



Activity Report

2021-2022

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TABLE OF CONTENTS

Table of contents.....	2
Foreword.....	3
I. Introduction	4
II. Organisation of the meetings.....	5
2.1 Main principles.....	5
2.2 Organisation of the meetings	5
Meeting of 15 June 2021	6
Meeting of 23 November 2021.....	7
Meeting of 31 May 2022.....	7
III. Main activities.....	8
3.1 Activities in the Work Programme.....	9
3.2 Other activities.....	12
IV. What to expect next	12

FOREWORD

The new Europol Regulation of May 2017 has opened-up a new chapter of cooperation among the Data Protection Authorities of the European Union regarding the supervision of Europol. While the European Data Protection Supervisor (EDPS) has taken over the supervision of Europol's processing activities, the Europol Cooperation Board (ECB) has been set up to facilitate the cooperation between the national supervisory authorities and the EDPS on issues requiring national involvement.

This third activity report covers the period of the Covid19 pandemic which created new challenges for supervisory authorities both in terms of newly arising legal questions as well as practical difficulties arising from the need of social distancing or even telework. This report reflects some of these challenges as two of the regular meetings of the ECB were held remotely and there was a reduced number of *in situ* inspections during the reporting period.

Furthermore, this activity report coincides with the adoption of major amendments to the Europol Regulation, *inter alia* allowing for the processing of big data and more cooperation of Europol with private actors. The ECB had issued an opinion on the Proposal during the reporting period. The amended Europol Regulation, besides changing the mandate of Europol, also has an immediate impact on the further existence of the ECB: It replaces the current model of coordinated supervision of Europol, carried out through the ECB with the single model of coordinated supervision laid down in Article 62 of Regulation (EU) 2018/1725. This horizontal approach in coordinated supervision is generally supported by the members of the ECB. However, it means that the ECB will cease to exist from the day that follows the publication of the Regulation amending the Europol Regulation in the Official Journal of the European Union. Therefore, this activity report can only cover a part of the usual reporting period of two years, as the end of the ECB will approach prior to the end of the term.

In addition to the global pandemic, the prior ending of the reporting period caused a certain amount of uncompleted tasks. Many of the tasks reported here correspond to items of the current 2021-2023 work programme. Those not completed by the ECB will be pursued in the context of the coordinated supervision under the framework of the European Data Protection Board.

The members of the Europol Cooperation Board

I. INTRODUCTION

Europol is an agency of the European Union (EU) that supports and strengthens action by competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.

Europol was originally established in 1995, when the Europol Convention¹ was signed. It became an agency of the EU in 2009, when the Europol Convention was replaced by Council Decision 2009/371/JHA². The Treaty of Lisbon³ that entered into force in 2009 then required the adoption of a new legal basis for Europol. This new legal basis is Regulation (EU) 2016/794⁴ (“the Europol Regulation”), which was adopted in May 2016 and became applicable on 1 May 2017.

Under Council Decision 2009/371/JHA, the Europol Joint Supervisory Body⁵ (JSB) was the independent body in charge of supervising Europol's activities to ensure the protection of individuals in relation to Europol's storage, processing and use of personal data. The Europol Regulation opens a new chapter regarding the supervision of Europol's activities in relation to data protection. The European Data Protection Supervisor (EDPS) becomes the supervisor of Europol and has now the task and duty of carrying out supervision activities over Europol. However, the involvement of national Data Protection Authorities (DPA) remains essential, since a large majority of the data collected and processed by Europol originates from Member States and will at a certain point be sent back to them. To maintain cooperation between the EU and national levels, Article 45 of the Europol Regulation establishes a new model of cooperation: the Europol Cooperation Board (ECB). The ECB has an advisory function and is composed of representatives of the national supervisory authorities of the Member States (except Denmark) and of the EDPS.

According to Article 44(2) of the Europol Regulation as amended in June 2022, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725, that is within the framework of the European Data Protection Board. However, for this activity report the old legal regime of the ECB still applies.

Article 17 of the ECB Rules of Procedure provides that at least every two years the Chair with the support of the Secretariat must draw up an activity report, in which insight is given on the activities of the ECB over the past period. The present document is the third activity report

¹ Council Act of 26 July 1995 drawing up the 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. 1.

² Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

³ Article 88 of the Treaty on the Functioning of the European Union (TFEU) provides for Europol to be governed by a regulation to be adopted in accordance with the ordinary legislative procedure. It also requires the establishment of procedures for the scrutiny of Europol's activities by the European Parliament, together with national parliaments.

⁴ Regulation (EU) 2016/794 of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53, hereinafter “the Europol Regulation”.

⁵ See archives of the Europol Joint Supervisory Authority's website available, at:

adopted by the ECB. Special attention is again given to the extent to which the intended activities of the ECB, as laid down in the 2021-2023 work programme, have been carried out.

II. ORGANISATION OF THE MEETINGS

2.1 MAIN PRINCIPLES

The ECB elected a Chair and a Vice-Chair from among its members for a term of office of two years. The Chair of the ECB is mainly in charge of representing the Board, convening the meetings, setting the draft agenda and chairing the meetings. The Vice-Chair performs these tasks when the Chair is unable to attend. In the ninth meeting of the ECB on 15 June 2021, Chair and Vice-Chair were due to election. However, members unilaterally adopted a statement endorsing the decision to maintain the outgoing Chair and Vice-Chair in their current position and asked them to continue fulfilling their duties as per their election in 2019. The reason given was that the proposal amending the Europol Regulation, under negotiation by the co-legislators at the time, provides for the single coordinated supervision model of Article 62 of Regulation 2018/1725 to be applicable to Europol in the near future. Given that the new term would be a (possibly very short) interim term, and in the absence of candidates for the positions of Chair and Vice-Chair, the ECB asked the outgoing Chair and Vice-Chair to remain in their current positions in order to ensure continuity of the work and organisation of the Board.

The EDPS provides the Secretariat of the ECB. The Secretariat assists the ECB in the performance of its tasks and acts solely in the best interests of the ECB. When carrying out its tasks, the Secretariat is only subject to the instructions of the Chair.

The ECB may establish one or more subgroups or appoint one or more rapporteurs to prepare its position on certain matters and decide on their mandate. The Secretariat also supports the work of the subgroups and the rapporteurs as decided by the ECB.

The ECB must draw up a draft work programme at least once every two years, in which an overview is given of the intended activities of the ECB during the period covered by the work programme.

2.2 ORGANISATION OF THE MEETINGS

In accordance with Article 45(5) of the Europol Regulation, the ECB must meet at least twice a year. The Chair may convene further meetings of the ECB on its decision or at the request of at least one third of its members. The costs and servicing of the Board's meetings shall be borne by the EDPS.

In the period 2021-2022, three meetings of the Europol Cooperation Board have taken place on the following dates:

- 15 June 2021;
- 23 November 2021;
- 31 May 2022.

Due to the abridged term of the reporting period, a second meeting in 2022 was neither legally required nor necessary.

The first two meetings were organised remotely, due to the COVID-19 pandemic, whereas the third meeting could be offered in a hybrid form, with some members convening in a meeting room at the EDPS's in Brussels and others participating online via the web conferencing system already used for prior remote meetings. In order to reduce the financial, travel and administrative burdens for attendees in case of in-person meetings, the latter meeting was organised in the same week in which the Supervision Coordination Groups for the Schengen Information System, for the Customs Information System, for the Visa Information Systems and for Eurodac were holding their respective meetings.

The following paragraphs summarise the topics discussed and actions taken during those three meetings.

Meeting of 15 June 2021

The ninth meeting of the ECB was all about the Proposal to amend the Europol Regulation⁶. On the one hand, it provided for an early end to the ECB and for its replacement by the coordinated supervision within the framework of the EDPB. This influenced the decision by the members not to elect a new Chair and Vice-Chair (*supra*, chapter 2.1 [Main principles](#), p. 5), but it also gave reason to analyse in depth the proposed changes to the mandate of Europol and to discuss the ECB draft Opinion on the Proposal amending the Europol Regulation. Following the meeting, the ECB Opinion was amended and ultimately adopted in written procedure on 23 July 2021. The Chair informed about recent events, especially his written contribution to the eighth Europol Joint Parliamentary Scrutiny Group meeting on 1 to 2 February 2021. The EDPS shared information about its supervisory activities, including its Opinions on Access to VIS and on the use of pre-trained ML models. The latter was outlined to members. The EDPS further reported on two upcoming Opinions on scope and on reasonable intervals under Article 36(1) of the Europol Regulation. The EDPS further thanked for the cooperation by the respective national SA's in two individual complaint cases. The EDPS further reported on the follow-up on its admonishment of Europol for its processing of large datasets received from Member States.

During the Europol Cooperation Board meeting of November 2020, the Europol Cooperation Board had agreed on a strategy to ensure joint monitoring of statistics processed on minors in EUROPOL's systems. This was part of the follow-up to the 2018 Annual Inspection, which had called for a closer supervision to ensure that data processed on minors classified as suspects relate to minors who have reached the minimum age of criminal responsibility. The EDPS reported on the feedback received from national SA's in the course of their related supervisory activities. National SA's confirmed that this exercise was useful and should be continued.

National SA's reported on their supervisory activities related to Europol.

It was then agreed to further prepare adoption of the work programme 2021-2023 for the ECB, even though the ECB might cease to exist before its full implementation. But the work programme would provide a trajectory to the successor of the ECB.

⁶ 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0796>.

Finally, questions of handing business over to the Coordinated Supervision Committee of the EDPB were discussed.

Meeting of 23 November 2021

The Chair informed members about recent events, especially the meeting of the Europol Joint Parliamentary Scrutiny Group on 25 October 2021. He furthermore introduced to the latest developments regarding the Proposal amending the Europol Regulation. Members took note of an open letter from 25 civil society organisations to the European Parliament of 20 October 2021. The EDPS reported on supervisory activities of general interest, namely the previously mentioned Opinion on reasonable intervals, a joint inspection of September 2021 regarding machine learning at Europol, information on a recent supervisory activity together with a national SA, on the follow-up to the admonishment regarding the processing of large data sets, on FIUnet, on a prior consultation regarding the data management portal, which was at the same time the first consultation with regard to NEO, Europol's new operational environment, and on the statistics regarding the processing of data of minors. The EDPS also suggested to discuss how the cooperation between EDPS and national SA's could be improved regarding inspections.

The ECB invited representatives from Europol's and Eurojust's SIRIUS project as well as from Europol's Data Protection Function to deliver background to a recent letter regarding SIRIUS. Members of the ECB articulated serious concerns regarding the aim of SIRIUS to promote voluntary law enforcement cooperation with private entities, especially telecommunication service providers, to obtain personal data including traffic data. Members questioned the compatibility of such an approach with EU law, namely the extended scope of the e-Privacy Directive which now extends to all interpersonal electronic communications, including number-independent services. Several SA's volunteered to prepare a statement to be adopted jointly by the ECB and the Coordinated Supervision Committee which is responsible for the coordination of the supervision of Eurojust related activities.

Several national SA's reported on their supervisory activities with a connection to Europol. It became clear that in general the SA's have begun to resume their regular supervisory activities, after a decline of *in situ* inspections due to the Covid19 pandemic.

Members furthermore discussed necessary amendments to the draft work programme 2021-2023 and recalled that while some activities in the draft programme were already ongoing, the programme still lacked final adoption. Some national SA's volunteered to complement the draft and it was decided to adopt the programme in written procedure as soon as possible. Further points of discussion were the transition of the ECB to the EDPB framework and status of the project ECB website. Members re-iterated that in order to make the work of the ECB transparent to the public and allow for an easy publication of central documents, the website should go on-line as soon as possible, irrespective of the upcoming end of the ECB.

Meeting of 31 May 2022

The Chair informed members of the ECB about three main recent events, namely the last Europol Joint Parliamentary Scrutiny Group meeting which he attended in person, the work programme 2021-2023 which was adopted by written procedure and the adoption of the Proposal amending the Europol Regulation. The Chair recalled that the publication in the Official Journal was announced to happen before the end of June.

The Data Protection Officer of Europol was invited to some of the items on the agenda and was given the opportunity to comment on recent developments from his point of view. He highlighted *inter alia* meetings with the appointed DPOs of the national authorities as a means

to discuss operational cases and promote data protection. He also noted an increasing involvement of (defence) lawyers in data subjects' access requests. Members posed different sets of questions regarding the training of employees and seconded national experts, the data protection culture at Europol, raising complexity of processing, namely AI, etc.

Another item of detailed discussion was the European Police Records Index System (EPRIS). The EDPS outlined two recently published Opinions in this regard, one being the Opinion on the Prüm II legislative Proposal⁷. In the second Opinion, of 25 April 2022, the EDPS responded to a prior consultation by Europol of a pilot project preparing a 'roll-out capable version of EPRIS', in anticipation of the planned legal basis for EPRIS.

Furthermore, the ECB members were informed about the state of affairs regarding a statement on the activities of the SIRIUS project that was first discussed in the previous meeting. It was noted that further treatment of this issue will occur under the EDPB framework.

The EDPS provided information on its recent supervisory activities, *inter alia* a follow-up to the admonishment of Europol reported previously as well as information on the next inspection, and on the restructuring of Analysis Projects at Europol. Several national SA's informed about their supervisory activities.

The ECB adopted a letter to the Coordinated Supervision Committee regarding the handover of tasks. Members also discussed the need to make the ECB's work products accessible to the public, wherever possible, through a dedicated website.

III. MAIN ACTIVITIES

The Work Programme for 2021 to 2023 as adopted by written procedure aims at ensuring that the current model of cooperation will evolve further, with its missions being taken over by the European Data Protection Board after entry into force of the amended Europol Regulation. The ECB members hope that this document will allow, among others, to provide for a smooth transition, to the benefit of the data subjects and the protection of our fundamental rights.

The work programme includes eleven intended activities for the Europol Cooperation Board to carry out during the period covered. The progress achieved regarding those activities, during the reporting period, is detailed under Section 3.1 below.

At the same time, the Work Programme for 2021 to 2023 allows sufficient flexibility to add other activities or to tackle unforeseen developments or events of relevance for the tasks of the ECB. The progress achieved regarding those other activities during the reporting period is detailed under Section 3.2 below.

⁷ Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council, COM/2021/784 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2021:784:FIN>.

3.1 ACTIVITIES IN THE WORK PROGRAMME

1 Review of the Europol mandate - Ongoing

Recent legislative Proposals from the European Commission demonstrate that the Regulation amending the Europol Regulation was only a step in a constant evolution of the mandate for Europol, in part entailing very concerning developments. Therefore, even though the ECB has issued an Opinion on the 2020 Proposal for a Regulation amending the Europol Regulation during the reporting period, the task to monitor closely the legislative developments regarding the mandate of Europol is ongoing and will remain an important element of the coordinated supervision activities under the EDPB framework.

2 Promoting and facilitating the exercise of data subjects' rights - Ongoing

The Work Programme had identified several tasks to carry out the activity of promoting and facilitating the exercise of data subjects' rights. Studying general problems relating to the exercise of data subjects' rights and promoting awareness of those rights are two of the main tasks of the Europol Cooperation Board (Article 45(3)(c) and (g) of the Europol Regulation). During the reporting period, the ECB planned to concentrate on raising awareness with the help of the ECB's own website in order to increase the visibility of the activities of the Board but also to facilitate the exercise of data subjects' rights whose data are processed by Europol. The development of the website has been continued during the reporting period, however, due to its early ending, the go-live will not be possible prior to the end of existence of the ECB. Currently a solution is sought to make the ECB work products available to the public, either on a static ECB website or on the website of its successor body.

3 Supervision activities at EU and national level - Ongoing

Under the Europol Regulation, the EDPS conducted the inspections of Europol and used the expertise and experience of the national supervisory authorities gained in supervising Europol within the former Europol JSB. One of the main tasks of the ECB is to "discuss general policy and strategy on data protection supervision of Europol and the permissibility of the transfer, the retrieval and any communication to Europol of personal data by the Member States".⁸ Therefore, the supervision of Europol has been among the items on the agenda of each meeting of the Board. In addition, national DPAs informed the Board of their supervisory activities carried out at national level in relation to Europol.

4 Review of cooperation agreements with third countries by the European Commission by 2021 - Ongoing

Pursuant to Article 25(1) of the Europol Regulation, Europol can transfer personal data to an authority of a third country on the basis of either an adequacy decision of the European Commission, an international agreement concluded by the Union pursuant to Article 218 TFEU or a cooperation agreement allowing for the exchange of personal data concluded between Europol and the third country before the entry into force of the Europol Regulation. Article 25(4) of the Europol Regulation provides that the European Commission should review all

⁸ Article 45(3)(a) of the Europol Regulation.

cooperation agreements concluded in the past with third countries by 2021. The ECB followed the developments regarding the review of cooperation agreements, the application of derogations from Article 25(1) and the legislative efforts to strengthen the Executive Director's authority to authorise transfers. Further steps should be taken following the review by the Commission of such agreements.

5 Update of the Handbook for Europol National Units (ENUs) - Ongoing

The former Europol JSB had adopted a Handbook for Europol National Units (ENU) that provides the Europol National Units with practical guidance on how to ensure compliance with national law and the Europol legal basis for the input/transfer of certain categories of data to Europol. The ENU Handbook was distributed at national level and aimed at harmonising the implementation of safeguards at national level as well as to function as an instrument for supervision by the national data protection authorities. Since the update of the ENU Survey, adopted by written procedure on 8 July 2020, there were no further steps undertaken during the reporting period. However, certain issues that require further practical guidance in the ENU handbook, such as the processing of data of minors, have been identified and should be addressed in the future.

6 Common audit framework for Europol National Units - Ongoing

Following the positive experiences with common audit standards in other areas of coordinated supervision, ECB members considered it useful to develop a common framework for ENU audits. No activities have unfolded in this respect during the abridged reporting period.

7 Process personal data originating from private parties - Ongoing

The activities unfolded under this point were also part of the monitoring exercise that the Europol Cooperation Board carried out under activity 4.1 of the Work Programme. The ECB carried out an analysis of the provisions of the Proposal amending the Europol Regulation that address the processing of personal data originating from private parties and included its recommendations in the Opinion on the Proposal.

The Europol Cooperation Board will continue to follow this novelty of processing data originating from private parties.

8 Processing of data concerning minors and victims of human trafficking - Ongoing

The joint monitoring of data processed by Europol on minors has been continued by the ECB members during the reporting period. Again, statistics from the Europol Analysis System on individuals under 15 have been provided by Europol to the EDPS, analysed and shared with ECB members in order to organise supervisory actions at national level, including checks on the legality of the data transfers by national competent authorities to Europol.

In addition, the working programme contains a related activity regarding another particularly vulnerable category of data subjects, i.e. victims of human trafficking. Here, it is upon the EDPS and the national supervisory authorities to take potential issues of data accuracy and

other risk factors into account in their ordinary inspections and supervisory activities. This activity therefore has the status ongoing.

9 Interconnection through interoperability - Ongoing

Regulation (EU) 2019/817⁹, together with Regulation (EU) 2019/818¹⁰ (hereinafter the “Interoperability Regulations”), establish a framework to ensure interoperability between three existing (i.e., the Schengen Information System, Eurodac and the Visa Information System) and three future EU information systems (i.e., the Entry/Exit System, the European Travel Information and Authorisation System and the European Criminal Records Information System for third-country nationals). The Europol Cooperation Board followed the legislative developments and their potential impact on the activities of Europol, and the processing of Europol’s data.

10 SIENA Investigations - Ongoing

SIENA (acronym for "Secure Information Exchange Network Application") is a communication system run by Europol. The ECB perceives SIENA to be a major IT-system not only in the cooperation with Europol, but also bilaterally between users in general. Statistics published by Europol also show a constant increase of information shared in the SIENA network.¹¹ SIENA is subject to constant development, including the promotion of the interoperability with national IT systems and the integration of further functionalities.¹² The ECB has vowed to collect up-to-date information on SIENA and to provide it to its members to support their supervisory activities. The ECB has also planned to conduct an initial analysis of the system and its use in order to identify potentially problematic aspects. This activity has not yet been carried out during the abridged reporting time.

11 Big Data Challenge - Coordinated Actions - Ongoing

Following up on the EDPS decision to admonish Europol for the processing of large datasets received from Member States and anticipating the evolution of the Europol’s legal framework - in particular with new provisions related to the processing of large and complex datasets and to personal data processing for research and innovation - and considering that Europol has been relying on help from some Member States with regard to such processing, the ECB has planned to cooperate to identify specific challenges and issues on the side of Europol or the Member States. As a first start, a joint inspection at Europol between the EDPS and national supervisory authorities was devoted to this subject. The results of this inspection require further use in the future to scope the activity and decide on further action.

⁹ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22/5/2019, p. 27.

¹⁰ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, OJ L 135, 22/5/2019, p. 85.

¹¹ *Idem*.

¹² Europol Work Programmes 2010-2016, <https://www.europol.europa.eu/publications-documents/work-programmes>.

3.2 OTHER ACTIVITIES

1 Consultation by the SIRIUS project team - Ongoing

As already mentioned under chapter 2.2 on page 7, the EDPS was approached by the Europol/Eurojust SIRIUS project team and the ECB took up the subject and invited project team members to explain the project and its work products. In an initial reaction, ECB members questioned the compatibility of the project's declared goal to increase law enforcement direct cooperation, thus data exchange, with telecommunications providers with the e-Privacy Directive which now extends to all providers of interpersonal electronic communications, including number-independent services. Several SA's volunteered to prepare a statement to be adopted jointly by the ECB and the Coordinated Supervision Committee which is responsible for the coordination of the supervision of Eurojust related activities. This work has not been completed during the abridged reporting period and will have to be carried on solely by the Coordinated Supervision Committee.

2 Joint inspections of Europol - Ongoing

In accordance with Article 44(2) of the Europol Regulation, the EDPS involved members and staff of the national SAs to participate as national experts in joint inspections of Europol. To this end, the ECB created a pool of national experts available to participate in joint inspections with the EDPS, and suggested to the EDPS the participation of several experts in view of such joint inspections. As a result, several members and staff of the national DPAs participated in (due to Covid19 limited number of) on-site inspections of Europol in 2021-2022.

IV. WHAT TO EXPECT NEXT

With the expected publication of the Regulation amending the Europol Regulation in the Official Journal of the European Union on 27 June 2022, the ECB will cease to exist on 28 June 2022 and the task of coordinating supervision activities between the EDPS and the national SA's will be vested with the Coordinated Supervision Committee (CSC) within the framework of the EDPB. It is expected that the CSC will base its activities on the foundations laid by the JSB in the past and the ECB more recently and will follow-up with the themes that will require further action in the future, among which are the following:

- the further evolution of Europol's mandate;
- the review of cooperation agreements with third countries;
- the update of the Handbook for Europol National Units (ENUs);
- the design of a common audit framework for ENUs;
- the processing of personal data originating from private parties in general and more specifically in the case of the SIRIUS project;
- the processing of data concerning minors.