Strengthened mandate for Europol - Consultation Strategy

Background information
The Commission has included in its Work Programme 2020 a legislative proposal to “strengthen the Europol mandate in order to reinforce operational police cooperation” among Member States. The need for such initiative lies on the need to ensure that the Agency is equipped to face the current and future challenges posed by criminality and terrorism.

A more extensive description of the context for this initiative can be found in the Inception Impact Assessment, published on 14 May 2020 in the Better Regulation Portal. The Inception Impact Assessment presents the identified problems to be tackled in the referred legislative proposal as well as the preliminarily identified options to counter these problems. The document can be consulted here and will be open for public consultation until 9 July 2020.

Below a summary of the identified challenges.

Problem n. 1. The current legal framework limits Europol to cooperating effectively with entities like banks, online service providers and non-governmental organisations which often hold data essential for investigating crimes such as financial crimes, corruption, cyber and cyber enabled crimes (including child sexual exploitation) or for countering terrorist content online as Europol may request the information held by such entities only via its members. The rules currently allowing the Agency to request data from private parties via proxy of national units of the Member States aim at ensuring that the information is obtained in full respect of the requirements of the applicable criminal procedure law and under the control of national authorities, including courts. As a consequence of the lack of effective direct cooperation with private parties, Europol is limited in providing effective support to Member States in the abovementioned areas.

Problem n. 2. The Agency’s legal basis needs to provide sufficient legal certainty for Europol to perform its tasks in support of the Member States. The question also arises as to granting new tasks to Europol, while respecting its mandate under the EU founding Treaties. Moreover, a number of other limitations (such as Europol’s inability to feed the Schengen Information System, or to connect to Prüm framework and identified gaps with regard to research and innovation, and in the coordination of investigations of so-called ‘high-value targets’

Problem n. 3 Despite an increasing operational need to establish structured cooperation with neighbouring countries, long and complex procedures have prevented Europol from engaging in operational cooperation with third countries.

Problem n. 4. Under the existing Europol mandate, the Agency may request the competent authorities of the Member States to initiate, conduct or coordinate a criminal investigation in specific cases where cross-border cooperation would add value. The current Europol mandate only foresees a rather light form of engagement between Europol and the Member States in

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1 High Value Targets (HVT) are individuals that constitute the highest serious and organised crime risk for two or more MS.
this regard, while recent experience has demonstrated the benefits of Europol’s engagement with individual Member States in high profile cases that affect one Member State but have repercussions at Union level.

Problem n. 5. Europol’s current legal regime entered into application before the adoption of the legislation applicable to other agencies in the Justice and Home Affairs area. As per Regulation 2018/1725, this divergence should be addressed in the context of any amendment to Regulation (EU) 2016/794.

1. Consultation scope and objectives
The main objective of the consultation is for the Commission services to receive relevant input from stakeholders to enable an evidence-based preparation of the future Commission initiative on a strengthened mandate for Europol. The Commission will seek the stakeholders’ contributions in particular on (i) the problems they consider should be addressed in the initiative; (ii) the effectiveness, efficiency, relevance, coherence and EU added value of available solutions to these issues outlined above; (iii) the roles of different actors in the actions to be taken and the level of action needed, taking into consideration the principle of subsidiarity; (iv) the possible options to tackle the problems and the impact thereof.

2. Mapping of stakeholders
The categories of stakeholders to be consulted will be, at least:
- EU institutions and agencies
- Law enforcement authorities in the Member States (police, customs, bodies with control functions and, where relevant, their European level networks
- Judicial authorities in the Member States, including prosecution offices
- Data protection authorities, through the Europol Cooperation Board and the European Data Protection Board (EDPB)
- International Organisations
- Non-governmental organisation, civil society (sector associations, where relevant)
- Academia and think thanks

Further categories may be added on the basis of input received from the public on the Inception Impact Assessment.

| 1. EU institutions and agencies | • DG HOME  
| | • DG JUST  
| | • DG MOVE  
| | • DG CNECT  
| | • DG GROW  
| | • DG FISMA  
| | • DG RTD  

| | • DG ENER  
| | • DG ENV  
| | • DG NEAR  
| | • DG DEVCO  
| | • JRC  
| | • EEAS  
| | • Europol, including Data Protection Function  
| | • Eurojust  
| | • European Anti-Fraud Office (OLAF)  
| | • EPPO  
| | • EBCGA  
| | • CEPOL  
| | • FRA  
| | • Eu-LISA  
| | • EMCDDA  
| | • European Data Protection Supervisor  
| | • European Parliament and national parliaments (via Joint Parliamentary Scrutiny Group)  
| | • Council of the EU and representatives of national Governments and administrations (via working groups)  
| 2. National authorities in Member States | • Law enforcement community (including customs) in Member States, including staff in Europol National Units and in Europol Liaison Offices.  
| | • Judicial authorities in the Member States  
| | • Data protection authorities (through Europol Cooperation Board).  
| 3. Private parties | • Online service providers,  
| | • Internet security companies,  
| | • Credit institutions,  
| | • Financial institutions, and other obliged entities within the meaning of Directive (EU) 2015/849,  
| | • Airport, Ports and Railway station Authorities  
| | • Shipping companies, and  
| | • Parcel service providers including express couriers.  
| 4. International organisations | [To be listed, also depending on the reactions to IIA]  
| 5. NGOs | [To be listed, also depending on the reactions to IIA]  
| 6. Academia, think tanks and research centres | [To be listed, also depending on the reactions to IIA] [depending on the response to the IIA we might consider further addressing specific institutes with online survey]  

The table below summarises the topic under revision and the targeted stakeholders.
Member States will be asked to appoint experts from law enforcement and judiciary, in order to gather first-hand experiences about obstacles and hurdles to Europol effectively supporting investigations and prosecutions of relevant crimes.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Stakeholders</th>
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<tbody>
<tr>
<td>Cooperation with private entities and service providers</td>
<td>- Commission officials in DG HOME, DG JUST, DG CNECT, DG GROW</td>
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<td>- EDPS</td>
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<td></td>
<td>- Council of the EU (via working groups)</td>
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<td>- European Parliament (via JPSG)</td>
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<td>- Europol staff</td>
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<td>- European Anti-Fraud Office (OLAF)</td>
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<td></td>
<td>- Representatives of Member State competent authorities, including judicial and those involved in the activities of Europol’s Internet Referral Unit. Staff in Europol National Units and in Europol Liaison Officers.</td>
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<td>- Competent authorities in the Member States that are involved in the indirect exchange of personal data with private parties (e.g. Ireland or Luxembourg where many relevant private actors are headquartered).</td>
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<td></td>
<td>- National Data Protection Authorities (via EDPB)</td>
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<td>- Representatives from private parties that are or may be impacted by the practice of direct exchanges of personal data between Europol and private parties.</td>
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<td>- Representatives from civil society (non-governmental organisations, etc.).</td>
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<td>Preventive nature of the mandate</td>
<td>- Commission officials in DG HOME, DG JUST, DG FISMA</td>
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<td>- EDPS</td>
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<td>- Council of the EU (via working groups)</td>
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<td>- European Parliament (via JPSG)</td>
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<td>- Representatives from Europol</td>
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<td></td>
<td>- Representatives of national law enforcement authorities (including customs, representatives from national FIUs and FIU.net),</td>
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<td>- National Data Protection Authorities (via EDPB)</td>
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<td>- NGOs</td>
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<td>Data protection regime</td>
<td>- Commission officials in DG HOME, DG JUST</td>
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<td>- EDPS</td>
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<td>- Council of the EU (via working groups)</td>
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<td>- European Parliament (via JPSG)</td>
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<td>- Europol, including DPO,</td>
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<td>- National Data Protection Authorities (via EDPB)</td>
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<td>- FRA</td>
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<td>- NGOs</td>
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<tr>
<td>International cooperation</td>
<td>- Commission officials in DG HOME, DG JUST</td>
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<td>- EDPS and Europol Cooperation Board</td>
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<td>- Council of the EU (via working groups)</td>
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<td>- European Parliament (via JPSG)</td>
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<td>- Europol, including DPO,</td>
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### Innovation
- Commission officials in DG HOME, RTD, JRC, CNECT
- EU research and innovation community (via existing networks)
- Frontex
- Council of the EU (via working groups)
- European Parliament (via JPSG)
- Representatives from Europol
- Representatives of national law enforcement authorities
- National innovation labs on security

### Access to SIS and Prüm
- Commission officials in DG HOME, DG JUST
- SIS community at EU level (via existing network)
- Prüm community at EU level (via existing network)
- eu-LISA
- EDPS
- Council of the EU (via working groups)
- European Parliament (via JPSG)
- Representatives from Europol
- Representatives of national law enforcement authorities (including SIS and Prüm end-users),
- National Data Protection Authorities (via EDPB)

### High Value Targets
- Commission officials in DG HOME, DG JUST
- EDPS
- Council of the EU (via working groups)
- European Parliament (via JPSG)
- Europol staff
- Representatives of Member State competent authorities, including judicial, experts and practitioners (e.g. lead investigators, operational analysts) and participants in the EMPACT/EU Policy Cycle activities (e.g. NEC, Drivers, Action Leaders). Staff in Europol National Units and in Europol Liaison Offices.
- National Data Protection Authorities (via EDPB)
- NGOs

### Initiation of criminal investigations
- Commission officials in DG HOME, DG JUST
- EDPS
- Council of the EU (via working groups)
- European Parliament (via JPSG)
- Europol staff
- Eurojust
- EPPO
- Representatives of Member State competent authorities, including crime experts and practitioners (e.g. lead investigators, operational analysts) and participants in the EMPACT/EU Policy Cycle activities (e.g. NEC, Drivers, Action Leaders). Staff in Europol National Units and in
3. Selection of consultation activities & their accessibility

In view of the current crisis due to the Coronavirus it will be difficult to interact with stakeholders in physical meetings. Therefore, the consultation activities focus on alternatives such as online surveys, semi-structured phone interviews, as well as meetings via video conference.

**Reactions to Inception Impact Assessment:** DG HOME will collect reactions to the publication of the Inception Impact Assessment.

**Dedicated discussions and presentation:** DG HOME will discuss the initiative with EU stakeholders, such as EDPS, ECB, Europol and Europol governance fora (HENU, WGCM, MB), Member States authorities (EMPACT meetings, EPCC), Council of the EU Working Parties (LEWP), and European Parliament Committees (LIBE) and groups (JPSG).

**Online surveys:** Experts from Europol, national competent authorities, private sector (financial institutions, online service providers), EU institutions and bodies, data protection authorities, NGOs and academia will be invited to contribute by means of online surveys and, where relevant, targeted follow up interviews. The surveys will aim at gathering qualitative and quantitative evidence on the practice and potential obstacles experienced directly or indirectly by Member States in fully exploiting Europol’s capacities. The surveys will include a set of predefined questions with some open-ended questions to allow participants to contribute with more detailed opinions or advice.

**Semi-structured interviews** may complement where possible the information collected through the surveys by filling in the possible data gaps and by improving the understanding of the responses.

In particular, interviews are aimed at:

i. gathering information related to the implementation of the current EU framework by pointing at loopholes and specific issues deserving further attention;

ii. deepening the understanding of the current practice;

iii. gathering recommendations and suggestions in order to improve Europol’s capacity to support Member States in the prevention and fight against serious crime, terrorism and other forms of crime affecting an interest of the Union.

DG HOME may conduct semi-structured interviews with Europol staff, data protection authorities, law enforcement representatives, companies, and civil society (including NGOs).

**Workshop:** Representatives from law enforcement from all EU countries (selected by Member States) will be invited to attend a workshop organised by the Commission in July. The meeting will be useful to gather experts' views about the solutions identified to tackle the problems.

The language regime of the consultation will be English.
The Commission will set up a dedicated webpage for the initiative that will serve as the major information tool concerning the consultations carried out. It will inform on the different types of consulting work planned and performed, and on the progress in the preparation of the proposal.

4. Overview on consultation activities by stakeholder groups and indicative timing

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Consultation Activity</th>
<th>Feedback on IIA</th>
<th>Internal (through ISG) continuous</th>
<th>Dedicated Discussions continuous</th>
<th>Online survey</th>
<th>Interviews</th>
<th>Workshop police cooperation</th>
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<td>Citizens</td>
<td>Planning</td>
<td>May - July</td>
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<td>Council (Member States via Working Groups)</td>
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<td>European Parliament National Parliaments (via Joint Parliamentary Scrutiny Group)</td>
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<td>Europol, including Data Protection Function and liaison officers at Europol</td>
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<td>Other agencies (Eurojust, EMCDDA, EBCGA, CEPOL, FRA, Eu-LISA, EPO)</td>
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<td>European Data Protection Supervisor (EDPS) and European Data Protection Board (EDPB)</td>
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<td>Law enforcement community in Member States (including customs)</td>
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<td>Private parties (to be further detailed)</td>
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<td>Academia</td>
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5. Consultation webpage & communication activities

DG HOME will set up a webpage dedicated to the preparation of this initiative on its Europa website. This will serve to provide information on the initiative, including the targeted consultations and when they are expected to be held.

Europol's, DG's, Commissioner(s)'s and Spokespersons websites and social media will inform the public as needed.