

#### I. OPERATION GOLF

Twenty eight children were rescued as part of a major joint operation led by the UK Metropolitan Police and Europol. The operation, finalised in October 2010, was part of a wider investigation called Operation Golf, which consisted of a Joint Investigation Team (JIT) between the Metropolitan Police and the Romanian National Police. The aim of the JIT was to tackle a specific Romanian organised crime network that was trafficking and exploiting children from the Roma community. To date, the investigation has led to the arrest of 126 individuals. The offences include: trafficking human beings (including internal trafficking in the UK), money laundering, benefit fraud, child neglect, perverting the course of justice, theft and handling of stolen goods. Court cases are ongoing. The operation's primary aim was to safeguard the potential child victims and involved 16 addresses being searched in Ilford, Essex. The children found were taken to a dedicated centre staffed by child protection experts from the police, the local authority and local health trust, where individual assessments were made on each child. The assessment process examined the welfare of the children and sought to identify if they had been subject to exploitation and/or neglect. Europol was an active member of the Joint Investigation Team (JIT) and provided assistance to the competent authorities by:

- Giving expert advice on setting up the JIT and the planning of strategic and operational activities.
- Ensuring analytical support throughout the whole investigation. One of the key outcomes from this analysis was the identification and prioritisation of the main targets of the organised crime group, both in Romania and the UK.
- Providing on-the-spot assistance through the deployment of its mobile office, in the UK and Romania on four occasions. Each time, real-time checks were carried out on the database to support intelligence gathering operations and coercive British and Romanian police actions (searches and arrests).
- Drafting and disseminating 67 analysis reports.
- Identifying key links to other EU countries, especially Belgium and Spain.
- The quality and quantity of analysis provided by Europol was crucial to the progress of the case. Europol is expected to provide further support in the near future.

## **II. HUMAN TRAFFICKING OPERATION**

In November 2010, Europol supported Austrian and Hungarian police in rescuing victims of sex trafficking and arresting the organisers of the human trafficking network. Five young women, from Hungary and Romania, were being kept as sex slaves in a house in southern Hungary and intimidated with sexual, physical and psychological abuse. The women were then moved to Austria, where they were forced into prostitution and again locked-up without any contact with friends and family. They were forced to have sex with 15-20 clients a day and were routinely abused by their captors. These women came from impoverished backgrounds and were 'recruited' with false promises of domestic work. As a result of the operation, Hungarian police arrested the main suspect, a 54-year-old Hungarian and his 36-year-old female Hungarian accomplice. During house searches, police seized guns, a considerable amount of cash, jewellery, and other assets worth several thousand euros. In addition, IT and communication equipment was seized, along with a large amount of evidence relating to criminal activities over the last 10 years.

Europol sent its expert to the field to coordinate simultaneous operations in both the country of origin and destination. Moreover, dedicated operational analysis was provided by Europol which helped to detect international links through cross-checks on victims with data already held in the Europol databases, as well as establishing links with other reported cases. Europol also analysed data from itemised bills and financial transactions gathered during the day of action which resulted in more charges being brought against the suspects.

## **III. OPERATION PHANTOM**

In February 2010 Europol assisted German Police in arresting five facilitators of illegal immigration, including three main suspects. During the operation, investigators searched 18 premises in Berlin, Brandenburg and Sachsen. Besides evidential material, more than 55 000 euros in cash, several computers, a hand weapon and cocaine were seized. Nine illegal immigrants from Vietnam were found during the house searches.

The investigations, supported by Europol, focused on more than 20 suspects who smuggled illegal immigrants with a 'guarantee' that the immigrants would reach their final destination, even when previous smuggling attempts had failed. The price charged for the entire journey was around 10 000 euros and would take from a few days up to many weeks. The families of the illegal immigrants often would have sold their property or assets to fund the journey.

In some cases the immigrants illegally sold commodities such as cigarettes to finance their onward journey to Western Europe - mainly France and the United Kingdom. According to reports from some of the smuggled immigrants, the UK is considered a dream destination by the Vietnamese as they can readily earn money as gardeners tending and protecting illegal cannabis plantations.

This investigation targeted a criminal network operating across Europe. The Czech Republic, France, Hungary, Slovakia and United Kingdom ran parallel investigations. More than 250 investigators from the German Federal Police and Berlin Police took part in this extensive operation.

Europol experts were present at the operational coordination centre to provide technical expertise and operational analysis support, due to the large quantity of house searches carried out. During the investigation phase, Europol prepared several intelligence reports and facilitated the exchange of intelligence, which also resulted in the discovery of new criminal links.

#### **IV. OPERATION FORECOURT**

Intelligence indicated that an organised crime group was using drivers, working for a legitimate transport company, to smuggle illicit tobacco products into the UK. The drivers stopped in Luxembourg en route to the UK to load up with hand-rolling tobacco. They were using the cover of their company vehicles and frequent trips to the UK to facilitate the imports.

Europol analysed key intelligence contributions which pinpointed the criminals' modus operandi and helped to identify the source of the tobacco supply, people and vehicles involved.

The operation concluded with two arrests and the seizure of nearly two tonnes of hand-rolling tobacco by the UK authorities. This prevented duty and tax losses of around €277 000.

#### **V. OPERATION ATHENA II**

Two Europol officers and the mobile office supported the Spanish General Customs Directorate with Operation Athena II in April 2010. Operation Athena II was a joint customs operation targeting the cross-border movement of cash and other monetary instruments used by criminal organisations for financing of their criminal activities and laundering of criminal proceeds. Customs authorities from 19 EU and non-EU countries (namely Algeria, Morocco, Norway, Tunisia and the USA) participated, along with international agencies like Europol, Interpol and the World Customs Organization. This operation led to:

The issuing of warning messages (reports on people who declared they were travelling with over €10 000, as well as alerts on suspicious cash movements)

The issuing of seizure messages (used to report detections and seizures of cash or other monetary instruments exceeding €10 000)

Cash seizures totalling €5.5 million and cash warnings which came to €26.5 million

Europol dealing with 110 warning messages and 128 seizure messages and performing searches in Europol systems which resulted in various links

The generation of four links by Europol that proved a staggering amount of cash was being moved across two EU countries.

## **VI. OPERATION TEX – COSPOL INITIATIVE**

Since 2005, Europol has supported the Synthetic Drugs Group of COSPOL (Comprehensive Operational Strategic Planning for the Police). In February 2010, based on Europol analysis and ongoing inquiries in several Member States, COSPOL selected one specific 'high-value target' (HVT) for joint investigation. Together with Belgium, Germany and the Netherlands, Europol initiated a joint operation focusing on the organised crime group that was led by the selected HVT involved in the large-scale production of synthetic drugs. In May 2010, it became clear that the suspects were ready to start up their synthetic drug production process in Belgium. Europol's operational and technical support was requested by the Belgian Federal Police of Hasselt, to potentially dismantle the illegal production site. Europol sent 'on-the-spot' support and provided detailed technical investigation and expertise. As a result, the Hasselt Federal Police, in close cooperation with Europol, dismantled a large sophisticated illicit drug laboratory, which had the potential to produce hundreds of kilograms of synthetic drugs. The European street value of such production was estimated to be several million euros. Six main suspects were arrested in Belgium and large quantities of chemicals were seized. At the same time, the Dutch judicial authorities carried out house searches and seized more synthetic drugs, cocaine, large amounts of money and chemicals. Links to other illegal synthetic drug production sites (e.g. in Germany and the Netherlands) have been already identified via the Europol Illicit Laboratory Comparison System. Europol was involved in this successful operation from the very start, in February 2010, in terms of initiating the joint targeting of the HVT. During the operation, Europol provided 13 analytical reports and one specialist report to investigators. Two operational in-house meetings and on-the-spot technical support were also provided. As a result of these joint activities, the main targets were sentenced to six years in prison.

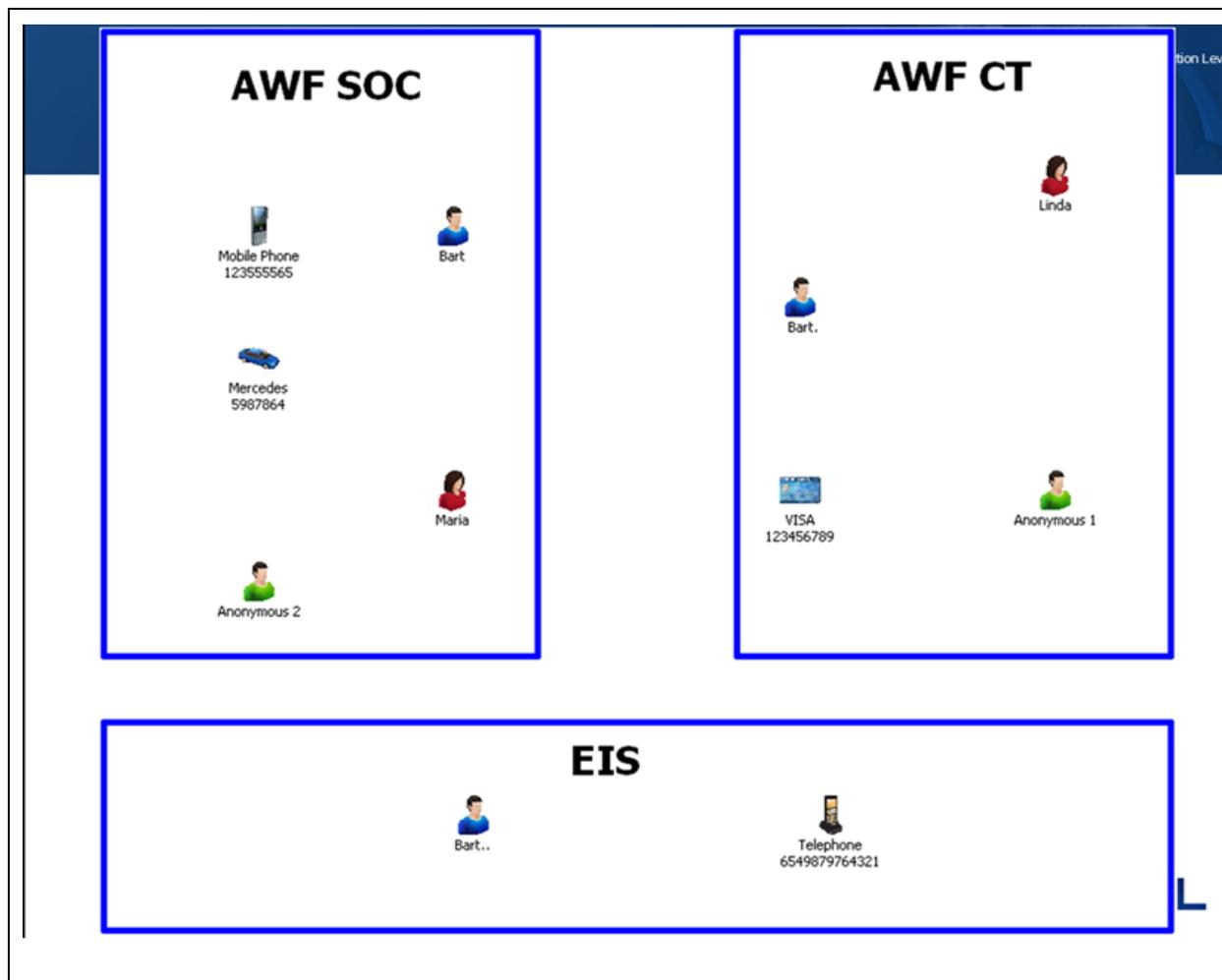
## **VII. OPERATIONAL AND TECHNICAL SUPPORT TO ESTONIA**

On 22 September 2010, an air freight cargo consignment containing 217.3 kilos of coffee powder arrived in Estonia from Venezuela via Germany. German Customs had already found that the consignment tested positive for cocaine and in cooperation with the investigation department of the Estonian Tax and Customs Board, a controlled delivery was organised. Europol promptly provided two very comprehensive reports on cocaine conversion laboratories, cocaine extraction and conversion procedures, chemicals and equipment used, and details on the risks involved during the cocaine extraction and conversion process. In addition to daily contact, additional information was also provided on laboratories discovered

in other EU countries where similar consignments had been processed. Based on these reports and associated advice, and during subsequent house searches, investigators found and identified a list of chemicals used for the conversion and purification of cocaine. In total, 48 kilos of cocaine were seized, while two Estonian citizens and two others are suspected of drug-related crimes. Three further suspects have been in custody at the prosecutor's request.

## Annex 4

### An example illustrating the problem with linking and analysing data spread over different databases

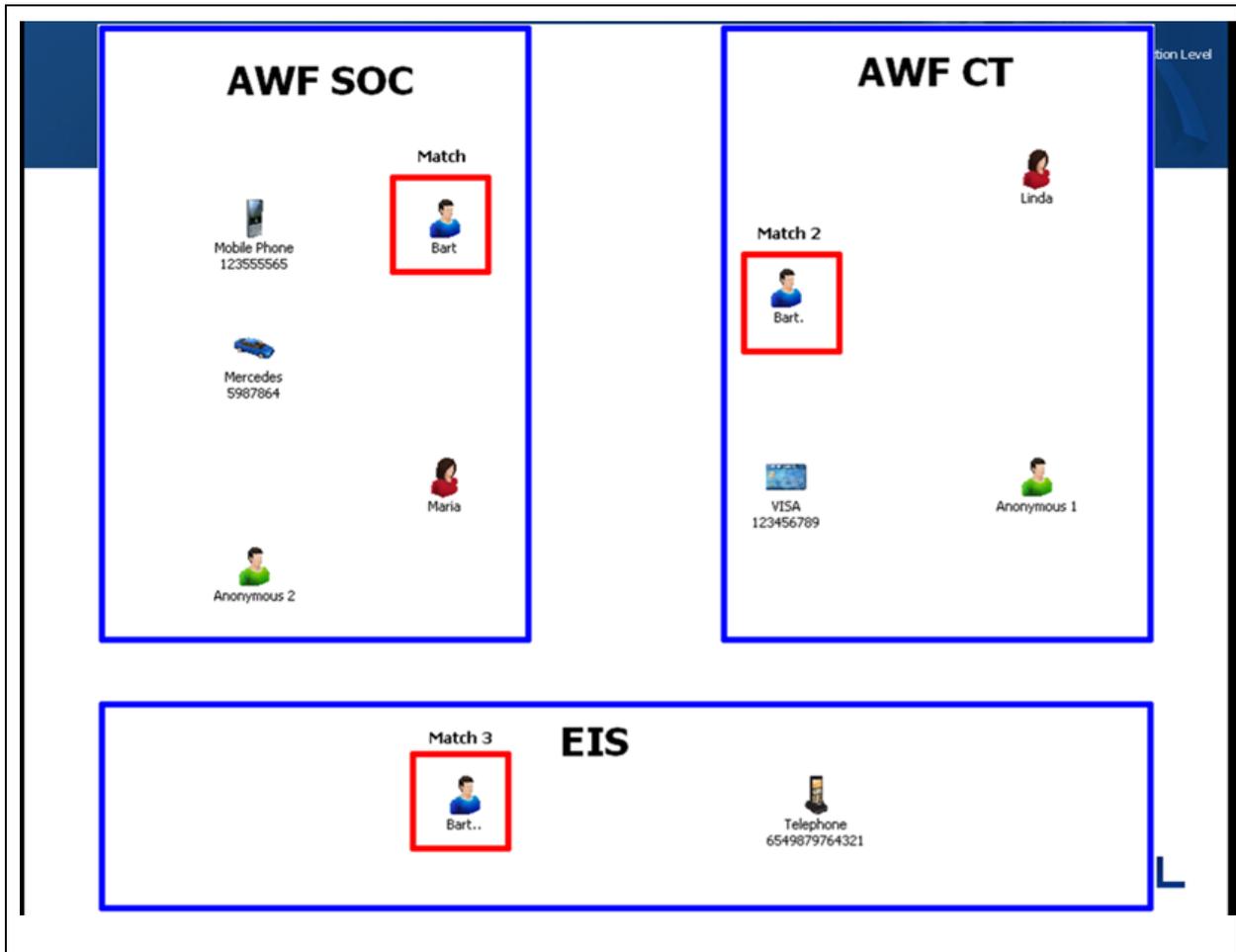


Presented here is the current situation, following the transfer to the new AWF Concept (NAC).

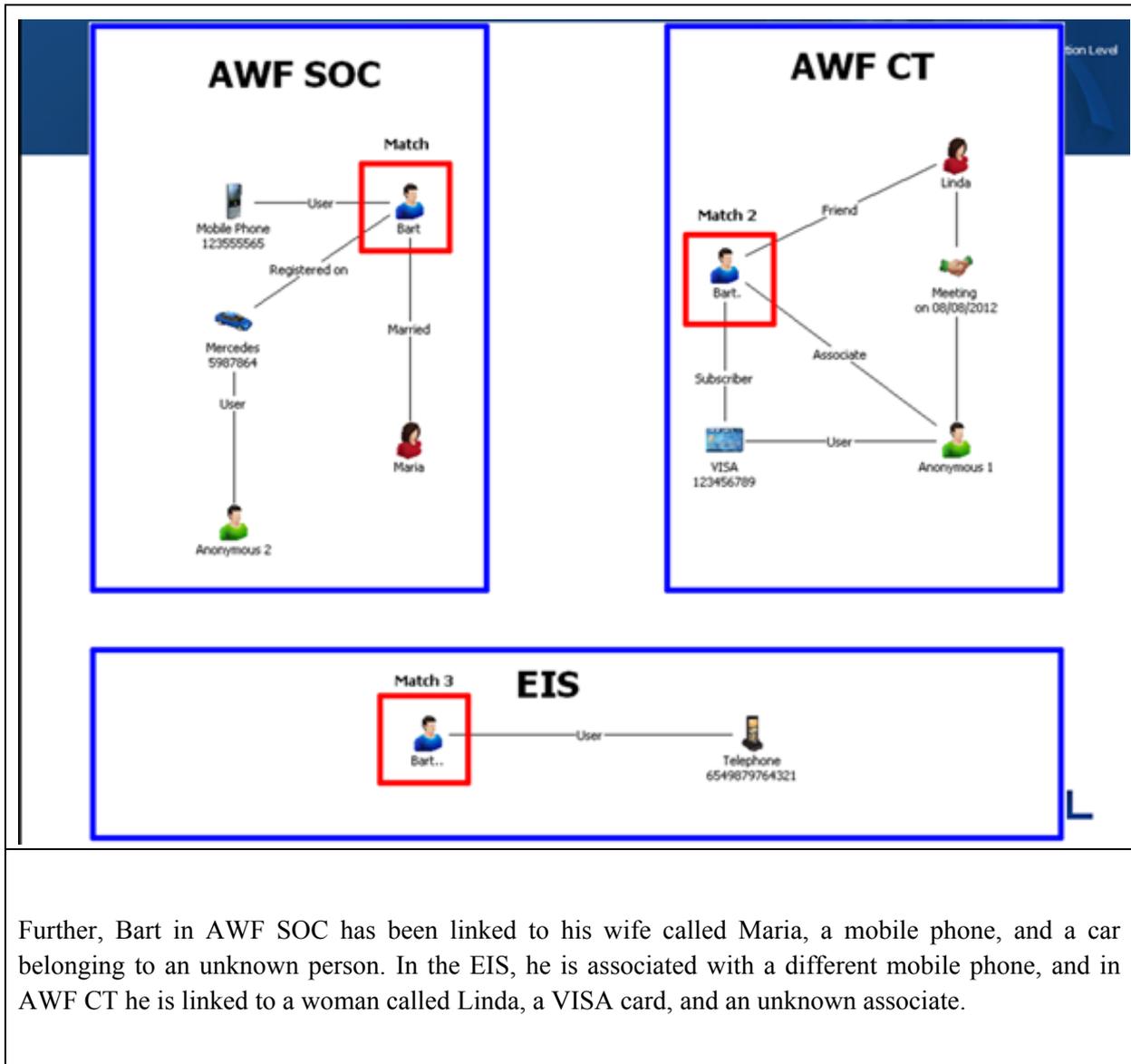
Present are the two AWFs Counter Terrorism and Serious and Organized Crime, as well as the Europol Information System.

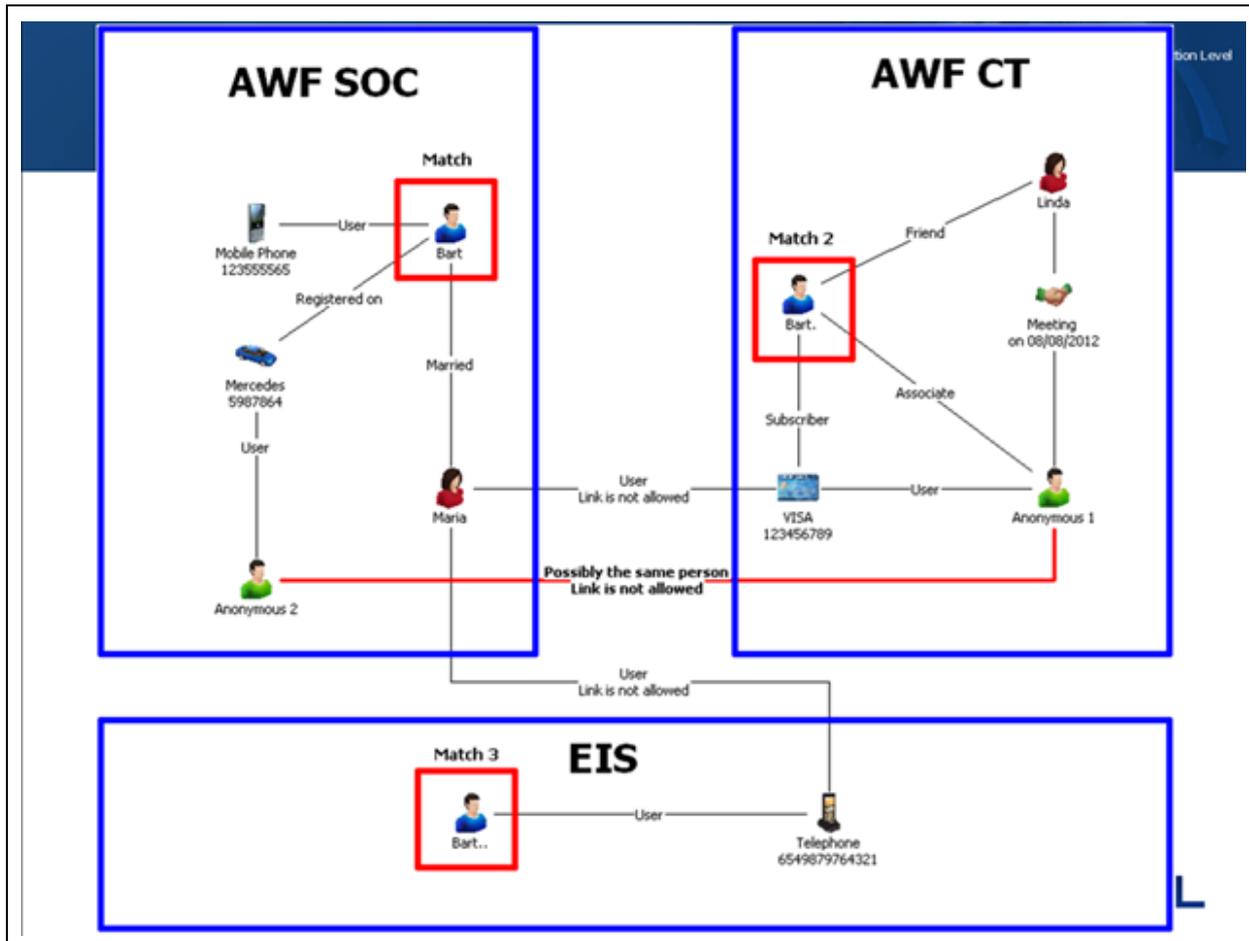
From an analytical point of view the current legal framework allows analysis only within the scope of an individual AWF. This limits the analysis to the borders defined by the scope of the AWF itself.

At present this means therefore that no analysis can be conducted between Serious and Organized Crime and Terrorism.



In this example, Bart has been identified as being present, in both AWF SOC and CT, as well as in the EIS.





In the current present framework Europol is not aware of these different links and the analyst of e.g. the AWF CT, knows nothing of the mobile phone or contact or car his colleague working in AWF SOC has identified.

Consequently, we cannot see that as per this example, the unknown owner of the car linked to Bart in AWF SOC is the same unknown associate linked to Bart in AWF CT.

Further, we also do not know that the mobile phone linked to Bart in the EIS in fact stems from Maria, Bart's wife as identified in AWF SOC.

## Annex 5

*Key Performance Indicators (KPIs) of the Europol's Work Programme relating to information exchange since the entry into force of the Europol Council Decision*

<b>Multi-annual KPIs set out in 'Implementing the Europol Strategy'</b>	<b>Baseline (2009)</b>	<b>Target 2010</b>	<b>for 2010 data</b>	<b>Was target met?</b>
Number of objects in the Information System	135,489 objects	169,361 (increase of 25 per cent)	174,459 of objects	<input type="checkbox"/> Increase of 28 per cent
EIS searches by Member States	131,576 searches	164,470 (increase of 25 per cent)	121,774 of searches	<input type="checkbox"/> Decrease of approximately 7 per cent

RAND report, p.48

## Annex 6

### Overview of issues raised by RAND (in addition to Transversal issues described under section.5.2) which will not be tackled in this impact assessment

1. Some issues could not be addressed at the EU level: the national rules regarding employment at Europol which are inconsistent between countries.
2. A possibility of overlap with other Justice and Home Affairs' agencies has been identified as a future risk by the RAND report<sup>82</sup>. The question of the merger with CEPOL and exploiting synergies between training and operational work is subject to an impact assessment with CEPOL. The possible risks of overlap with other agencies will need to be monitored when initiatives on other JHA agencies are taken. To enhance inter-agency cooperation with Eurojust, the future EUROPOL regulation will further specify the existing obligation of Europol to inform Eurojust in case Europol asks a Member State to initiate an investigation. Such improved cooperation will bring benefits to the EU fight against the crime. Whilst Europol will address its request to Member States' law enforcement authorities, Eurojust, based on the information supplied by Europol, should address the prosecution authorities, if appropriate. The future draft EUROJUST Regulation will have to take these aspects into account.
3. The implications of the decision to host the Cybercrime Centre by Europol, in particular on the budget and resources, will be subject to a dedicated ex-ante analysis. The question of the Cybercrime Centre does not fall within the core of the Europol's reform which is assessed here (although the reform of Europol increasing its effectiveness, in particular exchanges of data with private parties will allow the Cybercrime Centre to fulfil its function).
4. This impact assessment will not analyse the possibility of merging with CEPOL which is subject to a detailed impact assessment of the future regulation on CEPOL. From the point of view of Europol, it has never been a problem and the current division of competence on trainings between CEPOL and Europol work well. This has been confirmed by the RAND report.

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<sup>82</sup> The RAND report, p. XXXIII

## Annex 7

### 2010 Main operational outcomes in euro counterfeiting

#### Money transferred 2010: 158.054euro

The investigations supported financially by Europol resulted with the dismantling of five illegal print shops (Colombia, Italy, Bulgaria).

During the financially supported operations 83 persons were jailed. Counterfeit euro banknotes with the denomination of 20, 50 and 100, in the face value of more than 6.2 million euro, were seized. Furthermore, counterfeit US dollar, Colombian peso and all kinds of raw materials and equipments used for producing counterfeit currency, were confiscated in the frame of the supported investigations.

On 27 January 2010, in Bogota (Colombia), an illegal print shop was dismantled by the Colombian National Police (DIJIN) supported by the Spanish BIBE and Europol.

Counterfeit 50 euro notes to the value of more than 1.2 million euro were seized, along with 312.000 counterfeit Colombian peso, an offset machine, printing plates, a computer and other materials to be used for the production of counterfeit currency.

The counterfeit banknotes were intended for distribution in Europe. The investigation started in 2009 and was concluded with the arrest of a person responsible for the production and logistical distribution of the forged notes. The smuggling of counterfeit euro banknotes by airmail was also disrupted.

On the 17 April 2010, in Bogota (Colombia) the Colombian National Police with the Spanish BIBE and Europol dismantled another print shop and seized 297.200 counterfeit 100 euro banknotes (finalized or still in the printing process), 300.000 counterfeit 100 US dollar notes and counterfeit Colombian pesos. In frame of the house searches police found two full set of equipments (inks, stamps, three printing machines, guillotines, two PCs etc.) used for counterfeiting activities.

On 22 April 2010, 13 people suspected of distributing counterfeit euro banknotes in the EU have been arrested in Poland, with the support of Europol. The raid on several addresses in the area of Lublin involved around 120 Polish police officers.

The operation was part of a 3-year investigation which has focused on tracking down the criminals behind one of the largest distribution networks of counterfeit 20, 50 and 100 euro banknotes. In total more than 80 members of the criminal group, with branches in several countries, have been arrested during the whole investigation.

On 11 August 2010 in Naples (Italy), the Anti Currency Counterfeiting Unit of the Carabinieri dismantled an illegal print shop and seized 4.5 million counterfeit euro in 50 euro denomination. The targeted OCG is responsible for the production of the most numerous counterfeit euro classes distributed in Europe.

On 21 October 2010, the German authorities arrested eight people involved in the procurement and distribution of counterfeit 20, 50 and 100 euro banknotes from Italy to Germany. The German police also seized 108.250 euro in counterfeit banknotes.

On 17 December 2010, the French Gendarmerie seized 11.004 pieces of counterfeit 20 euro banknotes and arrested five suspects. The investigation is still ongoing in order to dismantle the print shop producing the most dangerous euro counterfeit in France and the third in Europe.

### **2011 Main operational outcome**

**Money transferred 2011: 159,558 (+EUR 5,000\*)**

Nr of supported police measures: 48

Arrested people: more than 50

Print shops dismantled: 6 (+1 mint shop)

Counterfeits seized: EUR 2.3 M

\*Please note that the money transfer (EUR 5,000) in the last case of 2011 could only be initiated in January 2012 due to our Christmas break, however the payment was authorised and the budget commitment made on 22 December 2011. Therefore, the 2012 budget was charged with the above amount.

The figures presented above are "not official" yet as the FS annual report is still being drafted. Thus adjustments are still possible.

## Annex 8

### The assessed costs of a one-day training of law enforcement officers in two Member States selected by the Commission on the basis of different GDP

#### Latvia:

Number of police officers: 6.450\*

Number of border guards: 2.453\*

Total : 8.903

1% = 89 officers

Costs 1 training day = € 7,-

Total costs 1-day training on Europol:  $89 \times €7 = € 623,-$

#### Sweden:

Number of police officers 20.666\*

1% = 206 police officers

Costs 1 training day = € 66,7

Total costs 1-day training on Europol:  $206 \times € 66,7 = € 13.740,20$

\*Based on recent Schengen evaluation reports.