

NETHERLANDS

Please see below the written comments of the Netherlands of the LEWP of 22 February.

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

- General discussion regarding block 4: enabling Europol to enter data into the Schengen Information System
- 1) *Do you agree that there is an operational need to make verified third-country sourced information on terrorists and other criminals available to frontline officers (border guards and police officers) in order to detect those persons when they seek to cross EU external borders or when they are being checked within the EU?*
- 2) *If so, do you agree that the Schengen Information System is the right tool to make this information available to frontline officers (border guards and police officers)? If not, what alternative solution would you propose?*
- As we said during the JHA Council in January, the last IXIM and LEWP, the Netherlands – also following consultations with our operational experts - is not convinced that there is an operational need and/or that the possibility for Europol to enter alerts on suspected third-country nationals in SIS is the right solution. The proposed solution has no added value to the already existing information channels. In the Netherlands frontline officers have adequate access to the information available in systems, including those of Interpol. The solution in our view is to allow MS themselves to remedy the bottleneck of information on suspected third-country nationals in SIS. We see a solution in further cooperation with Interpol.
- The proposal is a fundamental change to the SIS system and poses serious questions about ownership of data, quality of information, fundamental rights of individuals, and a possible conflict with national law and investigations.
- We have a number of important questions we would like to raise:
 - 1) How would Europol decide which information it receives from third countries to consider for inclusion in the SIS? Would the third countries themselves indicate whether the information is intended for e.g. analysis purposes or the SIS? Or would Europol decide what to do with the information it receives?
 - 2) Is there not a risk that third countries would start sending a lot of information to Europol for inclusion in the SIS, i.e. that Europol would in fact be working on behalf of a third country?

- 3) Who would be responsible for the result of an action?
- 4) How many resources would Europol need to carry out this task? How much time would Europol need to include an alert about one person in the SIS?
- 5) Why should Europol be allowed to put information in the SIS that Member States cannot put in themselves? Why should Europol be able to do something that Member States are not?
- 6) What would be the added value of these alerts if Interpol notices have also been issued for the same people?
- 7) And last but not least, what would be the added value of having this information at the border, if no action has to be taken?

Before the proposal amending the SIS regulation is further assessed in the IXIM working party, the Netherlands is of the opinion that first clarity is needed on what the problem regarding the 'information gap' around suspect/criminal third country nationals is exactly.

We refer to the Joint Statement by the EU Home Affairs Ministers on the recent terrorist attacks in Europe of 13 November 2020. In that statement it is mentioned that we are striving for a process involving Europol for reviewing relevant information relayed by third countries and analysing it and that it is up to the competent national authorities to enter it into the SIS, to the extent that this is legally possible. The Ministers did not declare that it should be Europol who enters SIS alerts.

- It would not be wise to start negotiating the proposal to amend the SIS Regulation when we do not know what the problem is exactly and where the gap is. We are not convinced that the current proposed solution is the right way to go, and have concerns regarding unwanted effects and precedents. This could best be discussed in a dedicated format. Therefore we would like to propose to change the IXIM meeting planned by the Presidency on 18 March into an LEWP meeting to explore what the problem is and what solution is possible and necessary. Follow-up meetings could be planned if necessary to discuss this further. Only after conclusions have been reached should IXIM start technical, article by article discussions on the Commission's SIS proposal.