

ITALY

ITALIAN CONTRIBUTIONS ON THE “PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2016/794, AS REGARDS EUROPOL’S COOPERATION WITH PRIVATE PARTIES, THE PROCESSING OF PERSONAL DATA BY EUROPOL IN SUPPORT OF CRIMINAL INVESTIGATIONS, AND EUROPOL’S ROLE ON RESEARCH AND INNOVATION” TO BE DISCUSSED AT THE LEWP MEETING ON 28 JANUARY

DOC. ST.13908/20

PROPOSAL OF THE COMMISSION	ITALIAN COMMENTS
<p><u>With reference to recital 3:</u></p> <p><i><u>These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal organised crime groups that engage in a wide range of criminal activities.</u></i></p>	<p>Italy believes that it is of utmost importance to recall the pivotal role that mafia-style and family-based criminal organizations have played in taking advantage of the opportunities of the health emergency and digitization.</p> <div data-bbox="646 985 1173 1019" style="border: 1px solid black; padding: 2px;"> <p>We therefore propose a revised version of recital 3:</p> </div> <p><i>These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal, mafia-style and family based organised crime groups that engage in a wide range of criminal activities.</i></p>
<p><u>With reference to recital 6:</u></p> <p><i>“High-risk criminals play a leading role in criminal networks and pose a high risk of serious crime to the Union’s internal security. To combat high-risk organised crime groups and their leading members, Europol should be able to support Member States in focusing their investigative response on identifying these persons, their criminal activities and the members of their criminal networks”.</i></p>	<p>Italy believes that with reference to the establishment of the Operational Task Forces (OTF) and the identification of the High Value Targets (HVT), it is of utmost importance to better define, in the proposal Regulation, the evaluation criteria and the selection procedures. Moreover Italy believes that in this part, as said with reference to recital 3, it would be pivotal to mention, mafia style and family based organised crime groups.</p>

<p><u>With reference to recital 8 and the connected amendment of art.4 r)</u></p>	<p>Italy will give its contribution when the SIS-Europol proposal will be discussed at the dedicated meeting of IXIM and LEWP. We can anticipate however that we believe that giving Europol such power is likely to alter excessively the SIS general balanced structure based on national judicial or LEAs decision for any SIS alert. Italy believes that the system currently in place ensures the certainty of the actions to be taken and creates a clear responsibility for the Member State concerned.</p>
<p><u>With reference to recital 12 and connected new paragraph 4b of art.4</u></p> <p><i>“Europol should support the screening of specific cases of foreign direct investments into the Union that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes.”</i></p>	<p>Italy believes that UNEs and AROs should be explicitly involved in the screening of foreign direct investments.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>Therefore we propose to rephrase the recital as follows:</i></p> </div> <p><i>“Europol, through its UNEs and in collaboration with ARO Offices, should support the screening of specific cases of foreign direct investments into the Union that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes.”</i></p>
<p><u>With reference to recital 15 and the connected new article 18 f)</u></p> <p><u>Recital 15:</u></p> <p><i>Publishing the identity and certain personal data of suspects or convicted individuals, who are wanted based on a Member State’s judicial decision, increases the chances of locating and arresting such individuals. To support Member States in this task, Europol should be able to publish on its website information on Europe’s most wanted fugitives for criminal offences in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals.</i></p>	<p>Italy believes that the authorization to disclose information concerning investigative activities should be decided by the judicial authorities and investigators. In order to avoid confusion the text of recital 15 should clarify this aspect.</p> <p>Furthermore, we believe that any kind of support from Europol on activities related to informing the public should be only upon explicit support request coming from Member States. Moreover, we have to be cautious with this provision. We have a scrutiny reserve on this point in order to assess the actual need for a support from Europol in informing the public (especially for persons that are only suspects).</p>

<p>Art 18 f</p> <p><i>“supporting Member States in informing the public about suspects or convicted individuals who are wanted based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals.”</i></p>	<p>Therefore we suggest to modify the text of recital 15 and Art 18f as follows:</p> <p><u>Recital 15</u> <i>To support Member States in this task, Europol, upon competent national judicial authority permission, should be able to publish on its website information on Europe’s most wanted fugitives for criminal offences in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals.</i></p> <p><u>Art 18 f</u> <i>supporting Member States in informing the public, upon explicit request from Member States as well as authorization by the competent national judicial authority, about suspects or convicted individuals who are wanted based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals</i></p>
<p><u>With reference to recital 33:</u></p> <p><i>(33) Any cooperation of Europol with private parties should neither duplicate nor interfere with the activities of the Financial Intelligence Units (‘FIUs’), and should only concern information that is not already to be provided to FIUs in accordance with Directive 2015/849 of the European Parliament and of the Council.. Europol should continue to cooperate with FIUs in particular via the national units.</i></p>	<p>Italy is in favour of this provision and strongly support it. Given its relevance, we would like it to be merged or incorporated under art 7 of the proposal.</p> <p>On top of that, Italy also believes that it would be very important that the new text explicitly refers to the principle that all cooperation between Europol and private parties should be in place in full respect of domestic legal framework. This addition is also motivated in order to align the text proposal with the principle set out under Directive 2019/1153.</p> <p>If agreed the new wording of Art 7 par 8 would be replaced by the following:</p> <p><i>“8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council* are allowed to cooperate without prejudice and respecting the domestic legal frameworks with Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European</i></p>

	<p><i>Parliament and the Council**, in particular via their national unit regarding financial information and analyses, within the limits of their mandate and competence. Any cooperation of Europol with private parties should neither duplicate nor interfere with the activities of the Financial Intelligence Units ('FIUs'), and should only concern information that is not already to be provided to FIUs in accordance with Directive 2015/849 of the European Parliament and of the Council. Europol should continue to cooperate with FIUs in particular via the national units.</i></p>
<p><u>With reference to the amendment of art.4 h) and connected recital 4</u></p> <p><i>“support Member States’ cross-border information exchange activities, operations and investigations, as well as joint investigation teams, and special intervention units, including by providing operational, technical and financial support;”</i></p>	<p>As refers to the envisaged support that Europol should provide to Member State special intervention Units, we believe that it should be first made clear, within the text proposal, the exact procedures to be followed as well as the bodies that are supposed to request and certify the crisis as indicated in recital 4 of the proposal.</p>
<p><u>With reference to the amendment of art.4 m)</u></p> <p><i>“support Member States’ actions in preventing and combating forms of crime listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States, the <u>coordination of law enforcement authorities’ response to cyberattacks, the taking down of terrorist content online, and the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions;”</u></i></p>	<p>Italy believes that the wording of the text is not very clear. It seems to give to Europol (though in cooperation with Member States) the possibility <u>to coordinate</u> (Member State) Law enforcement authorities response and the taking down of terrorist content online. On the contrary the main role of Europol should be, in our opinion, limited to <u>supporting</u> member States and not coordinating them.</p> <p>Furthermore we believe that it is premature to take decisions on such important topics also in consideration of the fact that the “Digital service act” is still in the in the work and TCO Regulation does not provide Europol such role as competent authority.</p>
<p><u>With reference to the amendment of art.4 r) and connected recital 8</u></p>	

<p>(r) “enter data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council*, following consultation with the Member States in accordance with Article 7 of this Regulation, and under authorisation by the Europol Executive Director, on the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries or international organisations within the meaning of Article 17(1)(b);</p>	<p>Italy recalls the observations made with reference to recital 8. We can not support the text,</p>
<p><u>With reference to the amendment of art.4 new paragraph 4b and connected recital 12:</u></p> <p>“Europol shall support the screening of specific cases of foreign direct investments into the Union under Regulation (EU) 2019/452 of the European Parliament and of the Council* that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes covered by Article 3 on the expected implications for security”</p>	<p>Italy, recalling what said with reference to recital 12, believes that is of utmost importance that such screening role of Europol with regard to foreign direct investments should be carried out through the ENUs.</p> <p><i>Therefore we propose to rephrase recital 12 as follows:</i></p> <p>Europol, through its national units, shall support the screening of specific cases of foreign direct investments into the Union under Regulation (EU) 2019/452 of the European Parliament and of the Council* that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes covered by Article 3 on the expected implications for security</p>
<p><u>With reference to the new proposed version of Article 6 and connected recital 14:</u></p> <p>“In specific cases where Europol considers that a criminal investigation should be initiated into a crime falling within the scope of its objectives, it shall</p>	<p>We would like to have explanations on the need to replace the actual Art 6 (under current Europol Regulation) with the proposed version.</p>

<p><i>request the competent authorities of the Member State or Member States concerned via the national units to initiate, conduct or coordinate such a criminal investigation.”</i></p>	<p>We are not in favour of the reviewed text proposed as the actual Europol regulation has already proved to be sufficient and adequate. Furthermore, according to the connected recital 14, Europol would have the possibility to request the competent national authorities to initiate or conduct a criminal investigation even where there is not a cross border nature of the crime.</p> <p>We believe that no modification should involve art. 6 of the Europol actual Regulation.</p>
<p><u>With reference to the new proposed version of Article 7:</u></p> <p><i>Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council* are allowed to cooperate with Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council**, in particular via their national unit regarding financial information and analyses, within the limits of their mandate and competence</i></p>	<p>As already observed under our comment in relation to recital 33, Italy asks for the recital to be merged with Art 7.</p>
<p><u>With reference to the new article 18 3a:</u></p> <p><i>“Processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed by means of Europol’s research and innovation projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply.”</i></p>	<p>We believe that the text here should be more specific. In particular, it should be made clear that processing personal data for such purposes is possible only if needed in order to reach the projects objectives.</p> <div data-bbox="718 1478 1356 1523" style="border: 1px solid black; padding: 2px;"> <p>Therefore, we propose the following rephrasing:</p> </div> <p><i>“If needed in order to reach Europol’s research and innovation project’s objectives, processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed only by means of the mentioned projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply”.</i></p>

<p><u>With reference with the new Article 25 paragraph 5, replaced by the following:</u></p> <p><i>"By way of derogation from paragraph 1, the Executive Director may authorise the transfer or categories of transfers of personal data to third countries or international organisations on a case-by-case basis if the transfer is, or the related transfers are:"</i></p>	<p>Italy would like to have explanations on this provision. If we compare this provision with the actual art 25 under the current regulation, we notice that the powers of the Executive Director now have increased including also « categories of transfers ». Why?</p>
<p><u>With reference paragraph 8, the following sentence is deleted:</u></p> <p><i>"Where a transfer is based on paragraph 5, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred."</i></p>	<p>This part of the proposal is not clear to us, if the sentence « where a transfer... » is added or deleted. It seems to us that the sentence is being added and not deleted.</p>
<p><u>With reference to the Article 26 paragraph 2 that would be replaced by the following:</u></p> <p><i>"Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 in order to identify all national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the processing of that data necessary for the purpose of establishing jurisdiction immediately to the</i></p>	<p>Preliminarily Italy believes that any direct transmission of banking and financial data by private parties to Europol could lead to the possibility that the aforementioned European Agency gets to know this information before the national Law Enforcement Agencies do. This could create a delicate situation, also because of the fact that, to date, there is no similar obligation owed to the latter in the national legislation (except for Court orders to produce documents and measures provided for by special rules aimed at money laundering prevention).</p> <p>Italy considers this new version of article 26 not fully in line with Directive 1153/2019 art.11 « Each Member State shall ensure that its competent authorities are entitled to reply,</p>

<p><i>national units concerned. Europol may forward the personal data and relevant results from the processing of that data necessary for the purpose of establishing jurisdiction in accordance with Article 25 to contact points and authorities concerned as referred to in points (b) and (c) of paragraph 1. Once Europol has identified and forwarded the relevant personal data to all the respective national units concerned, or it is not possible to identify further national units concerned, it shall erase the data, unless a national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the transfer takes place.”</i></p>	<p>through the Europol national unit or, if allowed by that Member State, by direct contacts with Europol, to duly justified requests related to bank account information made by Europol on a case-by-case basis within the limits of its responsibilities and for the performance of its tasks. Article 7(6) and (7) of Regulation (EU) 2016/794 apply » and with the Recital 33 of the Proposal.”</p> <p>Moreover, in our opinion both conditions should apply simultaneously in order to allow Europol to receive data from Private parties:</p> <ul style="list-style-type: none"> — having identified and forwarded the relevant personal data — it is not possible to identify further national units concerned. <p>Therefore we suggest to replace the word « or » with « and ».</p> <p>In general, Italy believes that any information exchange should comply with the current regulatory framework and fully involve the Europol National Units.</p> <p>Furthermore Italy believes that the first part of the article should be reworded according to the following version:</p> <p>“Europol may only receive personal data directly from private parties, based on third countries, in compliance with national legal framework ...”</p>
<p><u>Regarding the new paragraphs 6a and 6b of art. 26:</u></p> <p><i>“6a. Europol may request Member States, via their national units, to obtain personal data from private parties, which are established or have a legal representative in their territory, under their applicable laws, for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol with a view to identifying the national units concerned. Irrespective of their jurisdiction over the specific crime in</i></p>	<p>We need explanations as regards the concrete possibilities to verify that the condition is fulfilled. Will Europol somehow have to certify that the condition underlying its request is met?</p> <p>In general, to Italy the wording appears to us a bit confusing and redundant. In fact, MS can always ensure their competent authorities can lawfully process the request when this is in done in accordance with their national law (which automatically implies lawfully). So why foreseeing this obligation explicitly?</p>

<p><i>relation to which Europol seeks to identify the national units concerned, Member States shall ensure that their competent national authorities can lawfully process such requests in accordance with their national laws for the purpose of supplying Europol with the information necessary for it to fulfil its objectives”.</i></p>	
--	--

<p><u>With regard to the new art. 26a</u></p>	<p>We want to raise the same objection of the new version of article 26</p>
<p><u>With reference to the new version of Article 57, paragraph 4 proposed:</u></p> <p><i>“..Europol may benefit from Union funding in the form of contribution agreements or grant agreements in accordance with its financial rules referred to in Article 61 and with the provisions of the relevant instruments supporting the policies of the Union. Contributions may be received from countries with whom Europol or the Union has an agreement providing for financial contributions to Europol within the scope of Europol’s objectives and tasks. The amount of the contribution shall be determined in the respective agreement.”</i></p>	<p>Italy believes the Europol cannot have a more specific relationship of financial dependence created with one State on the pretext that it would contribute more to its budget than others would.</p> <p>This situation would be harmful both for Member States but also for the credibility of the Agency, of the European institutions and the confidence that Member States place in it.</p> <p>Therefore, we cannot support the text proposed.</p>