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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**On the assessment of the Agreement on Operational and Strategic Cooperation between
the Kingdom of Denmark and the European Police Office**

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Content

1. Introduction	2
2. Methodology	4
3. Governance cooperation	5
4. Information exchange	6
4.1. Access to Europol databases	6
4.2. Information Exchange via the Secure Information Exchange Network Application	9
4.3. Liaison officers	10
4.4. Data protection safeguards	11
5. Operational cooperation	13
5.1. Analysis Projects	13
5.2. Serious and Organised Crime Threat Assessment	14
5.3. European Multidisciplinary Platform Against Criminal Threats	14
5.4. High Value Targets /Operational Task Forces	16
6. Operational consequences of being a third country	17
7. Financial contribution	18
8. Conclusions	18
8.1. Operational effectiveness	18
8.2. Data protection safeguards	20

1. Introduction

The Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and the European Police Office (hereafter “the Agreement”)¹ establishes the legal framework for Denmark’s cooperation with Europol. Under Article 25 of the Agreement, the Commission shall assess the provisions of this Agreement, and in particular the operational effectiveness of the Agreement and Denmark’s compliance with the data protection provisions thereof.

Until 1 May 2017, Denmark participated fully in the 2009 Europol Council Decision (hereafter “the Council Decision”)². Under Protocol (No 22) on the position of Denmark³, it has an opt-out of all EU Justice and Home Affairs legislation adopted after the Lisbon Treaty entered into force on 1 December 2009⁴. Regulation (EU) 2016/794⁵ on the European Union Agency for Law Enforcement Cooperation (hereafter “the Europol Regulation”) adopted in 2016 replaces the Council Decision. It became fully applicable on 1 May 2017. Because of the opt-out and due to a negative result of a national referendum held on 3 December 2015 on the question whether Denmark’s opt-out on Justice and Home Affairs matters should be changed, Denmark is unable to participate in the Europol Regulation.

Following the referendum, the President of the Commission, the President of the European Council and the Prime Minister of Denmark issued a Declaration⁶ on 15 December 2016, stating their agreement “*on the need for operational arrangements, minimising the negative impact of Denmark’s departure from Europol on 1 May 2017, for the mutual benefit of Denmark and the rest of the European Union in the combatting of cross border serious and organised crime and international terrorism. Such arrangements must be Denmark specific, and not in any way equal full membership of Europol, i.e. provide access to Europol’s data repositories, or for full participation in Europol’s operational work and database, or give decision-making rights in the governing bodies of Europol. However, it should ensure a sufficient level of operational cooperation including exchange of relevant data, subject to adequate safeguards*”.

The Agreement establishes the legal framework for Denmark’s cooperation with Europol called upon in the Declaration of 15 December 2016. It entered into force on 30 April 2017. On 27 April 2017, the Danish Parliament (Folketing) adopted Law No 411 on the European

¹ <https://www.europol.europa.eu/publications-agreement-operational-and-strategic-cooperation-between-kingdom-of-denmark-and-europol>.

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 OJ C 326, 26.10.2012, p. 299.

⁴ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, 17.12.2007, p. 1–271. So far Denmark has not exercised the option provided for in Part IV of Protocol (No 22) which would allow it to participate fully in the Europol Regulation.

⁵ Regulation (EU) 2016/794 of the European Parliament and of the Council 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.

⁶ Declaration by the President of the European Commission, Jean-Claude Juncker, the President of the European Council, Donald Tusk and the Prime Minister of Denmark, Lars Løkke Rasmussen, Brussels, 15 December 2016, Commission press release IP/16/4398.

Union Agency for Law Enforcement Cooperation (Europol) allowing the Danish Government to conclude the Agreement. The European Parliament adopted a resolution on 27 April 2017 approving the draft Council implementing decision.⁷ The Council gave Europol its authorisation to agree to the Agreement on 28 April 2017.⁸

The recitals to the Agreement make clear that it is intended to “*minimise the negative effects of the Danish departure from Europol*” by establishing cooperation at “*a level at least equivalent*” to that of third countries that have concluded similar agreements with Europol (recital 3).

A particular feature of the Agreement is Denmark’s specific position as an EU and Schengen Member State. Denmark’s specific position as an EU Member State is reflected in recital 4 of the Agreement. Recital 5 states that Denmark is part of the Schengen area and has implemented fully in its national law the Schengen *acquis*. Furthermore, recital 6 outlines that Denmark is part of the so-called Nordic passport union together with other Nordic States, two of which are EU Member States and two of which are associated with the implementation of the Schengen *acquis* and its further development. For these reasons, and in order to mitigate the adverse effects of the Danish departure from Europol, the Agreement pays particular attention to the exchange of information between Denmark and Europol through provisions that are unique.

The most interesting aspect in this respect is the unique service that Denmark receives through dedicated Danish speaking Europol staff or seconded national experts for treating, under the authority of Europol, Danish requests to input, retrieve and cross-check data on a 24/7 basis. This is subject to a number of conditions:

- accepting the jurisdiction of the Court of Justice as regards questions on the validity and interpretation of the Agreement raised by Danish courts or tribunals and as regards compliance by Denmark with the Agreement (recital 11 and Articles 18 and 20 of the Agreement);
- applying the data protection safeguards set out in the Europol Regulation (Article 10(4)(c) of the Agreement);
- complying with the EU Directive on data processing within the law enforcement sector⁹ when exchanging personal data under the Agreement (hereafter “the Law Enforcement Directive”), as this Directive forms part of the Schengen rule book which Denmark implements in its domestic law (recital 12 and Article 10(4)(d) of the Agreement);

⁷ European Parliament legislative resolution of 27 April 2017 on the draft Council implementing decision approving the conclusion by the European Police Office (Europol) of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol (07281/2017 – C8-0120/2017 – 2017/0803(CNS)), P8_TA(2017)0136.

⁸ 7281/1/17 REV 1 of 28 April 2017.

⁹ Directive (EU 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision, OJ L 119 of 4.5.2016, p. 89.

- recognising the role of the European Data Protection Supervisor (recital 12 and Article 10(4)(c) of the Agreement);
- making an “appropriate” annual contribution to Europol’s budget (recital 12 and Article 22 of the Agreement); and
- continuing to be a member of the Schengen area and be bound to the Schengen *acquis* (recital 12 and Article 27(1) of the Agreement).

Nonetheless Denmark’s status as a third partner country in terms of cooperation with Europol has a number of consequences of which the most important ones are listed below:

- Denmark has no direct or indirect computerised access to information held in Europol databases (Article 10(6) of the Agreement, Article 47 of the Implementing Arrangement);
- In case of relevant information identified in Europol databases, Europol has to comply with any access or use restrictions imposed by the data owner which may include seeking its authorisation before the information can be transferred to Denmark (Articles 10(5) and 11(3) of the Agreement);
- Denmark participates in the Management Board and its subgroups as an observer without voting rights (Article 8(1)(d) of the Agreement); and
- Denmark participates in the regular Heads of National Units meetings as a third partner country in an observer role with limited rights and possibilities to discuss and resolve problems that occur in the context of operational cooperation with Europol (Article 8(1)(c) of the Agreement).

Article 24 of the Agreement foresaw a 6-month transition period, meaning that the Agreement only became fully applicable on 1 November 2017. Also the Administrative Arrangement that accompanies the Agreement entered into force on 4 October 2017. The cooperation covered in this report concerns cooperation on the areas of governance, information exchange, and operations. The assessment covers the period of application of the Agreement from 1 November 2017 to 1 September 2020¹⁰.

2. Methodology

As part of the assessment process, the European Commission services sent on 15 September 2020 a questionnaire to the Danish Ministry of Justice (including the Danish National Police and its Data Protection Officer) and the Danish Data Protection Agency. The questionnaire and the replies provided by the Ministry can be found in Annex A.

In order for the Commission to provide insight to the way in which the Agreement has functioned, the Commission services also held videoconferences on 24 September 2020 with representatives of the Danish Ministry of Justice, the Danish National Police including its Data Protection Officer, and on 28 September 2020 with representatives from Europol responsible for the application of the Agreement, including analysts who use and have access to the information exchanged under the Agreement. It also held talks with the office of the

¹⁰ The Agreement became fully applicable on 1 November 2017, after the 6-month transition period as foreseen in Article 24.

Danish Data Protection Agency and the office of the European Data Protection Supervisor on 22 September 2020.

The assessment relied on the further following elements:

- The reports from the Danish Ministry to the Danish Parliament (Folketing) on the status of the situation of the Danish Police in relation to Europol (covering the years 2017 to 2019);
- Further documentation and information received from Denmark and from Europol; and
- The evolution of the security environment in the EU and globally, including the impact of the COVID-19 sanitary crises on crime.¹¹

Due to the sensitive nature of the cooperation between Denmark and Europol, some information was provided to the Commission by Denmark and Europol on the condition that it would be treated as confidential. This limitation has not stood in the way of the assessment, nor has this prevented an open and frank exchange of views with the Danish authorities and Europol in a very constructive spirit.

3. Governance cooperation

The purpose of the Agreement is defined as “*to establish cooperative relations between Europol and Denmark in order to support and strengthen action by the competent authorities of the other Member States of the European Union and of Denmark and their mutual cooperation in preventing and combating serious crime affecting two or more Member States of the European Union, terrorism and forms of crime which affect a common interest covered by a Union policy, in particular through the exchange of information between Europol and Denmark*”.

In this context, Article 8(1)(d) of the Agreement foresees the possibility to invite Denmark to attend the Management Board of Europol and its subgroup meetings and the meetings of the Heads of Europol National Units. Denmark can participate in its capacity as an observer and without the right to vote. The observer status allows Denmark to take part in the discussions at the meetings. This does not apply in case of special agenda items where the discussion takes place only between the Member States who are full members of Europol.¹²

Representatives from Denmark attended all Management Board meetings since the Agreement became fully applicable on 1 November 2017. Other third countries that have an operational cooperation agreement with Europol do not have the right to attend such meetings.¹³ This possibility to engage with other EU Member States within the governance

¹¹ Notably reporting by Europol on the impact of the COVID-19 crises on crime.

¹² Report of the Danish Ministry of Justice to the Folketing (Danish Parliament) of 26 October 2018 on the status of the situation of the Danish Police in relation to Europol, Legal Affairs Committee 2018-19, p. 3 (hereafter “the 2018 Folketing Report”).

¹³ The 2018 Folketing Report, p.3; Report of the Danish Ministry of Justice to the Folketing (Danish Parliament) of 29 October 2019 on the status of the situation of the Danish Police in relation to Europol, Legal Affairs Committee 2019-20, p. 3-4 (hereafter “the 2019 Folketing Report”).

structure of Europol is one of the features reflecting the special status of Denmark under the Agreement.

Representatives from Denmark also attended the Heads of Europol National Units meetings since the Agreement became fully operational, again as observers. Contrary to Management Board meetings, third countries having an operational cooperation agreement with Europol as mentioned in Article 25(1) Europol Regulation may also attend the Heads of Europol National Units meetings as observer in agreement with them.¹⁴

According to the report of the Danish Ministry of Justice to the Danish Parliament in 2018 on the Agreement, the Danish National Police is of the opinion that Danish participation in the Management Board and Heads of Europol National Units meetings is of operational and strategic value to them.¹⁵

4. Information exchange

4.1. Access to Europol databases

As part of the overall purpose of the Agreement to establish cooperative relations between Europol and Denmark, and in particular regarding the exchange of information, a key feature of the Agreement reflecting the unique status of Denmark is Article 10(6), stipulating that *“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”*.

Since the entry into force of the Agreement, four Danish speaking seconded national experts have been assigned to these tasks.¹⁶ They work under the authority of Europol. Under Article 10(6) of the Agreement, the Management Board can decide that national experts be deployed in Denmark if necessary in accordance with the purpose of the assignment. The Management Board decided on 1 May 2017¹⁷ that seconded national experts can be deployed in Denmark who, because of their proximity, will be the interface between the Danish authorities and Europol. As a result, two seconded national experts are posted in Denmark, whilst the other two remain posted at Europol in The Hague. While the latter can perform the same tasks as other seconded national experts posted at Europol, the two seconded national experts posted in Denmark have limited possibilities in the area of information exchange due to the restrictions mentioned in Article 10(6) of the Agreement, i.e. such staff shall not have access to Europol’s systems beyond what is available to other Member States. This means that the two seconded national experts posted in Denmark are treated in the same way as the national units of Member States and hence do not have access beyond what is granted to such units. In practical terms, this means that they can search the Europol Information System and retrieve

¹⁴ The 2019 Folketing Report, p. 4; the Heads of Europol National Units Rules of Procedure, Article 2(2), as in force as of 1 May 2020.

¹⁵ The 2018 Folketing Report, p. 3.

¹⁶ The 2018 Folketing Report, p. 4 and the 2019 Folketing Report, p. 7.

¹⁷ The 2018 Folketing Report, p. 4.

information, can insert and store information received the Danish authorities in the Europol Information System and are responsible for the quality control and review of such information, but cannot access other Europol databases.

The seconded national experts in The Hague can:

- Process Danish requests, i.e. insert Danish data into the Europol Information System and the Europol Analysis System (as well as retrieve data from these systems). According to the Agreement they can also modify, correct or delete such data;
- Cross-check information provided by Denmark against Europol databases following a Danish request; and
- Provide to Denmark any relevant information identified in Europol databases whilst respecting any use or access restriction established pursuant to Article 11(3) of the Agreement.

Requests from the Danish police and transfer of data to the Europol Analysis System within normal working hours are processed by the seconded national experts posted at Europol in The Hague. Police districts can send requests directly during normal working hours to the seconded national experts posted in Denmark, who then process the data in the Europol Information System and send a reply whether a hit was generated directly back to the requesting police district and a full reply to Denmark via Europol's Secure Information Exchange Network Application.¹⁸

In relation to requests for a search in the Europol Information System made outside normal working hours, they are processed by the seconded national experts in Denmark within normal working hours on the first subsequent weekday, unless the police district considers the request urgent in nature. In such a situation the police district sends the request to the Danish National Police's 24-hour National Situations and Operations Centre, which forwards the request as soon as possible to the Europol Operational Centre via Europol's Secure Information Exchange Network Application. The written request is followed up by a telephone request to the Europol Operational Centre, where the Danish National Situations and Operations Centre draws attention to its urgent nature. The Europol Operational Centre will provide the reply to the Danish National Situations and Operations Centre by phone, which will be followed up by a message in writing through Europol's Secure Information Exchange Network Application. The Danish National Situations and Operations Centre will then notify the police district of the outcome of the search as soon as possible.¹⁹ The Danish National Situations and Operations Centre is staffed 24/7 with staff from the Danish National Investigation Centre and are specially trained in overseeing communication between the Danish National Police and international partners.

Due to restrictions in the Agreement, the seconded national experts located in Denmark are not allowed access to any other system than the Europol Information System, leaving out all of Europol's other databases, which their Danish colleagues who are located at Europol in

¹⁸ The 2018 Folketing Report, p. 5.

¹⁹ The 2018 Folketing Report, p. 5.

The Hague can access. The seconded national experts in Denmark are thus limited in relation to which tasks they can perform for Europol. Therefore, the Danish National Police finds that there is potential for improvement in terms of the tasks of the seconded national experts located in Denmark. The Danish National Police and Europol are in an ongoing dialogue to improve procedures that can help to better utilize their skills and working hours.

Denmark is a frequent user of the Europol Information System. In particular, the Danish National Police requests the seconded national experts at Europol to run searches against the Europol Information System on a daily basis and provides a weekly input of relevant criminal cases and suspects. The Danish National Police considers *“results and hits in the analysis projects and the Europol Information System highly valuable when investigating organized criminals committing border-crossing crime”*.

Examples of the use of the Europol Information System²⁰:

- I. The Danish Police identified a case of money counterfeiting, where Europol, upon a Danish request, conducted a search in April 2019 in the Europol Information System. This produced a hit on a Bulgarian citizen who had just been taken into custody in Denmark in a counterfeiting case. Information from the Europol Information System showed that the suspect had been reported to that system by Europol on behalf of Switzerland in a case concerning counterfeiting. The suspect had put two counterfeit 200 euro notes into circulation in Switzerland, and the Swiss police, in a search of the person’s premises, had found the suspect to be in possession of 162 counterfeit 200 euro notes. Information from the Europol Information System containing a photograph and a copy of an ID card was forwarded to the Danish police, and the Danish National Investigation Centre obtained supplementary information from Switzerland via Europol which showed that the suspect had been sentenced to 20 months in prison in Switzerland in 2018 and had been deported from Switzerland in February 2019. The information was presented in court in connection with the criminal case in Denmark. It is evident from the judgment that in assessing the question of guilt, the district court emphasised the fact that the suspect had committed similar crimes in Switzerland. The person was convicted in Denmark.

- II. In June 2020 a Danish request to Europol generated a hit in the Europol Information System which identified two potential suspects. The hit was related to two Romanian nationals who were checked by the Copenhagen Police. The hit contained information about one of the Romanian nationals. According to the hit, the Romanian national was suspected of theft from ATM machines in Switzerland by the use of explosives. Based on the information from Switzerland, the Danish police started an investigation against the two Romanian nationals and initiated a correspondence through Europol’s Secure

²⁰ The 2019 Folketing Report, p. 8.

Information Exchange Network Application with a number of Member States. This investigation led to the arrest of the two Romanian nationals after a similar attack in Denmark committed later in June 2020. On the background of the correspondence via Europol's Secure Information Exchange Network Application, Switzerland has since issued an extradition request on one of the suspects. The Netherlands has forwarded a request to Denmark regarding the other Romanian national who is a suspect of an attempted manslaughter in the Netherlands. Furthermore, in September 2020 Europol hosted an operational meeting in the case with the participation of a number of Member States. The two Romanian nationals are currently in pre-trial custody in Denmark.

In addition to the exchange of information, the Agreement outlines a number of areas for cooperation, such as the exchange of specialist knowledge, general situation reports, results of strategic analysis and other forms of information sharing. The Danish National Police finds that *“these areas of cooperation are of great value to the Danish police, providing both operational and technical knowledge. The situation reports and strategic reports provide knowledge to the management level and our national analysts”*.

4.2. Information Exchange via the Secure Information Exchange Network Application

The Agreement foresees that Denmark shall designate a national contact point to act as the central point of contact between Europol and the Danish competent authorities.

In its reply to the questionnaire the Danish National Police mentioned that the Danish National Contact Point is located within the National Situations and Operations Centre which serves as the Single Point of Contact for all international communications. The Agreement did not give rise to a change of its structure. According to the Agreement, Denmark shall ensure the possibility for the national contact point to enable information exchange on a 24-hour basis. The national contact point shall also ensure that information can be exchanged without delay with the Danish competent authorities.

Denmark ensures this obligation through the Single Point of Contact, which operates 24/7 and which, as mentioned above, is located within the Danish National Police. Furthermore, the Danish Desk at Europol can also be reached on a 24/7 basis.

The following departments have (varying degrees of) access to Europol's Secure Information Exchange Network Application:

- The National Police: mainly the Single Point of Contact and the units of International Cooperation and International Communication;
- The national cyber-crime center;
- The State Prosecutor for Serious International and Economic Crime, e.g. the Danish Asset Recovery Office;
- The Danish Security and Intelligence Service; and

- Specialized and selected units in the police districts which are using Europol's Secure Information Exchange Network Application for border policing purposes.

It is important to underline again that under the Agreement the Danish authorities do not have direct or indirect access (i.e. an access system using a hit/no hit method) to data held in the Europol Information System. The requested information is provided to the National Danish Police by Europol's Operational Centre.

The information exchange of Denmark via Europol's Secure Information Exchange Network Application and the number of cases initiated have steadily increased over the years. That has not changed since the Agreement entered into force. That applies also to the searches in the Europol Information System, which is carried out, on behalf of Denmark, by the Danish speaking seconded national experts.

The number of messages exchanged in Europol's Secure Information Exchange Network Application by Denmark in 2019 increased by 27% compared to 2018. In terms of cases initiated by Denmark, the number increased by 81% in 2019 compared to 2018.

The searches run in the Europol Information System on behalf of Denmark increased by 32% in 2019 compared to 2018. The objects inserted in the Europol Information System increased by 20% in 2019 compared to 2018.

4.3. Liaison officers

One of the specific features of Europol is that it hosts liaison officers from all Member States, as well as from several third countries and international organisations, in its premises in The Hague. The Danish liaison officers fulfil a large number of tasks, aimed at supporting cooperation with Europol and all other partners deploying liaison officers to Europol. Their tasks are of a strategic, coordinating and investigation-supporting nature, as well as contributing to the exchange of information and criminal intelligence, which can be used in both national and cross-border investigations.²¹

Europol and the Danish National Police entered into an agreement on 3 October 2017 governing the tasks, rights and obligations of Danish liaison officers. That agreement relates primarily to the liaison officers posted at the Danish desk at Europol.

The Danish National Police has posted one Deputy Chief Superintendent and two police officers at its Liaison Office at Europol as well as one representative from the Danish Security and Intelligence Service. They are trained in overseeing communication and international cooperation. They ensure a 24/7 support between law enforcement counterparts in need of Danish support or vice versa and are the extension of the national contact point in Denmark.

The cooperation between Danish liaison officers' cooperation with Europol and the other countries' liaison officers is good and constructive. The liaison officers have been a great asset in organising virtual meetings, not least during the COVID-19 period.

²¹ The 2019 Folketing Report, p. 5.

4.4. Data protection safeguards

According to Article 6 of the Agreement, the national contact point is also the central point of contact in respect of review, correction and/or deletion of personal data.

In relation to the question how many requests for review, correction and/or deletion of personal data have been submitted to the national contact point and by who (mainly by Europol or mainly by the Danish competent authorities), over the reporting period the Danish National Police received one request for access, rectification and deletion of personal data submitted to Europol by the data subject. This request was forwarded to Europol via the national contact point and the data subject was informed about the transmission. The Danish National Police received three requests made by the data subjects for deletion of personal data relating to a vehicle in the national databases and Europol's and Interpol's databases. The data subjects were not registered in Europol's database, and the police informed the subjects accordingly.

These three requests were processed in accordance with the rules laid down in the Danish Law Enforcement Act, (hereafter "the Act"), which transposes the Law Enforcement Directive²². According to Section 17 (2) of the Act, the data controller shall, at the request of the data subject, without undue delay, delete information processed in violation of chapter 3, or if it is required to comply with a legal obligation, to which the data controller is subject. .

Denmark also specified in its reply that it has received a few notifications from Europol, where Denmark by mistake had requested the upload of data on minors. The information was corrected immediately.

Europol has also contacted Denmark regarding the correction of data on persons updated with the wrong birth year, e.g. in 1901 instead of 2001. These updates were caused by a technical mistake in the input of spreadsheets in batch uploads to the Europol Information System. The updates were immediately assessed and corrected.

Articles 11 to 13 of the Agreement concern the implementation of provisions covering specific data protection guarantees. Article 11 concerns the transfer of personal data between Europol and the Danish National Police, whereas Article 12 concerns the use of information by the Parties. Article 13 regulates onward transfer of the information received by Europol or by Denmark.

As described in the introduction, it was a condition for the Agreement that Denmark implemented the Law Enforcement Directive within the law enforcement sector. Furthermore, it was a condition that Denmark applied the data protection safeguards set out in the Agreement.

Access to information from Europol by the Danish National Police is regulated by Article 11 of the Agreement and by the Act.

²² See footnote 9.

Section 4 of the Act contains a number of basic data protection principles, which have to be complied with when the Danish National Police processes personal data for law enforcement purposes. That section provides that personal data must be collected for specified and explicit purposes which fall under the purposes listed in the Act's section 1(1). Other principles laid down in that section are that processing for purposes other than for which the data were collected must not be incompatible with these specified and explicit purposes (section 4(2)), and that the information processed must be relevant and adequate. Other data protection principles are laid down in sections 4(3) and (4), i.e. the collection of personal information must not exceed what is required to fulfil the purpose and must be accurate and if necessary, updated.

Sections 9 and 10 of the Act list general criteria for the processing of personal data, for which the Act is applicable. According to section 9, personal data may only be processed if processing is necessary in order to prevent, investigate, detect and punish criminal offences, including the protection against and prevention of threats against public security. According to the Act's section 10, special categories of data, such as data revealing political or religious beliefs or biometric data may not be processed unless strictly necessary and only if processing takes place in order to fulfil the purposes listed in the Act's section 1.

The Danish National Police has designated a data protection officer for the processing of personal data by the Danish police within the scope of the Act. The Data Protection Officer has, inter alia, been entrusted with the task of monitoring compliance with the Law Enforcement Directive.

As regards the implementation of safeguards related to the use of special categories of data as per Article 11(5), under section 10 of the Act, special categories of data, such as data revealing political or religious beliefs or biometric data may not be processed unless strictly necessary and only if processing takes place in order to fulfil the purposes listed in the Act's section 1.

As regards the implementation of Article 12 on the use of information received from Europol, Denmark has to respect any restrictions given by the data owner. This refers to the possibility for Europol, as laid down in the Europol Regulation, to restrict access to the information or to other specific terms it may add as part of the use of the information shared. This is reflected in Article 12(1) of the Agreement. In case of a transfer of information from Denmark to Europol related to a Danish case, the Danish contact point will liaise with the investigators in charge of the investigation to check if such a transfer could jeopardize the investigation.

On the question how often the Danish National Police has been asked to grant authorization to use information for a different purpose than the purpose for which the information was provided and how often such authorisation is granted under Article 12, including examples, Denmark has no statistics on the frequency of requests to grant authorization to use information for different purposes than for which it was initially provided. Denmark provided a number of examples where an authorization could be granted. This concerns requests to use information from police reports in cases which are about to be presented in a court hearing.

Another example given is where a request and authorization can also be related to data under which the data owner and the details of a cross match is hidden.

In relation to Article 13 on onward transfer of information received from Europol, onward national transfers to competent authorities are done through Europol's Secure Information Exchange Network Application or via the police communication system. The Danish National Police does not share personal or operational data with private parties unless the data owner has given consent. Such onward transfers are most relevant in relation to Denmark's sovereign areas Greenland and the Faroe Islands, which are considered third countries under EU law. However, such transfers did not take place yet. Denmark has not requested Europol to authorise an onward transfer as described.

In reply to the question on Article 11(5) of the Agreement (on transfer by Europol of sensitive personal data which is prohibited unless strictly necessary and proportionate), the Danish National Police said that it is not privy to information regarding such transfers.

As regards the question how often Denmark is asked by Europol to agree on onward transfer other than to the competent authorities in the Member States of the European Union (i.e. onward transfers to third States or international organisations), Denmark has given its prior consent allowing Europol to share data with such third States and international organisations that have operational agreements with Europol.

5. Operational cooperation

The Europol Analysis System is a central system used to analyse the data provided in accordance with the processing purposes established in Article 18 (2)(b) and (c) of the Europol Regulation. It contains a number of analysis projects which represent crime areas falling within Europol's mandate, for example human trafficking and cybercrime.

5.1. Analysis Projects

The purpose of the analysis projects is to support Member States' analytical activities with a view to fighting organised crime and other types of serious crime, as well as monitoring organised and serious crime in Europe at a strategic and operational level.

Under Article 14 of the Agreement, Denmark is invited by Europol to take part in new or existing operational analysis projects in which it was not taking part when the Agreement entered into force on 30 April 2017. It also allows Denmark to continue to take part in the operational analysis projects in which it was taking part before 1 May 2017.

In the annual report of October 2019 on the Agreement to the Danish Parliament, the Danish National Police outlined that *“The analyses are supplied to the Member States and third countries with an operational agreement in various forms, ranging from simple cross-match reports and link charts to more in-depth analysis reports. Based on such information, the countries participating in a particular analysis project can initiate a meeting to coordinate operational efforts or to enhance Member States' knowledge of particular criminal*

individuals or criminal organisations. Denmark can itself initiate or seek support for such meetings and can participate by invitation".²³

Before 1 May 2017, Denmark participated in 26 analysis projects. This continued during 2017 and 2018. As of 1 July 2019, Denmark took part in 31 analysis projects.²⁴ Since July 2020, Denmark again participates in 26 analysis projects. In addition, Denmark has pending requests for membership of two analysis projects.

Denmark participated in two ongoing investigative analysis projects since the Agreement entered into force. Most recently, Denmark initiated an operational meeting in September 2020 in the context of an analysis projects.

5.2. Serious and Organised Crime Threat Assessment

The Serious and Organised Crime Threat Assessment is a strategic analysis product taking the form of a threat assessment that Europol prepares for a four-year period. It forms the basis for the European Multidisciplinary Platform Against Criminal Threats (hereafter "EU Crime priorities") described below. Half way through the four-year cycle Europol assesses the Serious Organised Crime Threat Assessment to see if it continues to adequately reflect the threats identified earlier. All Member States and third countries can contribute to this assessment. Denmark contributed in the past to this assessment, and the change in Denmark's status in relation to Europol has not changed this.

5.3. European Multidisciplinary Platform Against Criminal Threats

The EU Policy Cycle for serious and organised crime (hereafter "the EU Policy Cycle") and its implementation mechanism, the EU Crime priorities, put into practice the EU's strategic priorities on the fight against organised and serious crime as established by the Council on the basis of the Serious Organised Crime Threat Assessment. It is the operational follow-up to this threat assessment. It does so by translating each of the EU Crime priorities into annual operational action plans.

The operational cooperation under the EU Crime priorities is driven by the EU Member States. Denmark participates with other EU Member States in the meetings of the national coordinators of the EU Crime priorities. Each of the priorities is led by a Member State (the so-called "driver"). A third country can take on the role of driver. Europol supports the cooperation through the support unit for the EU Crime priorities. This support also has a financial component. As a result of its status as a third country in relation to Europol, Denmark cannot independently apply for funding from the resources earmarked under the Europol budget for the EU Crime priorities.

Denmark continues to be among the relevant actors that can take part in all the EU Crime priorities for 2018-2021. From 2021 on, Denmark will take part in all priorities. Denmark's participation in the EU Crime priorities is *"rooted in, among others, the Danish National*

²³ The 2019 Folketing Report, p. 9.

²⁴ The 2019 Folketing Report, p. 9.

Police's National Investigation Centre, the Danish National Police's National Cyber Crime Centre, the National Traffic Centre, the State Prosecutor for Serious Economic and International Crime and the Danish Customs Agency".²⁵

Europol indicated that Denmark is an active contributor to the Operational Actions under the EU Crime priorities, being involved in about half of all such Operational Actions. Under the 2020 Operational Actions the Danish National Police participates in 120 of such Actions out of a total of 249.

Europol also frequently invites Danish investigators to operational meetings in cases with connections to Denmark. Representatives from the Danish National Police attended operational meetings in cases such as skimming and black box attacks, drug smuggling, and trafficking in human beings.

Examples of cooperation with Europol as of the investigation of specific cases²⁶:

- I. It may be mentioned, for example, that on 16 July 2019 an operation was launched against an Albanian criminal network, primarily of drug smugglers, in what is known as "Operation Goldfinger", relating to the smuggling of 1650 kg of cocaine into Denmark. The case has been investigated in Denmark by the Copenhagen Police since October 2019 in a cooperation with the Albanian police and several European countries coordinated by Europol. The combined operation resulted in 31 arrests in Denmark and another five arrests in other countries, the seizing of large quantities of cocaine, and the seizing of weapons and various items of property, cars, cash and other assets. The Danish National Police's view is that the cooperation between Europol and the other countries taking part in the operation worked very well, and the coordination with and assistance from Europol made a very positive contribution to the case.
- II. Another major case can also be mentioned, concerning theft of expensive hospital equipment from February and March 2019, where the cooperation between Denmark and several Member States and assistance from Europol was crucial in clearing up the case. The Danish police were made aware through the Secure Information Exchange Network Application in February 2019 that a member of a criminal gang was on the way to Denmark. Based on this information, the Danish police were able to take the necessary measures and subsequently arrest four foreign nationals who could be linked to the theft of hospital equipment to a value of around DKK 13 million from a Danish hospital. In subsequent close cooperation between the Danish, German and Spanish police and Europol's Analysis Projects, six packs of hospital equipment were found in Frankfurt, all containing objects from the theft at the Danish hospital.
- III. Mention can be made of a case of unlawful deprivation of liberty and violence

²⁵ The 2019 Folketing Report, p. 4.

²⁶ The 2018 Folketing Report, p. 12-13.

committed against a Danish citizen in Spain, which was solved in an uncomplicated and successful cooperation between the Danish and Spanish police, coordinated by the Danish and Spanish liaison officers at Europol headquarters in The Hague.

5.4. High Value Targets /Operational Task Forces

In the summer of 2017, Europol launched a new concept for target identification and combating of what are known as High Value Targets. High Value Targets are defined as organised criminals who pose a high crime threat to one or more EU Member States, and who commit crimes covered by Europol's mandate²⁷.

The concept means that the Member States can present proposals regarding the individuals who appear on the list of High Value Targets, after which Europol selects individuals on the list based on various criteria set out in an established procedure. Examples of criteria may, for example, be the ability and desire to harm private or public interests, access to expertise, access to financial resources, the ability and desire to use violence and the ability and desire to engage in corruption.

When the Member States, in cooperation with Europol, have selected a High Value Target, an Operational Task Force is established. The precondition is that the Member States allocate sufficient investigative resources and expertise and commit to use Europol's tools and services, such as the Secure Information Exchange Network Application, the Europol Analysis System and other support services for operational and analytical support.

Because of its status as a third country in relation to Europol, it is not possible for Denmark to propose High Value Targets. This means that Denmark cannot initiate the process leading to an Operational Task Force. However, Denmark can be invited to take part in an Operational Task Force by a Member State or by Europol and be operationally and financially supported when implementing activities defined within the operational plan. Denmark has taken part in one Operational Task Force.

Organised crime groups in Denmark are central to criminal activities and the distribution of drugs in the Nordic region. These networks are controlled by persons who could reasonably be proposed to appear on the High Value Target list. However, Denmark is limited in contributing to the High Value Target list, i.e. it can make suggestions to include names list but cannot propose them.

Denmark can only participate in Operational Tasks Forces by invitation, and cannot initiate an Operational Task Force.

Europol frequently invites Danish investigators to operational meetings in cases with connections to Denmark. In its replies, the Danish National Police mentions in particular that they attended operational meetings in cases such as skimming and black box attacks, drug smuggling, and trafficking in human beings.

²⁷ The 2019 Folketing Report, p. 5.

6. Operational consequences of being a third country

Compared to the possibility for the other Member States to directly query the Europol Information System, the Danish model inevitably leads to a delay in the exchange of information, as the Danish National Police has to make a request to the seconded national experts who will do the search on behalf of the Danish National Police, instead of doing the search themselves.

This lack of access also has other consequences, such as the impossibility for the Danish National Police to use the Europol application called QUEST (which stands for Querying Europol Systems) and which would allow a Danish front line officer to directly access certain data in the Europol Information System from smartphones or tablets.

The lack of access also led to a lack of integration between the Danish National Police's analysis platform called POL-INTEL and the Europol Information System. The reason is that this analysis platform is used to search information in various Danish databases. Because the Danish National Police cannot have access to the Europol Information System, the Europol Information System cannot be integrated with its analysis platform. It was originally assumed when the analysis platform POL-INTEL was implemented that it would directly integrate the Europol Information System with a view to support the ability of the police to create a combined intelligence picture for use in combating in particular cross-border crime. The Europol Information System would thus have represented a data source in the Danish National Police analysis platform POL-INTEL. However this is not possible within the framework of the Agreement. This limits the operational value of this investigative tool as it cannot make optimum use of available investigations and information on foreign criminals, and trends in the patterns of crime.

From an operational perspective, the lack of access means that when on patrol, Danish National police officers are not in a position to conduct searches in the Europol Information System with the same flexibility as the police in other EU Member States, who can do so within a very short timeframe. This means, among other things, that the special arrangement under the Agreement relating to access to the Europol Information System might, in certain cases, delay and complicate law enforcement activities in the context of border controls. Hence the officers are reluctant to request a search through the seconded national experts or the Single Point of Contact depending on the time of day, who must then contact Europol and await an answer. This is not an appropriate solution in case a car is stopped and the officer does a search on the driver in different databases. Due to the workflow in such a situation, where messages must be sent back and forth, it is difficult to estimate how long a delay will be if the officers request a search through the seconded national experts or the Single Point of Contact. It would take anywhere between 5 minutes and a couple of hours depending on the urgency of other tasks at the Single Point of Contact and Europol. As the police in the other EU Member States gain direct access to Europol databases other than the Europol Information System, the operational value to the Danish police will be further restricted in comparison with the police in the other EU Member States.

The Danish National Police is not, however, aware of such a delay having been significant to the outcome of specific cases or investigations. The Danish National Police's view is that the arrangement continues, in general, to be operationally satisfactory.

7. Financial contribution

Prior to 1 May 2017, Denmark contributed to the funding of Europol through the Danish contribution to the EU budget. Under Article 22 of the Agreement, Denmark is obliged to contribute directly to Europol with an annual sum equivalent to Denmark's percentage share of the aggregate gross national income of the EU Member States.

For the period from 1 May 2017 to 31 December 2017 the Danish contribution corresponded to 1.5 million euro, which is equivalent to the contribution Denmark would have had to pay through the EU budget if Denmark had remained a member of Europol²⁸. Denmark's contribution to Europol in 2018 was 2.5 million euro²⁹. Denmark's contribution to Europol in 2019 was 2.7 million euro³⁰. The contribution to Europol is budgeted in the 2020 Finance Bill at 2.7 million euro annually from 2020 on. The amount is adjusted annually when the updated aggregate gross national income figures, which represent the basis for calculation of the size of the contribution, are available.

Under the Agreement, with a few exceptions, Denmark has to meet all the costs associated with the employment of the seconded national experts. The costs associated with employing the four seconded national experts were half a million euro in 2018, and it is expected that the arrangement in future will continue to cost half a million euro on an annual basis. Any decision raising the number of seconded national experts will obviously increase these costs.³¹

8. Conclusions

8.1. Operational effectiveness

Position of Denmark

Denmark is very satisfied with the ongoing cooperation with Europol. It takes the view that the Agreement, which gives Denmark a special status compared to other third countries, generally means a smooth cooperation for the benefit of Denmark, Europol and Member States in the fight against serious, cross-border crime. According to its reply to the questionnaire, the Danish National Police "*is very satisfied with the daily cooperation with Europol. The present agreement has been working under the given context. However, it is the opinion of the Danish police that the pace of changes in the complexity of international organised crime requires a constant attention to the obligations to share information under Article 10 of the Agreement if the conditions for sharing information are met*".

Due to restrictions in the Agreement, the seconded national experts located in Denmark are not allowed access to other systems than the Europol Information System, leaving out

²⁸ The 2017 Folketing Report, p. 9.

²⁹ The 2018 Folketing Report, p. 12.

³⁰ The 2019 Folketing Report, p. 11.

³¹ The 2019 Folketing Report, p. 11.

Europol's other databases, which their Danish colleagues, who are located at Europol in The Hague, can access. In this context the Danish National Police finds that there is potential for improvement in terms of the tasks of the seconded national experts located in Denmark.

The Danish National Police also considers "*Europol to be the main hub concerning international information exchange, analysis and innovation in the European law enforcement community*" and takes the view that "*bi- and multilateral cooperation with other countries would be difficult and deficient without the support and services provided by Europol*".

At the same time the Danish National Police observes that "*Denmark's withdrawal from Europol has operational consequences for the Danish police*".³² In particular, the Danish National Police assessment at present is that the lack of access to the Europol application called QUEST (which stands for Querying Europol Systems), when it is fully implemented, will substantially restrict the prospects of the Danish National Police combatting cross-border crime compared with the police in the other EU Member States.

The Danish National Police also takes the view that the integration of data held in the Europol Information System into the Danish National Police analysis platform POL-INTEL would increase the operational value of this investigative tool.

The Danish National Police has stated that there are several examples of cooperation with Europol having led to good results in connection with the investigation of criminal offences.

Position of Europol

The Agreement provides the necessary instruments required to have a successful operational cooperation with Denmark. The Agreement provides for exclusive conditions that make Denmark a privileged and unique third partner for Europol.

The successful state of play of the cooperation is demonstrated by the continuous increase of information exchange activities via the Secure Information Exchange Network Application between Europol and Denmark, as well as by the valuable use that Denmark makes of the Europol Information System since it became a third country for Europol.³³

The secondment of Danish speaking national experts to Europol, primarily to process Danish requests, as well as to input and retrieve from Europol systems data coming from Danish competent authorities, has proven to be a successful instrument. It allows Denmark to receive a tailored and effective service from Europol that serves to counter-balance the shortcomings created by the status of Denmark as a third country. However, due to the limitations imposed by Article 10 (6) of the Agreement as regards the tasks of the Danish speaking seconded national experts in Denmark, there is room to improve the effectiveness of the cooperation.

Position of the Commission services

The Agreement, which gives Denmark a special status compared to other third countries, provides for a cooperation between Denmark and Europol that has met the overall objective

³² The 2019 Folketing Report, p. 12.

³³ See chapters 4.1 and 4.2.

of establishing cooperative relations between Denmark and Europol in the fight against terrorism and serious cross-border crime and has minimised the negative effects of the Danish departure from Europol as of 1 May 2017.

This is in particular due to the enhanced service that Denmark receives through dedicated Danish speaking seconded national experts for treating, under the authority of Europol, Danish requests to input, retrieve and cross-check data on a 24/7 basis. Both Denmark and Europol explicitly recognised that the secondment of Danish speaking national experts to Europol has proven to be a successful instrument in this respect. At the same time both parties also recognised that due to the limitations imposed by Article 10 (6) of the Agreement as regards the tasks of the Danish speaking seconded national experts in Denmark, there is room to improve the effectiveness of the cooperation.

The Commission services therefore consider that the Agreement has been effective in providing for the necessary operational arrangements, thus minimising the negative impact of Denmark's departure from Europol on 1 May 2017.

8.2. Data protection safeguards

It was a condition for the Agreement that Denmark transposed the Law Enforcement Directive. Furthermore, it was a condition that Denmark applied the data protection safeguards set out in the Agreement. The Danish Law Enforcement Act aims at transposing the Law Enforcement Directive. It entered into force on 30 April 2017. The Danish National Police has designated a Data Protection Officer for the processing of personal data by the Danish police within the scope of the Act. The Data Protection Officer has, inter alia, been entrusted with the task of monitoring compliance with the Law Enforcement Directive.

Access by the Danish National Police to information from Europol is regulated by Article 11 of the Agreement and by the Act. Article 11(5) concerns the transfer by Europol of sensitive personal data which is prohibited unless strictly necessary and proportionate. The Danish National Police said that it is not privy to information regarding such transfers.

As regards the implementation of Article 12 on the use of information received from Europol, the Danish National Police indicated that it respects any restrictions given by the data owner.

In relation to the implementation of Article 13 on onward transfer of information received from Europol, the Danish National Police indicated that such transfers are most relevant for Denmark's sovereign areas Greenland and the Faroe Islands, which are considered third countries under EU law. However, no such transfers have taken place. Furthermore Denmark does not share personal data with private parties unless the data owner has given consent. Also, Denmark has not requested by Europol to authorize any onward transfers so far.

Position of Denmark

The Danish National Police, supported by its Data Protection Officer, takes the view that Denmark has effectively implemented, and in practice applied, both the requirements of the Law Enforcement Directive and the Agreement with regard to the protection of personal data received under the Agreement.

Position of Europol

During the period under assessment, Denmark and Europol addressed a couple of data protection related issues. They related to information from Denmark which was corrected immediately after Denmark had received notifications from Europol on the matter. The Danish National Police received one request for access, rectification and deletion of personal data submitted to Europol by the data subject. It also received three requests for deletion of personal data.

Position of the Commission services

The Commission services consider that the data protections provisions of the Agreement have been applied correctly.

The questionnaire was also sent to the Danish Data Protection Agency, who replied that it had not looked into the implementation of the data protection safeguards of the Agreement. Hence it took the view that the Danish Ministry of Justice and the Danish National Police were better placed to reply to the questionnaire.

The Agreement has not been assessed from a data protection perspective by the European Data Protection Supervisor who oversees data processing by Europol.

ANNEX A

Assessment of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and the European Police Office³⁴

Questionnaire for the competent Danish Law Enforcement Authorities responsible under Danish national law for preventing and combating criminal offences, including such offences in respect of which Europol is competent (henceforth “Danish Competent Authorities”)

Note: Please ensure that any statistics/figures provided cover the full period of this Agreement (November 2017 to September 2020). All figures should be presented in such a way that the different years during which the Agreement was applied can be compared.

Questions of general nature

Q1: What are the overall benefits of this Agreement for the work of the Danish competent authorities, bearing in mind the wish to ensure cooperation between Europol and Denmark and to minimise the negative effects of the Danish departure from Europol as a consequence of the application of Protocol No 22 on the position of Denmark? Can you provide examples?

Organized criminal networks are cooperating in regional, European and global structures both physically and virtually. Economic gain is the prime motivation for crime and money, including money-laundering activities.

For the Danish police and law enforcement authorities it is therefore vital to have a very close, trusting and efficient co-operation with Europol.

Europol is the main hub for the Danish police concerning international information exchange, analysis and innovation in the European law enforcement community. Bi- and multilateral cooperation with other countries would be difficult and deficient without the support and services provided by Europol.

To mention some of the areas that most significantly benefits from Denmark’s cooperation with Europol, attention is drawn to:

³⁴ Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and the European Police Office. All questions and replies provided will be included in a report prepared by the Commission.

- *The analytical capacity provided by Europol, such as cross-match and strategic reports.*
- *The access to Secure Information Exchange Network Application (SIENA), which provides a fast and secure communication platform, making us able to communicate swiftly with both Europol and its Member States and third parties.*
- *The Danish liaison office at Europol, which ensures and strengthens the presence of Danish police in Europol and provides a perfect platform for enhanced cooperation with both Europol and its Member States. The liaison officers also provide a unique possibility for easy communication, knowledge and best practice sharing with Europol's experts, cooperating partners, Member States and third parties.*
- *The possibility of participation in operational meetings organized or held by EUROPOL.*
- *Implementation of innovative solutions such as the Austrian initiative from 2018 related to SIENA.*

Q2: The Agreement defines the Danish competent authorities as all police and other law enforcement services existing in Denmark, which are responsible under national law for preventing and combating criminal offences. Within this overall category, which authorities are the main beneficiaries of the Agreement and why?

The following fall under the definition of Danish competent authorities:

- *The Danish National Police*
- *The police districts*
- *The Prosecution Service*
- *The Danish Security and Intelligence Service*
- *The State Prosecutor for Serious International and Economic Crimes*

The Danish National Police provides expertise in complex investigations concerning organized crime, cross border crime or cybercrime. The National Police similarly coordinates international cooperation. The technological developments and the crime networks' use of technology means that some crime areas by nature have a border crossing aspect. Denmark therefore considers its national investigators, who are handling these types of cases, as the main beneficiaries of the agreement with EUROPOL, granting the investigators access to easy, fast and efficient communication with Europol and cooperating partners across Europe as well as providing access to the analytical capacity of Europol's Analysis Projects and databases.

The police districts and investigative units within the Danish police are dependent on the operational information passing through Europol in their continuous work towards disrupting organized crime groups on a national and European level.

Purpose and scope (Articles 1 and 3)

Q1: The purpose of the Agreement is defined as "to establish cooperative relations between Europol and Denmark in order to support and strengthen action by the competent authorities of the other Member States of the European Union and of Denmark and their mutual cooperation in preventing and combating serious crime affecting two or more Member States of the European Union, terrorism and forms of crime which affect a common

interest covered by a Union policy, in particular through the exchange of information between Europol and Denmark". Has this purpose been met in your view? If so, why, and if not, why not?

It is the overall opinion of the Danish police that the purpose of the Agreement has been met.

The Danish police are very satisfied with the daily cooperation with Europol. The present agreement has been working under the given context. However, it is the opinion of the Danish police that the pace of changes in the complexity of international organised crime requires a constant attention to the obligations to share information under Article 10 of the Agreement if the conditions for sharing information are met.

In relation to the cooperation with the Member States, Denmark is very satisfied with the ongoing and fruitful cooperation and sharing of information.

In the area of data protection, Denmark meets all legal guarantees. However, a few countries do not share data with Denmark. Some countries may by mistake regard Denmark as an ordinary third country.

Q2: The Agreement covers all areas of crime within Europol's competence, including related crimes, within the meaning of the Europol Regulation. Does the Agreement capture all of the crime areas necessary to achieve its objectives?

Overall, Denmark finds that the Agreement fundamentally covers Denmark's needs. The Danish police are pleased with the establishment of the new financial center, which is in line with the development concerning the investigation of financial crime in Denmark as well.

Q3: Are you aware of any crime areas where the Agreement has been of particular benefit? If so, can you illustrate this by way of examples?

The crime areas where the Agreement has proven especially beneficial are:

- Property crime, especially Mobile Organised Crime Groups*
- Drug smuggling*
- Weapons smuggling*
- Trafficking in human beings*
- Facilitation of illegal immigration*
- Foreign Fighters*
- Cybercrime*

Areas and mode of cooperation (Articles 4 and 6)

Q1: In addition to the exchange of information, the Agreement outlines a number of areas for cooperation, such as the exchange of specialist knowledge, general situation reports, results of strategic analysis and other forms of information sharing. Has this possibility been used and if so, can an indication be given about the frequency of the use of these areas of cooperation and their importance for the Danish competent authorities?

Denmark is a frequent user of the Europol Information System (EIS). The Danish National Police requests Europol to run searches against the EIS on a daily basis and provides a weekly input of relevant criminal cases and suspects.

The Danish National Police considers results and hits in the analysis projects and the EIS highly valuable when investigating organized criminals committing border-crossing crime.

Denmark receives a number of general situation reports, e.g. the weekly report from the European Migrant Smuggling Centre (EMSC), the weekly Internet Referral Unit report, and the annual TE-report. During the COVID-19 crisis, Denmark has received and contributed to the situation reports provided by Europol.

Denmark takes part in the weekly meetings held by the European Migrant Smuggling Centre (EMSC).

Europol frequently invites Danish investigators to operational meetings in cases with connections to Denmark. We have attended operational meetings in cases such as skimming and black box attacks, drug smuggling, trafficking in human beings etc.

Concerning specialist knowledge, the Danish National Cyber Crime Centre has exchanged knowledge related to decryption of software and ransomware with Europol and its partners.

All of the above-mentioned types of cooperation are of great value to the Danish police, providing both operational and technical knowledge. The situation reports and strategic reports provide knowledge to the management level and our national analysts.

Q2: Denmark shall designate a national contact point to act as the central point of contact between Europol and the Danish competent authorities. What are the experiences of the Danish competent authorities with this structure? Are there areas for improvement in the way in which the national contact point and Europol cooperate?

The Danish National Contact Point is located within the Single Point of Contact (SPOC), which is a subdivision of the National Centre of Investigation. The national structure is principally the same as before the agreement. In general, the Danish Police operate with a single point of contact of all international communication.

The following departments have (varying degrees of) access to SIENA:

- The National Police. Relevant departments. Mainly the SPOC and the units of International Cooperation and International Communication.*
- The national cyber-crime center.*
- The State Prosecutor for Serious International and Economic Crime. E.g. the Danish Asset Recovery Office.*
- The Danish Security and Intelligence Service.*
- Specializes and selected units in the police districts, which are using SIENA for border policing purposes.*

Danish authorities do not have access to data under subsections 2a and 2b of article 18 in the Europol Regulation concerning the EIS. These types of data are delivered to the National Danish Police on Danish requests to Europol's Operational Centre.

Currently, the two Danish seconded national experts working from Denmark only have access to the EIS. The Danish seconded national experts working from The Hague have access to those operational systems, which are implemented in the operational center (analysis projects). Denmark would welcome clarification as to whether Denmark's seconded national experts could get access to the hit/no hit solution in the analysis projects when this is rolled out to the Member States.

Due to restrictions in the agreement, the seconded national experts located in Denmark are not allowed access to any other system than the EIS, leaving out all of Europol's other databases, which their Danish colleagues, who are located at Europol in The Hague, can access. The seconded national experts in Denmark are thus limited in relation to which tasks they can perform for Europol. Therefore, the Danish police find that there is potential for improvement in terms of the tasks of the seconded national experts located in Denmark. The National Police and Europol are in an ongoing dialogue to improve procedures that can help to better utilize their skills and working hours.

There is some scope for the two seconded national experts working in Denmark to handle further tasks. They are as of now somewhat limited in their access and tasks due to restrictions in the Agreement.

Q3: Although the exchange of information between Europol and the Danish competent authorities normally takes place via this contact point, the Agreement also allows direct exchanges between Europol and the Danish competent authorities. Did the Danish competent authorities use this possibility and if so, what were the reasons for doing so? In case this possibility has been used, has the national contact point been informed of such exchanges and if not, why not?

Denmark has no record of any such cases where this possibility has been used. In general, the Danish guidelines state that all international communication must pass through the SPOC.

The Danish Police and Customs Coordination Centers have a limited SIENA access in order to communicate bilaterally with their cooperation partners in the other countries.

Q4: The national contact point is also the central point of contact in respect of review, correction and/or deletion of personal data. How many requests for review, correction and/or deletion of personal data have been submitted and by who (mainly by Europol or mainly by the Danish competent authorities)? Are these requests mainly a consequence of data subjects exercising their rights as provided for in the Europol Regulation and Denmark's national legislation transposing the Law Enforcement Directive or do the Parties contact the central point of contact proactively? Does the national contact point confirm the requesting party that personal data has been reviewed, corrected or deleted?

Our records show that the Danish National Police received one request for access, rectification and deletion of personal data submitted to Europol by the data subject. This request was forwarded to Europol via the National Contact Point and the data subject was informed about the transmission.

Furthermore, the records show that The Danish National Police has received three requests made by the data subjects for deletion of personal data relating to a vehicle in the national databases and Europol's and Interpol's databases. The data subjects were not registered in Europol's database, and the police informed the subjects accordingly.

These three requests were processed in accordance with the rules laid down in the Law Enforcement Act, which implements the Law Enforcement Directive. According to Section 17 (2) of the Act, the data controller shall, at the request of the data subject, without undue delay, delete information processed in violation of chapter 3, or if it is required to comply with a legal obligation, to which the data controller is subject. Chapter 3 regulates the general principles for the processing of personal data. The provisions are similar to those set out in the Law Enforcement Directive (EU) 2016/680, namely Article 4.

Denmark has received a few notifications from Europol, where Denmark by mistake had requested upload of minors. The information was corrected immediately.

Europol has also contacted Denmark regarding correction of persons mistakenly updated with the wrong birth year, e.g. in 1901 instead of 2001. These updates were caused by a technical mistake in the input of spreadsheets in batch uploads to the EIS. The updates were immediately assessed and corrected.

Q5: The national contact point is also the central contact point for the transmission of personal data from private parties established within Denmark, as well as for information from private parties residing in Denmark, to Europol. How often has such information been transmitted by the national contact point to Europol? If such information has been transmitted, do they concern particular crime areas (for example cybercrime, financial crime, child abuse, where the role of private parties is considered of increasing importance)?

Denmark has no record that transmission of data or information from private parties have occurred.

Q6: Denmark shall ensure the possibility for the national contact point to enable information exchange on a 24-hour basis. The national contact point shall ensure that information can be exchanged without delay with the Danish competent authorities. Has this requirement been implemented and if so, how, and if not, why not?

Denmark ensures this obligation through the Single Point of Contact, which operates 24/7. The Single Point of Contact is located within the Danish National Police.

Furthermore, the Danish Desk at Europol can also be reached 24/7.

Consultation and closer cooperation (Articles 8 and 9)

Q1: The Agreement provides for various forms of consultations and cooperation (high level meetings and other consultations) between Europol and the Danish competent authorities/national contact point to discuss issues relating to the Agreement and the cooperation in general, and participation at meetings of the Heads of Europol National Units and the Europol Management Board. How many high level meetings between Europol and the Danish competent authorities and meetings between the national contact point and

Europol took place since the Agreement entered into force on 30 April 2017? Has Denmark been invited to attend the meetings of the Europol Management Board and its subgroups? Has the national contact point been invited to attend the meetings of the Heads of the Europol National Units?

The Director of Europol and the Danish National Commissioner of Police held meetings in February 2018 and October 2018.

Denmark has participated in all meetings in the Europol Management Board and its subgroups Corporate Matters and Information Management. Denmark has also attended the meetings of the Heads of Europol National Units (HENU).

Q2: How many liaison officers have been seconded to Europol? From which competent authorities? Has an administrative agreement been established governing their tasks, rights and obligations, numbers and costs involved?

On October 3rd 2017 The Danish National Police and Europol entered into an administrative agreement, which relates primarily to the liaison officers posted at the Danish Desk at Europol.

The Danish National Police is posting at the moment one Deputy Chief Superintendent and two police officers to the Europol Liaison Office in The Hague as well as one representative from the Danish Security and Intelligence Service.

In addition and as part of the operational Agreement with Europol, Denmark has seconded four national experts to Europol's Operational Centre, two of which are working from Europol in The Hague and the other two from the Europol Office at the Danish National Police in Denmark.

Information exchange (Articles 10 – 13)

Q1: How has Denmark implemented Article 10 on general provisions, in particular the transitional period in relation to the implementation of Article 10(6)? Article 10(6) reads that if the Europol Management Board decide to second Europol staff or national experts 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. Article 10(6) also reads that Denmark shall second national experts to Europol to, inter alia, process Danish requests on a 24/7 basis. What is the scope of access of such seconded national experts to personal data processed in Europol systems? Are such seconded national expert sharing the information they access in Europol systems with the authorities in Denmark? Under which conditions and safeguards?

By request of Denmark, the seconded national experts forward hits in the EIS to the Danish contact points. On a weekly basis, Europol Operational Centre provides an overview of hits between Danish data stored in the EIS and data inserted in Europol's Analysis Projects by request of Member States or third parties.

The Danish seconded national experts have no access to the Danish police's operational systems, but they may access a secure mail system provided by the Danish police. Answers to

Danish requests, which contain Europol data are forwarded by the seconded national experts through SIENA. Danish requests for uploads in the EIS or contributions to Europol's Analysis Projects are similarly sent through SIENA.

The Danish seconded national experts have access to the EIS but no other Europol system when working from Denmark. According to Article 10 (6), 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, such staff or national experts shall not have access to Europol's systems beyond what is available to other Member States.

The Danish police are not allowed to use Querying Europol System (QUEST) but as mentioned above, the seconded national experts have access to the EIS. In the near future, the possibilities for searches in QUEST will expand. Thus, QUEST+ at some point will support hit/no hit inquiries from Member States regarding information in analysis projects. The Danish police expect that the seconded national experts in Denmark will be able to access hit/no hit data when implemented in the Member States.

Q2: How has Denmark implemented Article 11 on transfer of personal data (including safeguards related to processing of personal data and the use of special categories of data as per Article 11(5))?

According to Article 11 of the Agreement, Europol or Danish national competent authorities may only make requests for personal information in accordance with the purposes of the Agreement, and personal data may only be processed in accordance with the specific purpose(s) named in the article's paragraph 2. According to article 11(2), the contracting parties are required to indicate the specific purposes for which data are transmitted. In case Denmark has not done so, Europol, in agreement with Denmark, shall process the transmitted information in order to determine its relevance and the purposes for which it is to be further processed. Europol may only process data for other purposes, than those for which they were transmitted, if authorised by Denmark to do so.

Danish police's access to gather information from Europol is furthermore regulated by the Law Enforcement Act (the Act). The Act implements EU Directive 680/2016. The Act provides a similarly framework for the Danish police to process personal data as long as the processing is necessary to prevent, investigate, detect or prosecute criminal offences, etc.

Section 4 of the Act contains a number of basic principles, which have to be complied with when processing personal data for law enforcement purposes. For example, section 4 codifies that personal data must be collected for specified and explicit purposes which fall under the purposes listed in the Act's section 1(1). Further processing must not be incompatible with these purposes (section 4(2)), and the information processed must be relevant and adequate. Further, the collection of personal information must not exceed what is required to fulfil the purpose and must be accurate and if necessary, updated, cf. section 4(3) and (4).

The basic principles listed in section 4, in particular the principles of adequacy, relevance and proportionality, imply amongst other things that an authority may not collect personal information which the authority has no purpose for collecting, or which the authority does not otherwise need in connection with the fulfilment of its tasks.

Furthermore, section 9 and 10 of the Act list general criteria for the processing of personal data, for which the Act is applicable. According to section 9, personal data may only be processed if processing is necessary in order to prevent, investigate, detect and punish criminal offences, including the protection against and prevention of threats against public security. According to the Act's section 10, special categories of data, such as data revealing political or religious beliefs or biometric data may not be processed unless strictly necessary and only if processing takes place in order to fulfil the purposes listed in the Act's section 1.

Q3: How has Denmark implemented Article 12 on the use of information? In particular, how often is a Contracting Party asked to grant authorization to use information for a different purpose than the purpose for which the information was provided? How often such authorisation is granted? Can you mention examples of cases in which this happened and what the different purpose was?

Denmark respects any restrictions given by the data owner. If a transfer of information to Europol related to a Danish case could jeopardize the investigation, the Danish contact point will liaise with the investigators in charge of the investigation.

Denmark has no statistics on the frequency of requests to grant authorization to use information for different purposes than for which it was initially provided.

An example where authorization could be granted as stated, would be requests to use information from police reports in cases, which are about to be presented in a court hearing. Request and authorization can also be related to data, under which the data owner and the details of a cross match is hidden.

Q4: How has Denmark implemented Article 13 on onward transfers? In particular, how often Denmark requests Europol to authorise onward transfers or transfers to third States or international organisations? In the latter case, how is ensured that transfers take place under the same conditions as those applying to the original transfer? Please confirm if there have been transfers of data under Article 11(5)? If so, could you please detail the additional safeguards, if any, that have been provided? How often is Denmark asked by Europol to agree on onward transfer other than to the competent authorities in the Member States of the European Union (i.e. onward transfers to third States or international organisations)?

Possible onward national transfers to competent authorities are done through SIENA or via the police communication system. Generally, Danish police do not share personal or operational data with private parties unless the data owner has given consent.

Such onward transfers would most likely be relevant in regard to Denmark's sovereign areas Greenland and the Faroe Islands, which are considered third countries under EU law. However, such transfer has not taken place as of yet.

Record show that Denmark has not requested Europol to authorize an onward transfer as described. Denmark is aware of procedures should Denmark receive such a request.

Article 11(5) regulates the transfer of data by Europol. As such, the Danish Police are not privy to information regarding such transfers.

Denmark has given its prior consent allowing Europol to share data with third parties and international organizations, which have operational agreements with Europol.

Other forms of cooperation (Articles 14 – 15)

Q1: Are or were Danish competent authorities involved in Operational Analysis Projects since the entry into force of the Agreement? If so, how many and in which crime areas? Did they initiate any investigation or any meeting in the context of a particular Operational Analysis Project?

Currently Denmark participates in 26 Analysis Projects under Serious Organized Crime or Counter Terrorism. In addition, Denmark has pending requests for membership of two Analysis Projects. For the purpose of cross match and contributions, Denmark normally includes the relevant analysis projects in the SIENA correspondence.

Denmark has participated in two ongoing investigative projects since the Agreement entered into force.

Q2: Did Denmark set up any joint investigation team with Europol and or participate in such teams set up by other Member States since the entry into force of the Agreement? If so, in how many cases did this happen and what were/are the crime issues these teams were/are addressing?

Since the Agreement entered into force, Denmark has participated in four (ongoing) JIT's, which have involved Europol. These JIT's concern trafficking in human beings, cybercrime and drug smuggling.

Confidentiality of information (Articles 16 - 17)

Q1: Which measures Denmark has taken to implement the principles of security and confidentiality under Article 16 of the Agreement, notably to protect and safeguard classified and non-classified information?

The Danish Police and Prosecution Service are subject to "The Handbook of information security for the police and the prosecution in the police districts" which is drawn up by the National Police's IT Center. The handbook contains detailed rules on information security, data protection and confidentiality/classification.

Denmark has entered into the Agreement “Implementing Arrangement for the operational and strategic agreement between the Kingdom of Denmark and the European Union Agency for Law Enforcement Cooperation” on October 3rd 2017. The Agreement includes articles on confidentiality and secure communication lines.

Q2: Which issues have been implemented by way of an administrative arrangement as mentioned in Article 17?

Denmark refers to the Agreement mentioned above. The Agreement is attached.

Rights to judicial remedy, liability and jurisdiction of the European Court of Justice (Articles 18 - 20)

Q1: Have there been decisions of the European Data Protection Supervisor against which Denmark has launched a procedure with the Court of Justice of the European Union under Article 18 of the Agreement? If so, what was the issue at stake and why did Denmark decide to use the possibility under Article 18?

No.

Q2: Did any issue of liability or right to compensation as regulated under Article 19 occur since the Agreement entered into force? If so, what was the issue at stake and what was the nature of the compensation granted?

No

Q3: Has Article 20 been used by Danish courts since the entry into force of the Agreement? If so, what kind of cases were at stake and did any of them result in a ruling of the Court of Justice of the European Union and if so, which one(s)?

No

Final provisions (Articles 21 - 27)

No specific questions, the issue of the transitional period in relation to the implementation of Article 10(6) as regulated in Article 24 has been addressed under Article 10.