

PROACTIVE INFORMATION	
Update on Europol Agreement	
Deadline: N/A	Date of Response: 15 February 2021

Purpose

1. This paper provides an update on New Zealand Police's progress on the proposed Europol Agreement between New Zealand and the European Union. This Agreement would provide for the reciprocal sharing of personal data to combat serious crime and terrorism between the European Union and New Zealand.

Background

2. The proposed Europol Agreement is a bilateral agreement between New Zealand and the European Union (EU). The Agreement would allow the transfer of personal data¹ between Europol and the 'competent authorities'² of New Zealand to support and strengthen mutual cooperation in preventing and combating criminal offences, while ensuring appropriate safeguards with respect to privacy safeguards.
3. Police currently has a Working Arrangement with Europol for law enforcement cooperation. The Working Arrangement enables Police to share personal data it holds with Europol for the purposes of preventing and combating serious crime but does not allow Europol to share personal data on a reciprocal basis with New Zealand. The Europol Agreement would replace our current Working Arrangement.
4. The expected increased information sharing with the EU that would flow from the Europol Agreement would improve New Zealand's ability to detect and investigate crime. The Europol Agreement will also increase cooperation and enhance relations between New Zealand and the EU and supports other government priorities such as the Transnational Organised Crime (TNOC) Strategy.
5. In July 2020, Cabinet gave Police policy approval to commence negotiations with the European Union to establish a Europol Agreement to [ERS-20-MIN-0024]:
 - provide the legal basis for the transfer of personal data between Europol and New Zealand authorities;

¹ Personal data means any information specific to a person's physical, physiological, genetic, mental, economic, cultural or social identity.

² Under the Europol Agreement 'competent authorities' means domestic law enforcement authorities responsible under New Zealand law for preventing and combating criminal offences.

- guarantee that the cooperation and exchange of data under the International Agreement is aimed at preventing and combating terrorism and other serious crime;
 - set out the necessary safeguards and controls for the protection of personal data and fundamental rights and freedoms of individuals.
6. The EU has since shared a draft proposed Europol Agreement with New Zealand, which Police has discussed with interested New Zealand agencies.³

Preliminary discussions with the European Union are planned for 2021

7. Preliminary discussions between the New Zealand and EU negotiating teams are planned for late February/early March 2021. New Zealand's negotiating team currently consists of Police and MFAT officials.
8. Our preliminary talks with the EU negotiating team will discuss objectives and timeframes for future negotiating engagements this year, canvassing and clarifying initial aspects of the draft Agreement, as well as seeking approval to share the draft Agreement with domestic stakeholders.


Police has been consulting with agencies interested in the Europol Agreement and has received positive feedback

9. Police has led cross agency discussion on the draft Europol Agreement. All agencies consulted are supportive of New Zealand entering into the Europol Agreement. Feedback has highlighted areas of the Europol Agreement that require some further clarification with the EU. For example, the coverage and scope of transferring personal data under the Agreement, and the EU's preferred method for making and receiving requests for personal data. These queries will be the primary points of clarity during preliminary discussions.
10. Some New Zealand agencies have expressed interest in being considered competent authorities under the Agreement. Competent authorities need to be able to directly engage with Europol to send and receive personal data. At this stage, New Zealand's competent authorities will likely include Police, Immigration New Zealand and the New Zealand Customs Service, as these agencies have the requisite legislative provisions to enable them to enter into agreements for sharing information internationally. We will seek other ways of sharing information obtained under the Europol Agreement with agencies who do not have information sharing legislation, but still want access to the Europol data. We will update you on this as it progresses.
11. The Europol Agreement also has a requirement for reciprocal supervisory authorities to be nominated. Supervisory authorities must be an independent public authority responsible for data protection. The Office of the Privacy

³ Agencies include the Companies Office, the Computer Emergency Response Team New Zealand, the Department of Internal Affairs, the Department of the Prime Minister and Cabinet, Immigration New Zealand, Land Information New Zealand, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the New Zealand Customs Service, the New Zealand Intelligence Services and the Office of the Privacy Commissioner.

Commissioner (OPC) is the preferred candidate for this role in New Zealand. The EU's expectations for supervisory authorities and whether the functions of the OPC meet those expectations will be a point of discussion at initial talks.

s 9(2)(f)(iv) and s 9(2)(g)(i) OIA



Next steps:

- Preliminary discussions will be held by officials in late February/early March 2021. We are currently setting the agenda for preliminary discussions with the EU.
- We will brief you mid-March 2021 with outcomes of preliminary discussions, planned future negotiations, and stakeholder consultation for 2021.

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s 9(2)(f)(iv) and s 9(2)(g)(i) OIA

