

## LITHUANIA

In accordance to the last LEWP meeting on 11/01/2021, please find enclosed the Lithuanian contribution/comments on the first two thematic blocks (cooperation with private parties and research and innovation) under the agenda item 5. Revision of Europol Regulation, as requested.

### **Lithuanian comments:**

#### **1. Direct exchange of personal data between Europol and private parties.**

We do consider that current restrictions limits Europol's capacity to support some MS investigations. The Agency cannot proactively request data from private parties, moreover, there are national legal requirements to obtain such data. Those requirements can't be fulfilled by Europol at the moment (National Court's, Prosecutor's, or other's decision/approval is needed).

Essentially, we agree to allow Europol to exchange personal data directly with private parties, however, further profound and detailed discussion is needed. It would be not sufficient to amend Europol's Regulation only. Authorization of the prosecutor or even judge according to Lithuania's legislation is required to obtain certain data from private parties. There is no possibility to obtain such data upon request of Europol according to national law. Moreover, multiple laws must be changed if such option for Europol will be approved, including changing details of procedures to obtain the data (e.g. rights, duties, responsibility, order of sanctions and submission, remuneration for private parties for information provided, etc.). Amendment of Europol Regulation would be not sufficient to change national law. Thus, the highest EU legal act should be in place. Also, worth to mention, that some of the data from private parties Lithuanian authorities can obtain through police databases that linked with those companies. Thus, the administrative bargain is less for private sector. From our point of view, the discussions could take place on possibility to give Europol access to mentioned police databases/systems in order to prepare/organize connection between Europol's information system and particular module of national police. Europol's opinion as well as practical examples would be welcome on how such way of getting information from private parties would work if the Agency would get a possibility.

In addition, such an intervention needs to include clear data protection safeguards and mechanisms to fully involve Member States in the exchanges between Europol and private parties

Europol should be able to request and obtain data directly from private parties, however, it should be discussed in detail what will give such legal power and especially requesting private sector in third countries which does not recognize EU law.

Furthermore, the competence of the national authorities should be considered.

Recital of the Proposal (Point 31) contains an explanation which may be applied in the cases provided for in Article 26 Para 6a and Article 26a Para 5, i. e. those cases where the jurisdiction of the Member States has not been established or in cases of multijurisdiction and the information requested is required to establish jurisdiction. However, this purpose does not follow from the wording of Article 26 Para 6a and Article 26a Para 5. On the contrary, following the wording "Irrespective of their jurisdiction", Article 26 Para 6a and Article 26a Para 5 could be applied also in cases, where jurisdiction of the particular Member State would be obvious, but a Member State would still be obliged to comply with Europol's request regardless of its jurisdiction.

2. Considering the explanation of the definition of competent authorities in Article 2 (a) of Regulation (EU) 2016/794, the term "competent authorities" used in Articles 26 Para 6a and 26a Para 5 of the Proposal could cover not only law enforcement but also judicial authorities of the Member States. Therefore, in accordance with the wording, these judicial authorities should be obliged to execute or take measures for execution of the Europol's requests. The judicial authorities of the Member State (prosecutors' offices, courts) cooperate with judicial authorities of the other Member State applying the EU mutual recognition instruments, other procedures of international judicial cooperation in criminal matters, including Eurojust, and special cooperation with the European Public Prosecutor's Office. This cooperation is strictly regulated particularly implementing the basic principle of cooperation - ensuring the eligibility and the protection of human rights, which is guaranteed by judicial supervision. Thus, the other means of communication for judicial authorities, especially direct ones with non-judicial institutions (agencies) of the EU, without judicial supervision, can not be provided.

In Articles 26 Para 6a and 26a Para 5 the Europol's powers and means to request and receive personal data from private subjects are not separated depending the nature and content of this data. As an example that for the production of different kind of data different measures of legal protection should be applied could be the Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters 2018/0108 (COD). In this Proposal 2018/0108 (COD) depending on the data and its nature requested by the European Production Order or European Preservation Order different levels of judicial validation shall be applied (Article 4 Para 1 and 2 of the Proposal 2018/0108 (COD)).

It should be admitted that in crisis situations the specific measures of communication could be considered. However in such case these measures and the grounds for their application should be clearly defined. Nevertheless, Para 5 of new Article 26a, which is dedicated to the exchanges of personal data with private parties in crisis situations, establishes the same procedure as new Para 6a of Article 26, dedicated for all other cases.

Therefore, according to the provisions of Article 26 Para 6a and Article 26a Para 5 it is not clear in which cases, for what kind and content of data from private parties Europol could request, it is not clear on which national competent authorities and what kind of obligations would be imposed, as it is not clear whether these obligations wouldn't be contrary to the principles of judicial cooperation in criminal matters, to the rights of Member States to execute their jurisdiction, it is not clear how the judicial supervision of these requests in terms of protection the human rights and personal data would be ensured.

## 2. **Research and Innovation**

We do see a need for Europol to step up its support to Member States on research and Innovation. Capacity of the separate MS in this area is limited due to limited human and financial resources. Furthermore, countries invest in the similar research and innovation so duplicates their efforts. Europol might coordinate those efforts at some point to avoid such duplicity, also could allocate resources for sophisticated solutions and products that would allow strengthen fight with serious and organized criminality. Although, the cutting-edge products and actual needs of MS must be identified initially. Existing tools at Europol should be exploited efficiently. Consideration of further cooperation with existing innovation labs must be developed.