

REPLIES OF THE EUROPEAN COMMISSION AND THE EEAS TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT

“EUROPOL SUPPORT TO FIGHT MIGRANT SMUGGLING: A VALUED PARTNER, BUT INSUFFICIENT USE OF DATA SOURCES AND RESULT MEASUREMENT”

EXECUTIVE SUMMARY

I. The 2015 European Agenda on Migration¹ identified tackling migrant smuggling as a focal point for action.

The new Pact on Migration and Asylum of September 2020² foresees to reinforce the fight against migrant smuggling with a new EU action plan 2021 – 2025, which will focus on combatting criminal networks, and in line with the EU’s Security Union Strategy, it will boost cooperation and support the work of law enforcement to tackle migrant smuggling, often also linked to trafficking in human beings. The action plan will build on the work of Europol and its European Migrant Smuggling Centre, Frontex, Eurojust and the EU Agency for Law Enforcement Training. New measures and strengthened inter-agency cooperation will address challenges in the areas of financial investigations, asset recovery and document fraud, and new phenomena such as digital smuggling.

Combatting smuggling is a common challenge requiring international cooperation and coordination as well as effective border management. The new EU action plan against migrant smuggling will stimulate cooperation between the EU and third countries, through targeted partnership to counter migrant smuggling, as part of broader partnerships with key third countries. This will include support to countries of origin and transit in capacity-building both in terms of law enforcement frameworks and operational capacity, encouraging effective action by police and judicial authorities.

The EU will also improve information exchange with third countries and action on the ground, through support to common operations and joint investigative teams, as well as information campaigns on the risks of irregular migration and on legal alternatives. EU agencies should also work more intensively with partner countries. Europol will strengthen cooperation with the Western Balkans and the Commission and Europol will work towards similar agreements with Turkey and others in the neighbourhood. The Commission will also include this in its cooperation with the African Union (AU).

Common security and defence policy missions and operations are also playing a significant role in supporting Europol's (and other agencies’) efforts to address migration challenges outside its external borders, both at sea, in the Central Mediterranean, and in key departure or transit countries in Africa affected by smuggling and trafficking activities.

It is against this background that the Commission and EEAS welcome this special report of the ECA as it can contribute to raise awareness that Europol needs to have the capabilities and tools to support Member States effectively in countering migrant smuggling in the context of the fight against serious crime and terrorism.

V. The Commission agrees with ECA that the process of concluding international agreements with priority non-EU countries is challenging and that the Commission has encountered problems. However, the Commission also considers that there has been progress.

OBSERVATIONS

¹ COM(2015) 240 final

² COM(2020) 609

24. b) The Commission agrees with ECA that the process of concluding international agreements with priority non-EU countries is challenging and that the Commission has encountered problems. However, the Commission also considers that there has been progress. In this context, following the issuing by the Council of eight mandates for negotiation with MENA countries³ and Turkey in 2018, the Commission has started negotiations with Turkey, which are well advanced. For the other countries, the Commission is in close contact with the competent authorities at various levels, but we are finding difficulties to advance to the point of formally opening negotiations.

30. According to Article 25 (1) of the Europol Regulation, transfers of personal data from Europol to third countries can take place on the basis of an adequacy finding under Article 36 of the Directive (EU) 2016/680, an international agreement concluded between the Union and a third country pursuant to Article 218 TFEU adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, or under a cooperation agreement allowing for the exchange of personal data concluded, before 1 May 2017, between Europol and that third country or international organisation in accordance with Article 23 of Decision 2009/371/JHA.

In addition, the Europol Regulation also allows for transfers on a case-by-case basis based on specific derogations as per Article 25(5) and 25(6).

The mandates issued by the Council include specific directives to ensure an appropriate level of data protection safeguards in line with the applicable legislation and case law. Since each of the countries present different levels of protection of fundamental rights, including data protection, negotiations with specific countries can lead to different outcomes.

34. The SIRENE office at Europol, will allow the agency to capture and store relevant information on terrorism and other serious crimes, to facilitate operational, tactical and strategic analysis on terrorists and serious criminals and contribute to strengthening the criminal information hub of Europol.

The Commission has proposed enabling Europol to enter data into the Schengen Information System, subject to consultation of the Member States, on the suspected involvement of a third country national in an offence in respect of which Europol is competent⁴.

35. The 2020 EU Security Union strategy recognises that Interpol, one of the largest inter-governmental criminal police organisations, has an important role to play in enhancing cooperation and information exchange. As announced in the Counter-Terrorism Agenda (COM(2020) 796 final, 9.12.2020), the Commission adopted a recommendation to the Council authorising the opening of negotiations with Interpol. One of the objectives of the Commission proposal is Europol's exchange of information with Interpol and access to Interpol databases.

45. The Commission shares the observation made by the ECA that the transmission of operational personal data by Europol to Frontex has become possible only when Regulation (EU) 2019/1896 (cf. Art. 90) entered into force, while the transmission of data from Frontex to Europol was already possible under the 2016 Frontex Regulation.

³ Middle East and North Africa (MENA),

⁴ More information is available in the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation (COM(2020) 796 final, 9.12.2020).