

# Europol's reply

**Executive summary** From an overall perspective, Europol supports the findings and recommendations of the audit report, which contribute to the ongoing co-legislative process with a view to further strengthening Europol's mandate and tasks. The ECA highlights the business need with respect to the exchange of information with non-EU cooperation partners and private parties, as well as the effective and efficient handling of large and complex datasets, with innovative tools, in order to support EU Member States' law enforcement authorities in an effective and efficient manner. The impact of Europol's support is assessed for key activities, for example with respect to Joint Action Days and Operational Task Forces (OTFs) which aim at disrupting High Value Targets (HVTs) engaged in serious and organised crime activities. Operational highlights of Europol's European Migrant Smuggling Centre (EMSC) are summarised on Europol's website, including the annual reports of the EMSC. The survey conducted by the ECA, as part of the audit, shows that 80% of the responses by Member States and non-EU cooperation partners have a satisfaction rate of 7 or higher (on a scale of 1-10) in relation to the strategic and operational support provided by Europol. At the same time, 87% of the responses had a satisfaction rate of 7 or higher with respect to the information provided by Europol. This proves to Europol that the support provided by the EMSC has a tangible impact on the efforts undertaken by Member States and beyond. Beyond the current performance monitoring activities in place, re-allocating staff resources to collect and verify with Member States and third countries statistical data (e.g. on numbers of arrests etc.) is considered not feasible. Europol looks forward to the implementation of the EU interoperability agenda and the related activities that will contribute to expand the range of data sources for Europol's day-to-day work.

**VI** The use of external data sources depends on the applicable legal mandate. See also Europol's replies to paragraphs 33, 36 and 37.

**VII** To implement its share of the EU interoperability agenda, Europol developed the Europol EU interoperability plan. The plan outlines the activities required at Europol including the timelines, responsibilities and interdependencies for EES, ETIAS, ECRIS-TCN, SIS, VIS, EURODAC as well as for activities not specifically included in the interoperability agenda (e.g. PRÜM, EPRIS-ADEP).

**IX** Europol supports Member States based on the specific needs of the case and with the available tools and resources. Europol highlights the high level of satisfaction among Member States and non-EU partners with Europol's support, demonstrating that Europol is fulfilling its mission to support the Member States in preventing and combatting serious and organised crime.

**X** Europol accepts all the recommendations.

**25** Europol wishes to highlight that the work of the agency also aims at Member States having a complete set of relevant data at their disposal.

**28** Europol's role as the EU criminal information hub implies that Europol provides a platform for information exchange, in which Europol is involved when strategic and operational analysis as well as support at EU level is required, while bi- and multilateral information exchanges between Member States and third parties occur in parallel. The number of bilateral message exchanges in SIENA does not impact the qualitative and quantitative nature of the information exchanged with Europol.

**33** Europol closely cooperates with Interpol and already has direct access to the SIS II and indirect access to EURODAC and PNR/API data. Europol is in the process of acquiring access to the VISA Information System (VIS). The use of additional external relevant databases, such as the Entry-Exit System will be realised in the context of the EU interoperability agenda, in which Europol has a distinct role. In addition, access to the Prüm framework could be considered by the legislator.

**36** The EURODAC system has been set up to support the asylum application process that is led at national level. Furthermore, EURODAC can only be queried according to Article 21 of the EURODAC Regulation "if comparisons with fingerprint data stored in any information processing systems that are technically and legally accessible by Europol did not lead to the establishment of the identity of the data subject."

According to Article 10 of the PNR Directive "Europol may submit such a request when this is strictly necessary to support and strengthen action by Member States to prevent, detect or investigate a specific terrorist offence or serious crime in so far as such an offence or crime is within Europol's competence ... ." The condition of "strictly necessary" must be observed by Europol, thus not allowing for regular or systematic checks on a random sample basis.

**37** In March 2021, the European Data Protection Supervisor (EDPS) provided its opinion on prior consultation under the applicable provisions of Article 39 of the Europol Regulation. Given that the VIS is an administrative database, Europol will need to establish a Central Access Point and implement the requirements outlined by the EDPS, prior to accessing the VIS. Europol works with priority in 2021 to realise access to the VIS.

**40** Through the implementation of QUEST Member States' law enforcement officers can search and access Europol's data using their own national information systems. Further developments are being brought forward with the QUEST+ initiative to allow Member States to query Analysis Projects data on a Hit/No Hit basis.

**41** Access for Member States for the purpose of joint analysis with Europol is currently considered as an amendment to the provisions in the Europol Regulation.

**45** Europol underlines that the receipt of personal data by Frontex requires the completion of implementation steps on the side of Frontex.

**48** With respect to the use of innovative IT capabilities, Europol is bound by the provisions Article 39 of the Europol Regulation, which requires prior consultation with the EDPS. The legislator, as part of the currently ongoing review of amendments to the Europol Regulation, could consider a mechanism that serves the interest of operational agility and data protection at the same time. A recent example regarding the intended development and use of a machine learning toolbox (artificial intelligence) for a high-profile Operational Task Force at Europol shows that the current procedure under Article 39 of the Europol Regulation has taken 8 months to date from the initial start of the file (and is still ongoing). Such timelines are not likely to provide for an effective response to the threats faced by organised crime, including cyber-crime, and terrorism.

**52 (1)** Europol also provides support to Member States through Secondary Security Checks in migration hotspots. In addition, the cases supported by Europol focus on so called 'secondary movements' within the EU, in order to disrupt criminal networks facilitating illegal migration.

**54** The use of innovative tools such as artificial intelligence for performance monitoring on sensitive operational activities would require prior consultation with the European Data Protection Supervisor under Article 39 of the Europol Regulation. This notwithstanding, Europol is not in a position to invest significant amounts of financial and human resources into reporting mechanisms from its annual budget and corresponding establishment plan. Beyond the current performance monitoring activities in place, re-allocating staff resources to manually collect and verify with Member States and third countries statistical data (e.g. on numbers of arrests etc.) is considered not feasible. It is also doubtful that the investment of resources into such reporting mechanisms would lead to reliable quality data, reference is made to the Court's observation under Paragraph 57 with respect to the attempts undertaken by Eurostat.

**55** In 2019, Europol produced 9426 operational reports and 313 strategic and thematic reports with more than half (i.e. 5322) of operational reports in the area of serious and organised crime. The collection and monitoring of the resulting outcomes in Member States would require a significant resource investment and re-focus of priorities, both on the part of Europol and that of the Member States. Europol's role is to support Member States and their satisfaction with the products and services provided by Europol has been clearly demonstrated.

**56** See reply to paragraph 54.

**58** See reply to paragraph 54.

**60** EMPACT (European Multidisciplinary Platform Against Criminal Threats), and the corresponding Operational Action Plans (OAPs), is run by Europol.

**62** Europol also collected data on the number of priority cases related to document fraud and priority cases for which financial data is analysed.

The achievement of performance indicators in the areas of document fraud and money laundering will depend on the related activities performed at national level.

Europol highlights that the EU Internet Referral Unit (IRU) surpassed its targets in the same years when it comes to terrorist online content (the EU IRU's priority task) and despite dealing with additional tasks (e.g. EU Crisis Response, Terrorist Content Online Regulation) within the margins of existing resources. The target was missed by an equivalent of about 1% of the EU IRUs overall internet content assessed.

**65** In view of resource efficiency, the volume of cases and resources available, not all steps (which lead to the decision on whether a case is a priority) are fully documented. A thorough assessment is made for High Value Targets and related Operational Task Forces. Operational data could not be made available to the ECA, due to the data ownership principle set out in Article 19 of the Europol Regulation.

**66** Europol highlights that the available resources to deal with the cases have remained stable at Europol during the period in question.

**69** Regarding the Southeast European Law Enforcement Centre (SELEC), it must be noted that 4 SELEC member countries are EU Member States who form an integral part of Europol, while the other remaining 7 SELEC member countries are cooperation partners of Europol, including a Liaison Bureau representation (except for Bosnia and Herzegovina) as a third party at Europol. Accordingly, all members of SELEC are already directly part of the Europol cooperation framework. The same is true for all 12 members of the Police Cooperation Convention for Southeast Europe (PCC SEE). In addition, Europol has direct access to the BALTCOM network through the Baltic EU Member States.

**70** The start of negotiations on these working arrangements is being progressed in line with the External Strategy 2021-2024 endorsed by the Europol Management Board in June 2020.

**Recommendation 1** Europol accepts the recommendation.

**Recommendation 2** Europol accepts the recommendation.

**79** See reply to paragraph 54.

**80** See reply to paragraph 62.

**Recommendation 3** Europol accepts the recommendation.

**Recommendation 3 (a)** As the Member States and non-EU partners are not legally obliged to provide the relevant information, Europol will encourage them in doing so.

**Recommendation 3 (b)** The successful establishment of the requested indicators will depend on overcoming the status referred to in the reply to paragraph 62.

**81** See reply to paragraph IX of the Executive Summary.

**82** Europol follows a structured approach regarding its external relations, on the basis of Europol External Strategy, which is endorsed by the Management Board of Europol. Europol represents the largest cooperation platform at EU level for crime fighting. As an example, the Member countries of SELEC are part of the Europol cooperation framework (see reply to paragraph 69).

**Recommendation 4** Europol accepts the recommendation.

**Recommendation 4 (b)** In view of resource considerations, it might not be feasible to record all decision making and keep a record of scoring for all cases. Europol applies a consistent prioritisation process, in particular for High Value Targets and Operational Task Forces.