

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

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Strengthening Europol's role in operational police cooperation: proposed Regulation (COM(2020) 796) (ESC number 41725)

Thank you for the [Explanatory Memorandum of 7 January 2021](#) submitted by the Security Minister (Rt Hon. James Brokenshire MP) which states that [a proposed Regulation](#) to strengthen Europol's mandate—the rules determining what Europol can do—will have no legal, policy or financial implications for the UK. This assertion is difficult to reconcile with the commitment made in the EU/UK Trade and Cooperation Agreement (TCA) to establish “cooperative relations” with Europol encompassing the exchange of information (including personal data) and operational cooperation in support of individual criminal investigations. Changes to Europol's mandate may well affect the scope and depth of the partnership it can establish with the UK as a third country outside the EU and the information and analysis it can share. We are disappointed that your Explanatory Memorandum does not examine the proposed changes to Europol's founding Regulation in this broader context, exploring both the opportunities and risks that a stronger mandate may entail for future cooperation between Europol and UK law enforcement authorities under the TCA. To inform our understanding, we ask you to provide further information on the matters outlined below.

Data protection

The proposed Regulation is intended to establish a more solid legal foundation for Europol to process and analyse large datasets to support criminal investigations undertaken by individual Member States or by the new European Public Prosecutor's Office (EPPO) once it is fully operational. The datasets may include personal data held in specific criminal investigation files which UK law

enforcement authorities decide to share with Europol. The European Data Protection Supervisor has “admonished” Europol for its handling of large datasets, noting:

The processing of data about individuals in an EU law enforcement database can have deep consequences on those involved. Without a proper implementation of the data minimisation principle and the specific safeguards contained in the Europol Regulation, data subjects run the risk of wrongfully being linked to a criminal activity across the EU, with all of the potential damage for their personal and family life, freedom of movement and occupation that this entails.¹

Given these concerns, do you consider that the additional safeguards proposed by the European Commission adequately address the risk of false incrimination and are you satisfied that it would be appropriate for law enforcement authorities in the UK to share large datasets with Europol on a case-by-case basis? We note that data processed in this way “shall be shared only within the Union”.² Does this limitation affect your assessment of the risks and benefits of sharing the details of an investigative case file with Europol?

SIS II alerts

The proposed Regulation would allow (but not require) Europol to create “alerts” in the Schengen Information System on third country (non-EU) criminal suspects based on information received from the UK (or other third countries) which would be immediately accessible to frontline law enforcement officers across the EU. What assessment has the Government made of the operational implications of this new provision? While it might increase the visibility in EU Member States of criminal suspects wanted in the UK (now that the UK no longer has direct access to SIS II and the ability to create its own alerts), it might also increase the risk that criminal suspects who are UK citizens will be apprehended and prosecuted abroad. Do you anticipate that alerts circulated in this way (based on information provided by the UK) which lead to an arrest would be followed by a request for extradition under Part Three, Title VII of the TCA on surrender so that the individuals concerned can be tried in UK courts?

Data sharing with private parties

Where Europol has received and processed personal data provided by private parties based in the UK, the proposed Regulation would allow (but not require) Europol to share its analysis with the UK’s national contact point (the National Crime Agency) if it is relevant to the UK. Do you expect detailed arrangements for sharing relevant personal data and the results of Europol’s processing and

¹ [EDPS Decision of 17 September 2020 relating to EDPS own inquiry on Europol’s big data challenge.](#)

² Article 18a(4) of the proposed Regulation.

analysis to be set out in the working and administrative arrangements envisaged in the TCA?³

Europol support for EPPO investigations in the UK

The proposed Regulation would require Europol to “actively support” investigations and prosecutions carried out by the EPPO, allow the EPPO indirect access to its databases, and report to the EPPO any criminal conduct which falls within its areas of responsibility (currently, criminal offences affecting the EU’s financial interests).⁴ We ask you to clarify the practical implications of this provision, given that the EPPO is an EU “competent authority” for the purpose of implementing the mutual legal assistance provisions of the TCA and may therefore play a role in investigating any financial irregularities or fraud involving the beneficiaries of EU funding in the UK.

Working and administrative arrangements

The TCA envisages that Europol and the UK will conclude working and administrative arrangements to “complement and implement” the provisions in Part Three, Title V (cooperation with Europol). Does this mean that the conclusion of such arrangements is an essential pre-requisite for cooperation with Europol to take place? What progress has been made in agreeing these arrangements and is final agreement dependent on the UK securing a law enforcement adequacy decision? We anticipate that the arrangements (if agreed) will be published on Europol’s website. Does the Government also intend to publish the details and inform Parliament of their content?

Financial contributions to Europol

The proposed Regulation would allow Europol to receive financial contributions from third countries with which it (or the EU) has an agreement.⁵ What assessment has the Government made of this provision for future UK law enforcement access to Europol’s data processing and analytical tools, as well as its products? As a matter of principle, do you consider it reasonable for Europol to charge for any “added value” that its services provide to UK law enforcement?

Stakeholder consultation

Your Explanatory Memorandum does not state whether the Government has consulted external stakeholders—notably the National Crime Agency, the Information Commissioner and others with an interest in cross-border law

³ Part Three, Title V, Article LAW.EUROPOL.59.

⁴ [Regulation \(EU\) 2017/1939](#) implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’).

⁵ Article 57(4) of the proposed Regulation and recital (41).

enforcement—on the proposed changes to Europol’s mandate and the implications for cooperation under the TCA. We ask you to confirm that you have consulted external stakeholders (or intend to do so) and to provide an overview of their responses.

We look forward to receiving your response by the end of March.

I am copying this letter to the Chair (Rt Hon Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Sir Robert Neill MP) and Clerk (David Weir) of the Justice Committee; the Chair (Rt Hon Harriet Harman QC MP) and the Clerk (Lucinda Maer) of the Joint Committee on Human Rights; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Alex Bernal of your Department; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR