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Cooperation between Europol and Denmark

State of play after 6 months of the full implementation of the agreement

1. Introduction

On 1.11.2017 after the 6-month transition period as it was foreseen in art. 24 of the Agreement on Operational and Strategic Cooperation between Europol and Denmark (hereafter the Agreement), the provisions of the Agreement and the Administrative Arrangement (Art. 17 of the Agreement) were implemented.

During the negotiations and preparations prior the Agreement, Europol and Denmark agreed to assess the cooperation after 6 months of the full implementation.

This report aims to provide an overview of the current state of play and its conclusions reflects the position of both Europol and Denmark.

2. Background

After the entry into force of the Agreement Denmark became a 3rd partner country in terms of cooperation with Europol. This fact itself has some consequences on the law enforcement cooperation compared to another Member States:

- In case of relevant information identified in Europol databases, Europol shall seek the consent of the data owner Member State before it can be transferred to Denmark¹
- Denmark has no access to Europol information directly or indirectly² and lost completely the access to the EIS (Art. 18.(2).a data)
- Denmark participates in the Management Board (MB) as an observer without having voting rights
- Denmark participates in the regular Heads of National Units (HENU) meetings as a third partner country with limited rights and possibilities to discuss and resolve problems that occur in the context of operational cooperation with Europol

¹ Reference is made to the common provisions of the relations with Partners in accordance to Art. 23 (6) of ER: "If the data to be transferred have been provided by a Member State, Europol shall seek that member State's consent, unless the Member State has granted its prior authorisation to such onward transfer, ..."

² Only member states and Europol staff can have direct or indirect access to information stored by Europol in accordance with Art. 20 of the ER

Given Denmark's special position being a Member State, part of the Schengen area which fully implements, in its national law, the Schengen acquis, compared to other operational agreements, the Agreement has specific provisions (e.g. the recruitment of Danish speaking SNEs) that are unique if it comes to Europol's cooperation with 3rd partners.

Those special measures aim at compensating those shortcomings and ensure appropriate and expeditious information exchange with Europol and other Member States.

3. Danish speaking seconded national experts

One novelty in the Agreement was the recruitment of Danish speaking seconded national experts³; preliminary to work on Danish contributions to Europol and handle Danish information sent for the purpose of art. 18(2)a of the Europol Regulation, to search and insert data in the Europol Information System.

As agreed with Denmark, Europol recruited 4 Danish speaking SNEs and after the endorsement of the Management Board, a Europol office was set up in Copenhagen where 2 of the SNEs work within the limitation described in art. 10(6) of the Agreement⁴.

All SNEs are members of O1 Front Office (hereafter O1) under the line management of the Head of Unit of O1. They are embedded in the O11 Central Information Hub team. While the 2 SNEs working in The Hague at Europol can perform the same tasks as other staff members of O1, the 2 SNEs working in Copenhagen have limited possibilities due to the restrictions described above. Their daily tasks consist of:

- Cross-Checking Danish information against the EIS upon request.
- Hit-reporting via SIENA.
- Insertion of Danish data in the EIS upon request.
- Delivering awareness sessions and conducting meetings with collaborators.
- CBCC on Danish entities.

Their supervision is performed in the form of regular discussions including daily contacts, weekly phone conferences on Fridays and quarterly on-site visit in Copenhagen by HoU O1 and the responsible O11 team leader.

Europol provided the regular induction program for the SNEs and they receive continuous trainings throughout the year based on the business need identified.

Equally a Danish delegation – including an HR component – visited the SNEs in The Hague in February 2018 to interview them and ensure their smooth integration.

³ Art. 10.6 of the Agreement: "Europol shall assign up to 8 Danish speaking Europol staff on a 24/7 basis to the task of processing Danish requests, as well as inputting and retrieving the data coming from the Danish authorities into the Europol processing systems." "Denmark shall second national experts to Europol for that purpose."

⁴ "The Europol Management Board may decide to second Europol staff or national experts to the territory of Denmark if necessary for the purpose of the said assignment. Should they be deployed to the territory of Denmark, such staff or national experts shall not have access to Europol's systems beyond what is available to other Member States."

HoU O1 together with the Danish head of International Cooperation are regularly discussing the cooperation and performance of the SNEs and exploring further possibilities to use especially the SNEs in Denmark.

4. Information exchange via SIENA⁵

Based on the number of messages exchanged in 2018, Denmark is positioned as follows:

- Position 21 amongst Member States and Third Parties for the cases initiated, with 179 cases initiated (0.77% of the cases initiated by Member States and Third Parties).
- Position 20 amongst Member States and Third Parties for the messages exchanged, with 4,695 messages exchanged (1.58% of the messages exchanged by Member States and Third Parties).

It is expected that in 2018, the number of exchanged messages will increase by 14% (the extrapolated total number of exchanged messages is currently 15,165 for 2018) when compared to the number of exchanged messages in 2017 (a total of 13,310 SIENA messages exchanged). In 2018, 37% of messages sent were shared with Europol (37% of messages were shared with Europol in 2017 as well). It is expected that Denmark will initiate 578 cases in 2018. In 2017, Denmark initiated 371 cases (therefore, it is expected the number of cases will increase by 56%).

⁵ Statistical information was provided by Europol's Capabilities Directorate, Business Product Management team

5. Use of the Europol Information System (EIS)

To compare the evolution of a performance in relation to EIS is relatively difficult taking into account that the EIS is a dynamic database. The objects are constantly changing due to the data retention and review policy. The Key Performance Indicators adopted by the Europol Management Board as proposed by the HENUs may give a better picture about a country.

At the end of Q1 in 2018 the EIS contained 918 more objects inserted by Denmark than after the same period in 2017 (2017: 8,108 and 2018: 9,026). In Q1 2018 this number represents 1% of the total number of objects in EIS, making Denmark currently the 11th largest provider of data to the EIS.

During Q1 in 2018 the total number of searches performed by the SNEs on Danish information was 22,662 which make Denmark the 4th most frequent user of the EIS after Finland, Sweden and Germany. Compared to the last quarter of 2017 the number of searches increased by 7,932.

If we compare the searches to Q1 in 2017 when not only the former Europol National Unit but also Border Control points in Denmark had direct access to EIS we can see that the figures are almost the same: 22,662 in 2018 and 23,232 in 2017.

Denmark meets all KPIs. In Q1 2018:

- KPI: 850 objects in total per million inhabitants – DK: 1,570
- KPI: 250 person objects per million inhabitants – DK: 1,309
- KPI: 645 searches per quarter per million inhabitants – DK: 3,942

Up until this date, Denmark had shared data on 154 persons linked to terrorism via the EIS.

6. Cooperation with Europol's Analysis Projects

After the implementation of the Agreement the cooperation between Denmark's competent authorities and Europol's analysis projects has not changed. Currently Denmark is member of 28 Analysis Projects. The ones DK is not part of are: Hydra, ITOC and Heroin.

7. Reporting on relevant information from Europol databases

When Denmark became a 3rd party, one of the consequences was that in case of relevant information identified in Europol databases, Europol shall seek the consent of the data owner Member State before it can be transferred to Denmark.

In order to see if this fact has indeed resulted in any decrease of relevant information sharing with Denmark, Europol has compared the total number of reports (incl. cross-match reports, hit notifications and operational

analysis report) sent during Q1 in 2017 with the number of reports during Q1 in 2018.

In 2017 during the scrutinized period the number was 20 whereas in 2018 it was 55⁶.

Even if the increase of reports may be partially the result of the increased information exchange it also a clear sign that Denmark still benefits from the Europol's cooperation as any other Member State.

8. Consultation and monitoring of cooperation

In order to further the cooperation and enhance as well as monitor the developments of the provisions⁷, there is continuous dialogue between Europol and Denmark. This is mainly between HoU O1 Front Office and the Head of International Cooperation of the Danish National Police.

There are also frequent meetings from both parties; one of them is Europol's quarterly visit to Copenhagen in order to meet relevant partners including the review of the Europol office and the work of the Danish speaking SNEs deployed.

Both the Europol Management Board meetings and the Heads of National Units meetings hosted at the Europol Headquarters provide the opportunity of frequent high level meeting in case of any issue would arise.

In addition to the above the 4 Danish liaison officers of the Danish Liaison Bureaux at Europol have direct access to Europol teams and units and can foster the cooperation on a daily basis.

9. Financial aspects

According to art. 22 of the Agreement Denmark shall contribute to the revenue of Europol with an annual contribution. In 2017 (8 months) the contribution was € 1.46M.

In 2018, according to the latest GNI figures it should be approximately € 2.3M.

In addition to the annual contribution Denmark bears the majority of expenses related to the Danish speaking SNEs (cost free SNEs).

10. Executive findings - conclusions

Having assessed the current state of play as detailed in the report, taking into consideration the findings of both Europol and Denmark including factual, statistical information representing the information exchange the following conclusions can be drawn:

- All the provisions of the Agreement and the Administrative Arrangements were successfully implemented;
- The special measures of the Agreement well counter-balance the shortcomings of the status of Denmark being a 3rd partner of Europol. They put Denmark in a better position than any other 3rd partner and make Denmark a unique type of cooperation partner;
- The information exchange via SIENA between Europol and Denmark increased during 2018 compared to 2017;

⁶ Statistical information on reporting was generated by O1 Front Office using Europol's Analysis System on data related to serious and organised crime.

⁷ Also in line with Art. 8 of the Agreement

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- The insertion of Danish data in the EIS increased after the implementation of the Agreement and the searches in the system are at the same level as it was before the changes;
- The 4 Danish speaking SNEs recruited by Europol have integrated in the O1 Front Office. They perform their tasks and duties at a very good level and greatly contribute to the positive developments;
- 2 SNEs working in Copenhagen have some resources to do more due to the legal limitations of the Agreement. Denmark together with Europol will further work to exploit and utilise those resources;
- Regular exchanges and dialogue between Denmark including quarterly visits to Copenhagen take place to discuss issues relating to the cooperation. This way of consultation procedure is sufficient to monitor the developments, further future cooperation and resolve any issues.