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Europol Joint Parliamentary Scrutiny Group - 7th meeting

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I. INTRODUCTION: SUPERVISION IN TIMES OF COVID-19

Thank you, Chair.

Thanks to Catherine de Bolle for her very interesting presentation.

The topic of today's session is not surprising - we have all been worried about the impact of COVID-19 on the ability to perform our duties, equally and effectively, as public authorities.

I must admit that at the beginning of the pandemic I had doubts on whether the EDPS would be able to perform its role properly and whether strong supervision would still be possible. I am very happy to say that despite the constraints we are facing, our supervisory activities over Europol were not affected in substance.

Of course, we had to change certain things. For the first time, we had to postpone the annual inspection, which normally takes place in May or June every year. But - in a way - the new reality encouraged us to engage even more closely with Europol - we have had very frequent contacts during the last months, both at expert level via regular bi-monthly meetings, and at management level.

I am satisfied that I can bring to this committee some detailed information about our activities of the past months.

II. USING BIG DATA AND AI IN FULL RESPECT OF FUNDAMENTAL RIGHTS

In my written contribution, I have presented the areas in which the EDPS has focused its supervisory activities during the past months. Today, I will try not to use too much of your time. I will rather try to draw your attention to findings that might be of particular interest to this committee. I am looking forward to discussing them with you today and to answer any questions you may have.

As you know, my mandate started only recently - in December 2019. Recently I presented the EDPS Strategy for 2020-2024.

One of the priority for this term is to closely monitor how new tools, such as those involving data analytics and artificial intelligence, are used by Europol. Here, I would like to draw your attention to three key issues in relation to our current supervisory activities:

1. **Processing by Europol of large datasets**.
2. **Use of operational data for data science purposes**.
3. **Involvement of national analysts at Europol**.

Ad 1) PROCESSING OF BIG DATASETS IN LINE WITH THE EUROPOL REGULATION

Let me start with my first point. Since last year, we have been in close contact with Europol in relation to the processing of large datasets sent by Member States to Europol or collected by Europol from publicly available sources (the so-called "open source intelligence"). As you know [*and as Catherine de Bolle described right before me]*, more and more digital content is generated these days. This means that more data is available for law enforcement in the context of criminal investigations. Europol receives and stores more contributions from national authorities. This has become an important part of the work performed by Europol to produce criminal intelligence and to support Member States' law enforcement authorities.

In April 2019, Mrs. de Bolle brought to the attention of the EDPS the challenges that Europol was facing with this phenomenon. This led the EDPS to investigate the matter. After one year of careful analysis, including discussions with Europol, we have found that this state of affairs raises several issues of compliance with the Europol Regulation. I need to stress here that Europol has been addressing many of these issues and **I would like to thank Mrs de Bolle for her determination in improving the level of compliance in this field and for our cooperation in the past months.**

However, one major concern remains, namely the continuous storage of large datasets by Europol throughout the criminal investigation (which means - for years) without assurance that it complies with the restrictions outlined in the Europol Regulation. You know well that the Europol Regulation contains a specific list of categories of individuals and categories of personal data that Europol can process. These are in general more restrictive compared to national law enforcement authorities.

The problem is structural - it relates to core working methods of Europol and the fact that Member States send Europol large datasets, which are difficult for Europol to process properly - in line with the requirements of the Regulation. Therefore, as a result of this

investigation, **on 17 September 2020, the EDPS have issued a decision to admonish Europol**.

This is the first time that EDPS issues an admonishment and I would like to clarify what it means. The EDPS have less corrective powers under the Europol Regulation than under Regulation 2018/1725, which applies to other EU institutions, agencies and bodies. We cannot, for instance, order Europol to bring processing operations into compliance with the provisions of the Europol Regulation. Apart from issuing an admonishment, we can either refer the matter to Europol with recommendations in case of alleged breach - which is not the case here because the facts are well established and agreed with Europol - or impose a ban. We believe that imposing a ban seems disproportionate at the moment.

Admonishments are meant to signal data processing activities that are not in line with the applicable data protection framework and to urge the agency to adjust its practices.

We now expect Europol to propose measures reducing the risks for individuals' fundamental rights, in line with the obligations of the Europol Regulation, and secure Europol's operational capabilities. I have invited Europol to provide an action plan within two months and to inform the EDPS of the measures put in place to address the issue within six months.

At the same time, the EDPS is monitoring the works of the European Commission concerning the review of the Europol Regulation, as certain aspects of the structural problems could be tackled by legislatives measures.

Ad 2) USE OF OPERATIONAL DATA FOR AI

Second, I would like to draw your attention to the debate around the **use of operational data for data science purposes.** So far, the EDPS have a clear position against the use of operational data for testing and validation purposes, both for security reason and because of the purpose limitation principle. Europol followed our position and implemented adequate policies.

However, the rise of AI brings the topic back on the table both at national and European level. To what extent should we allow the use of many datasets and the creation of data lakes for the purposes of training, testing and developing algorithm?

When we learned that Europol was planning to develop policies to frame the use of operational data for these purposes, we decided to launch an inquiry. With this inquiry, we want to get a clear understanding of the data processing activities taking place in that regard at Europol and to verify whether they rely on an appropriate legal basis. This inquiry

is at a very early stage and we are in discussions with Europol in order to understand what data science activities this would entail, in the context of their activities.

Ad 3) INVOLVEMENT OF NATIONAL ANALYSTS IN PROCESSING AT EUROPOL

My **third and last point** is about expressing the need for Europol to carry out joint analysis, to not only have their analysts but also the analysts from Member States processing data in Europol systems of the large datasets they receive from third parties.

This is a big shift in how Europol is functioning as Member States would not only share information with Europol and receive, in return, criminal intelligence. They would play an active part in the criminal intelligence analysis (for instance helping Europol to define priority cases on the basis of the use of algorithms running on Europol systems).

We had the first exchanges with Europol on this matter in the context of a prior consultation. The problem we see is that the Europol Regulation does not provide a clear legal basis that supports such an active role for national investigators at Europol.

III. Concluding remark

I have decided to focus my presentation today on 3 aspects:

4. **Processing of large datasets.**
5. **Use of operational data for data science purposes.**
6. **Involvement of national analysts.**

I am aware that these issues are also highly relevant at national level, in the context of the supervisory role of national law enforcement authorities. I believe that at least some of these issues should be a topic of conversation in the context of the review of the Europol Regulation.