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NOTE

From:	Presidency
to:	Standing Committee on operational co-operation on internal security (COSI)
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Subject:	Summary of the COSI debate on the revision of Europol's legal basis

At its meeting on 11 April 2012, the Standing Committee on operational co-operation on internal security (COSI) had an in-depth exchange of views on 7 objectives that were set out in the Commission services' working document for the revision of Europol's legal basis (doc. 8261/12).

The present document aims at reflecting the outcome of these discussions and incorporates written comments received after the meeting.

In general the Committee welcomed the opportunity to have a second exchange of views in COSI at this stage in the preparation of the future Commission proposal. As in its earlier discussions on Europol issues, the Committee supported a Commission approach that would focus on strengthening and deepening the current Europol competences rather than extending them.

1) Improving Europol's intelligence picture

Delegations agreed that particular attention should be given to improving the information flow to Europol which should be done in a pragmatic and realistic manner. Various delegations considered the current wording of Art. 8 (4) and (5) of the Council Decision on Europol to be sufficient. Some delegations opposed extending the legal obligation to provide information to Europol and insisted on the voluntary supply of information. Reference was made among others to the provisions of the Framework Decision 2006/960/JHA ("Swedish initiative") since an effective implementation of this Decision could substantially increase the amount of information flowing to Europol.

The idea of introducing incentives to investigations to crime areas other than euro counterfeiting was welcomed although more clarifications would be needed regarding these incentives.

Introducing a periodic evaluation of the ENU's work and organisation was supported by a number of delegations but again further clarifications were needed, in particular regarding its scope, periodicity, the criteria and the "component of peer review". It was suggested that this evaluation should also cover Europol's response to Member States' transmission of information. It was also proposed that a report would be regularly provided to the European Parliament similar to the reporting that is carried out under the new Frontex Regulation. Some delegations opposed an evaluation mechanism and were not convinced that the obligation for a periodic evaluation would enhance the provision of information to Europol.

The obligation to provide Europol with information in certain crime areas was opposed by some delegations. Other delegations requested further explanations and suggested focusing on EU Policy Cycle crime areas.

2) Reviewing the role of the ENU's

Some delegations preferred maintaining a coordinating role for the ENU's. ENUs should at least be kept informed of all data exchange between the competent national authorities and Europol in order to keep an oversight and exercise control.

Delegations supported that ENUs should have access to all relevant national law enforcement data bases. However, the implementation (terms and conditions) should be decided by Member States.

It was suggested that Europol should have access on a hit/no-hit basis to Member States' national law enforcement data bases. Other delegations opposed granting Europol direct access to national databases.

3) Access to private-sector held information

Facilitating Europol's access to private sector-held information was considered interesting although some Member States voiced concerns regarding the transmission of personal data and called for thorough deliberations on this issue. Some delegations were of the opinion that data from private parties could only be processed by Europol if they are transmitted via the national unit as laid down in Art. 25 of the Council Decision on Europol.

Some delegations referred to the importance of such a provision for the functioning of the future European Cybercrime Centre.

4) Improving the follow-up to Europol's findings

The present wording of Art. 7 (1) and (3) of the Council Decision on Europol was considered sufficient since it obliges Member States to examine requests from Europol for initiating, conducting or coordinating investigations and to give reasons if such requests are refused. The introduction of a time limit could be considered although due attention should be given to not infringe with national criminal laws.

In general, delegations supported a wider reflection on how Europol could/should interface with other EU Agencies, including Eurojust. However, various delegations had doubts to further extend the provisions of Art.85 TFEU through strengthening Europol's obligation to inform Eurojust of a *notitia criminis*.

5) Redesigning Europol's data management concept

Some delegations welcomed more flexibility in the information management and a redesign of Europol's data management concept but asked for cautiousness and advocated that this should not lead to a decrease in either the operational effectiveness or on the high data protection level. More explanations were asked regarding the consequences for the database architecture in the Member States.

6) Rationalising Europol's means to exchange information with 3rd partners

Delegations were positive towards simplifying the procedure to negotiate and sign operational agreements but further clarifications were needed about the proposed system. Some delegations invited the Commission to explain its views on the interpretation of Art. 216 TFEU and how this would relate with Europol's possibility to conclude agreements on its own.

7) Strengthening the external data protection supervisory authorities

In general, delegations considered the current data protection system as well-functioning and would not support major changes in this regard.

Some delegations pointed out that they had strong reservations on applying the proposals of the Draft Joint Statements on decentralised agencies to Europol, in particular the arrangements for appointing the Director or the composition of the Management Board.