

12 SEP. 2024

Fundamental Rights at Europol - It takes all of us

2023 Annual Report of the Fundamental Rights Officer
at Europol

ANNUAL REPORT



DATE

March 2023

AUTHORS

Europol Fundamental Rights Officer

CONTENTS

INTRODUCTION	3
VISION AND MISSION	3
Background	3
Risk	4
Risk identified: "Infringement of Fundamental Rights by staff deployed".	4
Risk identified: "Fundamental rights violations in processes/tools in use or under development by Europol".	4
Risk identified: "Exploring the limits of lawful techniques in the fight against terrorism".	4
Objectives, mission and vision	4
OVERVIEW OF ACTIVITIES IN 2023	5
Organising the processes	6
Training	6
Advice	7
Working Arrangements with third countries and private parties	7
Advice on innovation projects	8
Non-mandatory advice	9
Monitoring	10
Promote	10
NON-OPERATIONAL MATTERS	11
BUDGET	12
TRANSPARENCY	12
CONCLUSION	12

INTRODUCTION

This is the first annual report of Europol's Fundamental Rights Officer (FRO). It reflects activities carried out during 2023, and the establishment of processes and structuring of the information flow as regards a new function at Europol. From the start, the FRO quickly integrated within the working dynamics of the organisation and engaged with staff at various levels. This has resulted in numerous consultations and requests.

VISION AND MISSION

Background

After the adoption of the revised Europol Regulation, the Management Board, at its meeting in June 2022, endorsed the proposal for the role, profile and organisational placement of the Fundamental Rights Officer function. In December 2022, the MB endorsed the Executive Director proposal and designated the Fundamental Rights Officer of Europol. Following the appointment, the responsibilities and tasks of Europol's Fundamental Rights Officer had to be effectively established. The function is unique, with different responsibilities compared to Fundamental Rights Officers in law enforcement organisations in the Member State or at EU level. Therefore, before the definition of a vision and mission, a comprehensive assessment of the Regulation was necessary, as well as a risk assessment from a fundamental rights perspective.

The role of the FRO is defined in article 41c of the Europol Regulation. In order to determine the objectives of the FRO in the short-, medium- and long-term, the FRO organised several meetings with senior management and especially with the Executive Director. From the beginning, it was necessary to involve the whole organisation, so the FRO had to consult with staff at all levels within the Agency to get a more complete overview and insight.

Learning from the experiences of external partners helped completing the picture. A visit to the Fundamental Rights Agency (FRA) in February provided an overview of the fundamental rights situation, organisation and processes in the European Union. During a three-day visit to Frontex in Warsaw, their FRO gave a detailed overview of their organisation and approach, and offered further support. This learning experience was enhanced by a visit to the refugee hotspot [REDACTED] accompanying a number of Frontex fundamental rights monitors.

Risk

Any vision has to be realistic and at the same time ambitious. A well-performed risk assessment can point us in the right direction. A specific risk assessment of the fundamental rights situation in Europol was delivered by the FRO at the beginning of the year and was immediately incorporated into Europol's overall risk assessment.

Risk identified: "Infringement of Fundamental Rights by staff deployed".

An area of divergence with other law enforcement agencies - is Europol's lack of executive powers. This means, that if all established procedures and processes are strictly followed, Europol's staff will only communicate with law enforcement colleagues and will never be confronted with victims, witnesses or perpetrators. This limits the risk of violations of fundamental rights. Still, staff deployed in the field, and in contact with local law enforcement agents, could at some point deviate from the official procedures and arrangements.

Risk identified: "Fundamental rights violations in processes/tools in use or under development by Europol".

Data processing is the most important activity of Europol, but data protection and privacy issues are the responsibility of the Data Protection Function (DPF). To limit the risk of violations of data protection rules, data processes are designed with data protection in mind by default. However, there is still a risk that the development of processes may not pay due attention to other fundamental rights. The legislator established that the advice of the FRO should be mandatory for innovation projects, thus also recognising this risk.

Risk identified: "Exploring the limits of lawful techniques in the fight against terrorism".

Counter-terrorism is a particularly sensitive area as regards fundamental rights.¹

[REDACTED]

This risk has to be monitored closely.

Objectives, mission and vision

An objective for the FRO was clearly formulated by the Executive Director to the Management Board, namely to: "effectively transform the perceived dichotomy between policing and the protection of fundamental rights into a positive narrative."

¹ See for example the Joint statement by the EU home affairs ministers of 13 November 2020, reaffirming their determination to counter terrorism holistically, with all the instruments at their disposal, "while fully maintaining all guarantees under the rule of law as well as fundamental freedoms."

<https://www.consilium.europa.eu/en/press/press-releases/2020/11/13/joint-statement-by-the-eu-home-affairs-ministers-on-the-recent-terrorist-attacks-in-europe/>

This calls for promoting Europol's fundamental rights approach among a large number of partners.

Article 41c of the Europol Regulation describes the intentions of the legislator and defines the objectives for the FRO. The legal text limits the role of the FRO to Europol's operational activities and Europol's staff. Furthermore, the objectives of the FRO are further developed by the Management Board.

Finally, yet importantly, a vision has to be realistic. It has to take into account the resources put at the FRO's disposal. It is a one-man job, so the number of activities are limited. The experience of this first year, combined with the risk assessment, indicate that there is no need to increase the capacity at this point in time.

Monitoring all activities and giving advice on all projects, working arrangements and planned activities cannot be done by the FRO alone. Within five years, it should be possible to get all staff involved. In such a scenario, all staff would be willing and capable enough to check compliance with fundamental rights vis-à-vis the organisation's activities and assess the respect of fundamental rights of all projects, working arrangements and newly developed processes. This idea reflects the essence of the FRO's vision: "Fundamental Rights at Europol, it takes all of us!"

This will implicate that a high priority will be given to courses and training. Article 41d of the Europol Regulation makes fundamental rights training mandatory for all Europol staff involved in operational tasks involving personal data processing. The FRO's vision demands the engagement of all staff, meaning non-operational staff also have to be trained - not only in data protection, but also in the other aspects of fundamental rights legislation and values.

OVERVIEW OF ACTIVITIES IN 2023

The tasks of the FRO are written down in the Europol Regulation Article 41c. Specifically they are to:

- ▶ advise Europol where the FRO deems it necessary or where requested on any activity of Europol without impeding or delaying those activities;
- ▶ monitor Europol's compliance with fundamental rights;
- ▶ provide non-binding opinions on working arrangements;
- ▶ inform the Executive Director about possible violations of fundamental rights during activities of Europol;
- ▶ promote Europol's respect of fundamental rights in the performance of its tasks and activities.

Article 41d describes the necessary training on fundamental rights for operational staff.

Organising the processes

Given that the role of the Europol FRO was created in 2022, it had to be developed from scratch. The experience and processes implemented by the Data Protection Function are the basis for the FRO. The exchange of ideas with the Fundamental Rights Agency and Frontex also provided valuable insights.

Getting the right information on time is essential for all functions of the FRO. The Deputy Executive Directors' Meeting approved a concept note describing the information flow towards the FRO. This is being implemented systematically, with the realisation of three out of twelve flows still ongoing.

Together with the Cabinet of the Executive Director, the internal information process towards the ED has been defined and streamlined. This guarantees the independence of the FRO and, at the same time, makes the process as efficient as possible.



Together with the IT unit, all FRO's processes and products will be structured and integrated into the overall processes of the organisation. The first stage of this exercise was finalised in November.

Training

To realise the FRO's vision - "Fundamental Rights at Europol, it takes all of us!" - training all staff is of utmost importance. Developing and organising these trainings was one of the priority tasks of 2023. Staff have been organised among four groups, each with their own specific needs regarding training and fundamental rights.

The first group consists of all Europol newcomers, operational and non-operational staff alike. Ideally, this one-hour induction training would also be provided to SNEs and Liaison Officers. The participation of everyone is essential; both to uphold Europol's Fundamental Rights reputation and to get staff acquainted with the FRO, his responsibilities, tasks and processes. This course is now a part of the mandatory induction training. A session is organised every quarter, with three sessions held in 2023.

The second group is the Guest Officers, or staff on deployments in general. Together with the Fundamental Rights Agency, a dedicated course is organised several times a year, depending on the need. During this training, special attention is given to fundamental rights in the area of migration and the correct use of the Serious Incident Report. In 2023, Europol organised six of these sessions for 33 Guest Officers.

The third group consists of all Europol staff involved in operational tasks, or in other words, the Operations Directorate. This is the largest group, comprising roughly six hundred staff. In line with Article 41.c.2 of the Europol Regulation, the organisation of this course requires active collaboration with the Fundamental Rights Agency and

CEPOL². The three Agencies are currently engaged in identifying the best practical options to ensure such training.

In addition, and not least important, is the inclusion of a fundamental rights perspective in every training plan. This will enable staff to detect possible violations of fundamental rights and act upon them.

The screening of the training plans is ongoing to ensure that fundamental rights are covered in all curricula.

In any organisation, the tone is set at the top; senior and middle management is the last group. They have not only to set the example, but they have also a major role to play in checking fundamental rights compliance of all procedures and activities. The training is developed in 2023. It will be organised outside Europol's premises in small groups for an estimated training time of eight hours, and should include the following themes:

- ▶ understanding the causes and processes that lead to violations of fundamental rights;
- ▶ ethical leadership;
- ▶ the fundamental rights that can be endangered by Europol's activities;
- ▶ ethical decision taking and dilemma training.

Advice

Working Arrangements with third countries and private parties

Various kinds of fundamental rights advice is expected to be delivered by the FRO. Some is mandatory, some is requested, and some is given on initiative. As this is a completely new task, there is no methodology or process in place. The main challenge is ensure the realisation of Europol's mission and objectives while safeguarding fundamental rights throughout all activities.

To provide an assessment of the human rights situation in third countries, different sources are consulted. The country reports of the Office of the High Commissioner of Human Rights are especially valuable for this. These are updated every four years and may, in some cases lack sufficiently up-to-date information. If these reports reveal a problematic situation that could be linked to law enforcement operations, further research is done via open sources such as news reports and the annual reports of NGOs with a track record in human rights monitoring.

The official reports of the bodies and institutions of the European Union are another important source of information when looking at third countries from a fundamental rights perspective. The outline of discussions in the European Parliament, the Commission, or the Council contain information both on the human rights situation and on the European Union policy towards the third country.

To get an idea of the human rights situation in third countries the FRO consults documentation available at Europol. This might include information related to previous

² Article 41d of the Europol Regulation: *All Europol staff involved in operational tasks involving personal data processing shall receive mandatory training on the protection of fundamental rights and freedoms, including with regard to the processing of personal data. This training shall be developed in cooperation with the European Union Agency for Fundamental Rights (FRA) and the European Union Agency for Law Enforcement Training (CEPOL).*

contacts with the country, or analyses that show the operational necessity to engage with a given country.

In case the advice concerns a private partner, the FRO only consults information available on the Internet. If available, reports of previous communication with the partner are also examined.

[REDACTED]

Working arrangements do not allow for the exchange of personal data, but a fundamental rights assessment is important because of the different levels of compliance with fundamental rights in third countries. If there is a political desire and an operational need to come to an arrangement, the possible options for the FRO are limited.

[REDACTED]

The FRO chooses between these options, accounting for operational needs and balancing them against the risk of violations of fundamental rights. This is one of the reasons why the FRO position requires considerable expertise and practice of policing.

In 2023, two working arrangements were concluded and went through a fundamental rights assessment:

- New Zealand was at its final stage and was negotiated before the appointment of the FRO;
- Ecuador.

Three arrangements have started or are ready to begin, and unofficial advice of the FRO has been given on:

- Egypt;
- Singapore;
- Morocco;
- European Labour Authority.

Advice on innovation projects

Besides the working arrangements, the FRO has to provide mandatory advice on innovation projects. The Innovation Lab keeps the FRO informed about new projects and on the progress and the results of ongoing projects. Such assessments require technological knowledge, which is provided to the FRO externally by the Fundamental Rights Agency and internally by Europol's Data Science & AI team, among others both internally and externally.

In 2023, the FRO was advised the Innovation Lab regarding a project concerning child sexual exploitation image classification. Four other written recommendations were sent to the Innovation Lab on:

- 1 / its public report about ChatGPT;
- 2 / the participation of Europol in monitoring committees of DG HOME-funded programmes;
- 3 / a process to decide on the participation of Europol in steering committees for DG HOME-funded projects;
- 4 / its report on the impact of quantum technologies on law enforcement.

Non-mandatory advice

Non-mandatory advice is delivered on other activities and products. In that regard, the FRO provided comments to the Europol Strategy - Delivering Security in Partnership. The assessment focussed on a possible increase of the risk of fundamental rights violations. It revealed that the risk is very low and that a specific objective on fundamental rights in the overall strategy was not necessary. Furthermore, a dedicated strategy on fundamental rights was not deemed necessary at this stage because of these limited risks; a more practical and effective approach could be to have a yearly action plan approved by the Executive Director.

On the other hand, the programming document 2024-2026 refers several times to fundamental rights and a specific objective A.8.2 incites the organisation to take action and measure results. Specifically, it states: "Ensure fundamental rights compliance in all internal and external operational and administrative processes."

To avoid possible violations of fundamental rights, the organisation of operational projects and the development of new processes also need the attention of the FRO. It seems obvious that Europol only supports projects that do not pose a risk to violations of fundamental or human rights, but operational needs can push the boundaries and the right balance has to be found. Such discussions can lead to projects being put on hold, which happened in one instance last year.

New processes, especially when modern techniques are used, follow an internal validation process in which the FRO is integrated. The data protection impact assessment is closely monitored by the FRO for possible violations of fundamental rights. When artificial intelligence is used, a "Model Card" is registered [REDACTED] In 2023, seven processes went through this internal validation process.

Occasionally, staff also addresses the FRO with alleged violations concerning more personal situations. [REDACTED]

Monitoring

Giving advice helps to secure respect for human rights in the future. Monitoring must ensure daily activities are compliant. In contrast to advising, this is done entirely on initiative of the FRO, but needs the involvement of all staff.

The highest priority is to monitor daily operations.

[REDACTED]

[REDACTED]

As the risk is slightly higher for deployed staff, the FRO performs weekly checks of the reports drafted by Guest Officers in the various operational regions. As the Guest Officers strictly follow the operational directives and the memorandum of understanding with the host states, the FRO did not detect any irregularities.

[REDACTED]

The FRO visited the guest officers in [REDACTED], Greece, in March. Although no major issues concerning fundamental rights were detected, the visibility of the teams and their composition could be improved. The FRO made some recommendations on these matters, which have been followed up in the meantime.

In line with the risk assessment, and upon initiative of the Head of the Operations Unit of the European Counter Terrorism Centre (ECTC), the FRO regularly participates in their weekly meetings.

A procedure has been put in place for major public-facing reports such as the Serious and Organised Crime Threat Assessment (SOCTA) and the European Union Terrorism Situation and Trend Report (TESAT). These reports are checked from a fundamental rights perspective prior to their publication.

In addition to the advice on innovation projects, the use of innovative tools presented to the Member States through the Europol Platform for Experts (EPE) also require monitoring: 10 tools were assessed in 2023 and no substantial issues were noted. In practice, the risk level depends on the correct use of these tools by the Member States. However, some of the tools presented via the EPE can really help law enforcement to respect fundamental rights and simultaneously improve the efficiency and the effectiveness of investigations. Some of the tools also protect the investigator from psychological traumas, which guarantees their fundamental rights in an enhanced manner.

Promote

If Europol wants to “Effectively transform the perceived dichotomy between policing and the protection of fundamental rights into a positive narrative”, promotion of the organisation’s vision on fundamental rights is of utmost importance. Every opportunity should be used to explain Europol does not have coercive powers and that the Agency’s processes and activities are checked and double checked by internal and external authorities.

During the stay in [REDACTED], NGOs active there have been contacted and asked to comment upon Europol's work. The FRO used this meeting as an opportunity to explain his role and the functioning of the organisation.

It is important for the FRO to use every opportunity to explain the values and the functioning of Europol. [REDACTED]

On March 18th the FRO, as a member of a group of law enforcement from around the world, participated in the March of the Living. This event brings individuals from across the world to Poland to study the history of the Holocaust and to examine the roots of prejudice, intolerance and hatred. This visit gave to opportunity to talk to different organisations about human rights education for law enforcement leaders. The outcome is that Europol is now recognised as a very important partner on training on fundamental rights for police leadership all over the world; not only among colleagues, but also among academics (e.g. Toronto and Rutgers University). Messages about this event were published on social media.

To highlight the vision on fundamental rights, social media is also used by the communications unit of Europol. Several activities of the FRO were showcased via this channel. Internally, one article is published on the internal website explaining the role of the FRO. Together with this team, as well as the Working Group on Diversity and Inclusion and the Working Group on Violence against Women, the FRO organised an internal event on Human Rights Day (10 December). The Executive Director of Europol and the Executive Director of the Fundamental Rights Agency delivered keynote speeches. More than 100 staff attended this event.

NON-OPERATIONAL MATTERS

Europol develops activities and policies not directly related to the responsibility of the FRO, but which do nonetheless influence fundamental rights compliance in different ways.

Europol has developed a new diversity and inclusion strategy and implementation plan in 2023, as well as establishing a Diversity and Inclusion Advisory Group. The Executive Director received the 'Certificate of Excellence - Change and Challenge', in recognition of the Diversity Day initiative. This award was presented by the European Union Agencies Network during the Meeting of the Network of the Heads of Resources in Frankfurt on 27 October 2023.

Closely related to the diversity and inclusion advisory group is the Working Group on Domestic Violence. This group advocates against violence against women and their children. The group organised an "October Domestic Violence Awareness Month", which ended with the above-mentioned event on Human Rights Day.

Environmental protection is also mentioned in the European Union Charter of Fundamental Rights (Article 37). Europol has a new environmental management policy that strives to comply with applicable environmental legislation, the Green Deal and the Environmental Vision 2030. It even goes further and tries to exceed relevant environmental standards and requirements.

BUDGET

The FRO does not have a dedicated budget, but rather uses the budget allocated to the Executive Director. For missions and events, the FRO spent EUR 9 172 in 2023. Other costs, such as the organisation of the Human Rights Day event, were financed by other entities within Europol.

TRANSPARENCY

The FRO met the Executive Director on five occasions to discuss the fundamental rights situation at Europol, the planned activities of the FRO, and the results of missions and activities. During these meetings the FRO receives feedback, support and steering to improve its work.

During the meeting of the Europol Management Board in March, the FRO explained his role and activities. In the December session, a preliminary overview of the activities of 2023 was provided. Also, the heads of Europol National Units were informed about the role and task of the FRO during the July session.

On 20 September, the FRO participated for the first time in the meeting of the Joint Parliamentary Scrutiny Group (JPSG). There the FRO informed about his vision and activities.

CONCLUSION

This report explains the activities and initiatives of the FRO started in 2023, and to what extent they identified risks to or violations of fundamental rights. In this first year, no reports sent to the Executive Director mentioned any violations.

There is always a risk for fundamental rights violations; however, this risk, other than the violation of data protection and privacy rules, is rather low. This is due to the nature of the activities that are almost entirely focussed on data processing. Europol does not have coercive powers, and Europol staff are not in direct contact with victims or perpetrators of criminal offences.

The monitoring activities of the FRO, both in house and on mission, did not uncover any violations. Some smaller comments have been made as a means to avoid deviations in future, or to enhance the transparency of Europol's activities.

Next to the direct operational risk, the risk exists that the development of modern, innovative processes or tools will lead to possible violations of fundamental rights. To monitor for this, it is guaranteed that the FRO is involved every time new processes are developed and can advise and suggest improvements.

Cooperation with third countries through the establishment of a working arrangement - or through any kind of project - can be challenging for the respect of the basic values of the European Union. The non-binding advice of the FRO has to take into account the

many policies and operational needs of the different partners. However, even FRO's balanced advice can lead to opinions that conflict with the rest of the organisation.

Taken together, Europol clearly pays attention to respecting fundamental rights in operational activities. This also extends in relation to the staff and the environment, where the organisation takes initiatives that enhance diversity, equality and sustainability.

PUBLIC

Document made partially accessible to the public on

12 SEP. 2024

