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NOTE

From: Presidency

To: Law Enforcement Working Party

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA
- Revised Chapters I-II and Annex 1

Delegations will find below a Presidency revised text of Chapters I-II and Annex 1 based on the outcome of discussions on these Chapters by the LEWP on 11 July 2013 and on 4 September 2013 as well as the written drafting suggestions provided by delegations.

Changes to the Commission proposal are marked in *bold italics* and ~~strikethrough~~.

Delegations are invited to note that the recitals will be adjusted at a later stage.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Union Agency for Law Enforcement Cooperation and Training (Europol)
and repealing Decision[s] 2009/371/JHA [and 2005/681/JHA] ¹

(...)

Chapter I

GENERAL PROVISIONS AND OBJECTIVES OF EUROPOL

Article 1

Establishment of the European Union Agency for Law Enforcement Cooperation [and Training]

1. A European Union Agency for Law Enforcement Cooperation [and Training] (Europol) is hereby established to² ~~improve~~ **support and strengthen**³ mutual cooperation among law enforcement authorities in the European Union, ~~to strengthen and to support~~ **and** their actions [as well as to deliver a coherent European training policy].⁴
2. Europol, as established by this Regulation, shall replace and succeed Europol as established by Decision 2009/371/JHA[, and CEPOL as established by Decision 2005/681/JHA]⁵.

¹ **CZ, DE, EL, IT, HU, AT, SI, UK** suggest to delete all parts of the document relating to training

² **FR** suggests to replace the rest of the paragraph with "***meet the objectives laid down in Article 3***"

³ **LU, PL, SE, UK** suggest to replace "improve" with "***support and assist***"

⁴ **ES** suggests to add here: "***in preventing and combating criminal offences in respect of which Europol is competent pursuant to the present Regulation***"

⁵ **ES** suggests to add here the following paragraph:

"3. Europol shall liaise with a single national unit in each Member State, to be established in accordance with Article 8."

Article 2

Definitions^{6,7}

For the purposes of this Regulation:

- (a) ‘the competent authorities of the Member States’ means all police authorities⁸, and other law enforcement services *and other authorities*⁹ existing¹⁰ in of the Member States which are responsible under national law for preventing and combating criminal offences¹¹;
- (b) ‘analysis’¹² means the assembly¹³, processing or use of *data information*¹⁴ with the aim of assisting criminal investigations¹⁵ *supporting the performance of tasks listed in Article 4*¹⁶;

⁶ BG suggests to add a definition of "data owner" ("*data owner*" means a Member State, a Union body, a third country or an international organisation that posses a piece or set of data and can authorise or deny access to them), which BG suggests to use instead of "a Member State, a Union body, a third country or an international organisation" with regard to processing of information
DE suggests to add definitions of "serious" and "organised crime"; no drafting proposals
PL suggests to add a definition of "information": "*information*" means all kind of data, including personal data and criminal intelligence
SI suggests to add definitions of "law enforcement authorities of third countries" and "bodies (or organs) of international organisations"; no drafting proposals

⁷ BG suggests to rearrange/group the definitions, i.e.: competent authorities, Union bodies, third countries, international organisations, etc.

⁸ EL, ES suggest to replace "authorities" with "services"

⁹ FR, CY, NL, PT, SI, SE, UK suggest to add here "*customs*"

⁹ BG, CZ suggest to replace "police authorities and other law enforcement services" with "*all public bodies*". FR suggests to add here: "*as well as other public bodies*"

¹⁰ BE, DE, ES, EL, IT, LU, NL, PL, PT, SE, UK suggest to replace "existing" with "*designated by the Member States*"

¹¹ EL, ES suggest to add here "*in respect of which Europol is competent*"

¹² BE, BG, NL suggest to replace the definition of "analysis" with the following two definitions:
"*(b) "strategic analysis" means the entirety of agreed methods and techniques by which information is collected, stored, processed and assessed with the aim of supporting and developing criminal policy enabling an efficient and effective response to security problems;*
(bb) "operational analysis" means the entirety of agreed methods and techniques by which information is collected, stored, processed and assessed with the aim of supporting intelligence operations and criminal investigations."

SI suggests widening the scope of the definition of analysis with a reference to "prevention"; no drafting suggestion

¹³ ES, PL suggest to replace "-assembly" with "*collecting*"

¹⁴ ES suggests to replace "data" with "*information and intelligence*"

¹⁵ ES suggests to add here "*and to draw up of reports*"

¹⁶ UK suggests to refer to Europol's objectives

- (c) 'Union bodies' means institutions, ~~entities~~ **bodies**, missions, offices and agencies set up by, or on the basis of the Treaty on European Union and the Treaty on the Functioning of the European Union;
- (d) ['law enforcement officers' means officers of police, customs and of other relevant services, including Union bodies, responsible for preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime that affect a common interest covered by a Union policy and for civilian crisis management and international policing of major events]¹⁷

¹⁷ **CZ, FR** suggest to replace this definition with "***officers of the competent authorities of the Member States***"

BE, LU suggest the following wording of this paragraph:

"'law enforcement officers' means officers of police ***and other law enforcement services responsible under national law for preventing and combating criminal offences***, ~~customs and of other relevant services, including Union bodies, responsible for preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime that affect a common interest covered by a Union policy and for civilian crisis management and international policing of major events"~~

DE suggests the following wording of this paragraph:

"'law enforcement officers' means officers of police, customs and of other relevant services, ~~including Union bodies, responsible for preventing and combating~~ ***criminal offences***. ~~serious crime affecting two or more Member States, terrorism and forms of crime that affect a common interest covered by a Union policy and for civilian crisis management and international policing of major events"~~

EL, NL suggest to replace this definition with "***officers of competent authorities mentioned in paragraph (a) of this Article as well as members of Union bodies***"

IT suggests the following wording of this paragraph:

"'law enforcement officers' means officers of police, ~~customs and of other~~ ***law enforcement services responsible under national law for preventing and combating criminal offences*** ~~relevant services, including Union bodies, responsible for preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime that affect a common interest covered by a Union policy and for civilian crisis management and international policing of major events"~~

PL suggests the following wording of this paragraph:

"'law enforcement officers' means officers of police, ~~customs and of other relevant services~~ ***competent authorities***, including Union bodies, responsible for preventing and combating ***criminal offences*** ~~serious crime affecting two or more Member States, terrorism and forms of crime that affect a common interest covered by a Union policy and for civilian crisis management and international policing of major events"~~

- (e) 'third countries' means countries that are not Member States of the European Union;
- (f) 'international organisations' means international organisations and their subordinate bodies governed by public law or other bodies which are set up by, or on the basis of, an agreement between two or more countries;
- (g) 'private parties' means entities and bodies established under the law of a Member State or a third country, in particular companies and firms, business associations, non-profit organizations and other legal persons that do not fall under point (f);
- (h) 'private persons' means all natural persons;
- (i) ¹⁸'personal data' means any information relating to an identified or identifiable natural person hereinafter referred to as "data subject"; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;
- (j) 'processing of personal data' hereinafter referred to as 'processing'¹⁹ means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (k) 'recipient' means a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients²⁰;

¹⁸ **Definitions from (i) to (o) will be reviewed in the future, possibly taking into account the ongoing negotiations on the "data protection package"**

¹⁹ **EL, FR** suggest to delete "hereinafter referred to as "processing".

²⁰ **BE** questions the need and meaning of the sentence "however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients"

- (l) 'transfer of personal data' means the communication of personal data, actively made available, between a limited number of²¹ identified parties, with the knowledge or intention of the sender to give the recipient access to the personal data;
- (m) 'personal data filing system' hereinafter referred to as 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (n) 'the data subject's consent' means any freely given specific and informed indication of his/her wishes by which the data subject signifies his/her agreement to personal data relating to him/her being processed;
- (o) 'administrative personal data' means all personal data processed by Europol apart from those that are processed to meet the objectives laid down in Article 3(1) and (2).

²¹ **BE** questions the need of mentioning here "limited number of"

Article 3

Objectives

1. Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious²² crime affecting two or more Member States, terrorism and²³ forms of crime which affect a common interest covered by a Union policy, as specified in Annex 1.²⁴
2. ~~Europol shall also support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating criminal offences related to the offences referred to under point (a).~~ ***In addition to paragraph 1, Europol's objectives shall also cover related criminal offences.*** The following offences shall be regarded as related criminal offences:
 - (a) criminal offences committed in order to procure the means of perpetrating acts in respect of which Europol is competent;
 - (b) criminal offences committed in order to facilitate or carry out acts in respect of which Europol is competent;
 - (c) criminal offences committed in order to ensure the impunity of acts in respect of which Europol is competent.
- [3. Europol shall support, develop, deliver and coordinate training activities for law enforcement officers].²⁵

²² **BG, DE, ES, HR, RO** suggest to add "***organised crime***". HU suggests to replace "~~serious crime~~" with "***organised crime***"

²³ **DE** suggests to add here "***other***"

²⁴ **CZ, ES, HU** suggest to add here "***in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences***"

²⁵ **EL, IT** suggest to replace this paragraph with:
"Europol shall support ***CEPOL in developing, delivering and coordinating*** training activities for law enforcement officers"

Chapter II

TASKS RELATED TO LAW ENFORCEMENT COOPERATION

Article 4

Tasks²⁶

1. ~~Europol is the European Union agency that shall perform the following tasks in accordance with this Regulation:~~

- (d) ~~to~~ collect, store, process, analyse and exchange information²⁷;
- (b) ~~to~~ notify the Member States, *via the Units established or designated according to Article 7(2) ("National Units")*, without delay of information ~~concerning them~~ and of any connections between criminal offences *concerning them*;
- (c)²⁸ ~~to~~ coordinate *and support Member States' investigations by assisting their competent authorities in* organising and implementing²⁹ investigative and operational action
 - (i)³⁰ carried out jointly with the ~~Member States'~~ competent authorities³¹ *of the Member States*; or

²⁶ BG suggests that tasks of Europol be divided into "principal" and "additional" tasks

²⁷ BE suggests to add here "*and intelligence*"

DE suggests clarifying with whom data are to be exchanged

²⁸ ES suggests to delete (c)

CZ, SK take negative stance on (c)

BG suggests to replace (c) and (h) with new wording:

"to aid Member States" cross-border operations and investigations, including joint investigation teams, in particular by:

i. forwarding all relevant information;

ii. providing technical and financial support;

iii. coordinating and organising implementing investigative and operational actions carried out jointly with the Member States" competent authorities"

²⁹ SI suggests to replace "implement" with "*support*"; HU suggests to replace "coordinate, organise and implement" with "*support*"

³⁰ ES suggests to delete (c)(i)

³¹ EL suggests to add here "*in liaison with Eurojust*"

- (ii) in the context of joint investigation *tion* teams, in accordance with Article 5, where appropriate, in liaison with Eurojust;
- (d) ~~to~~ participate in joint investigation *tion* teams as well as ~~to~~ propose that they are set up in accordance with Article 5³²;
- (e) ~~to~~ provide information and analytical³³ support to Member States in connection with major international events³⁴;
- (f) ~~to~~ prepare threat assessments, strategic and operational analyses and general situation reports;
- (g) ~~to~~ develop, share and promote³⁵ specialist knowledge of crime prevention methods, investigative procedures and technical and forensic methods, and ~~to~~ provide advice to Member States;
- (h)³⁶ ~~to~~ provide technical and financial support to Member States' cross-border³⁷ operations and investigations, including joint investigation *tion* teams³⁸;

³² **BG** suggests to replace this paragraph with: "*to ask the competent authorities of the Member States concerned to initiate, conduct or coordinate investigations and to suggest the setting up of joint investigation teams*"

³³ **BG** suggest to add here "*and technical*"

³⁴ **DE** suggests using a clearer term than "events"

³⁵ **BE** suggests to add here "*expertise for combating crime, including research and development*"

PL suggests to add here "*expertise in the field of combating crime*"

³⁶ **BG** suggests to replace (c) and (h) with the text above (see footnote to subparagraph (c))

³⁷ **HU** suggests to add here "*information exchange activities*"

³⁸ **BE** suggests to delete "~~including joint investigation teams~~"

- (i) ~~to~~ support, develop, deliver, coordinate and implement training for law enforcement officers in cooperation with the network of training institutes in Member States as set out in Chapter III;^{39]}
- (j) ~~to provide~~ **cooperate with** the Union bodies established on the basis of Title V of the Treaty and **with** the European Anti-Fraud Office (OLAF), **in particular through the exchange of information and by providing them** with ~~criminal intelligence~~⁴⁰ and analytical support in the areas that fall under their competence⁴¹;
- (k)⁴² ~~to provide~~ information⁴³ and support to EU crisis management structures, and to EU crisis management missions established on the basis of the Treaty on European Union;
- (l)⁴⁴ ~~to develop~~ Union⁴⁵ centres of specialised expertise for combating certain types of crime falling under Europol's objectives, in particular the European Cybercrime Centre.

46

³⁹ IT, EL, LU, FR suggest the following wording of this paragraph:
 "to support **CEPOL in developing, delivering, coordinating and implementing** training for law enforcement officers ~~in cooperation with the network of training institutes in Member States as set out in Chapter III~~"
 EL, LU, FR also suggest to add at the end "**within the areas covered by Europol's competence**"
 BG, PL, SE, UK suggest the following wording (in a similar way) of this paragraph:
 "to **provide** training for law enforcement officers **within the areas covered by Europol's expertise** ~~in cooperation with the network of training institutes in Member States as set out in Chapter III~~"
 BG also suggests to replace "law enforcement officers" with "**members of Member States' competent authorities**"
 PL additionally suggests to add at the end of the proposed wording "**and within the limits set by the Management Board, where appropriate in cooperation with Union bodies**"

⁴⁰ BG, PL suggest to replace "criminal intelligence" with "**information**"

⁴¹ ES suggests to delete "~~in the areas that fall under their competence~~"
 EL, ES suggest (in similar wording) to add here "**where this is essential for the performance of their functions and where the owning [after approval by] Member State which would be affected by such provision of intelligence [directly concerned by the communication of such data] has given its consent**"

⁴² BG suggests to delete this paragraph

⁴³ For DE it is unclear what information is meant

⁴⁴ FR suggests to delete this paragraph

⁴⁵ BG, EL, LU, SE, UK suggest to delete "Union"

⁴⁶ EL, ES suggest to add the following new subparagraph:
 "(m) **to aid investigations in the Member States, in particular by forwarding all relevant information to the national units**"

2. Europol shall provide strategic analyses and threats assessments to assist the Council and the Commission⁴⁷ in laying down strategic and operational priorities of the Union for fighting crime⁴⁸. Europol shall also assist in operational implementation of those priorities.

3. ~~Europol shall provide strategic intelligence to~~ *Europol may provide strategic analyses and threat assessments at the request of the Council or the Commission⁴⁹ to contribute to the evaluation of States which are candidates for accession to the Union or to* assist the efficient and effective use of the resources available at national and Union level for operational activities and the support of those activities.

4. Europol shall act as the Central Office for combating euro counterfeiting in accordance with Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting.⁵⁰ Europol shall also encourage the coordination of measures carried out to fight euro counterfeiting by the competent authorities of the Member States or in the context of joint investigation teams, where appropriate in liaison with Union bodies and the authorities of third countries.

⁴⁷ **BE** questions the need of "the Commission" in this paragraph

⁴⁸ **DE** suggests to add here "*forms of crime mentioned in Article 3(1)*"

⁴⁹ **FR** suggests to add here "*in the Schengen evaluations and*"

⁵⁰ OJ L 185, 16.07.2005, p. 35.

Article 5

Participation in joint investigation teams

1. Europol may participate⁵¹ in the activities of joint investigation teams dealing with crime that falls under Europol's objectives⁵².
2. Europol may, within the limits provided by the laws of the Member States in which *a* joint investigation team is operating, assist in all activities and exchanges of information⁵³ with all members of the joint investigation team. *Europol shall not*⁵⁴ *apply coercive measures.*
3. Where Europol has reasons to believe that setting up a joint investigation team would add value to an investigation, it may propose this to the Member States concerned and take measures to assist them in setting up the joint investigation team.

⁵¹ ES suggests to add here "*upon request from Member States*"

BE, BG, EL, FR, LU, PT suggest to add here "*in a supporting capacity*"

⁵² CZ suggests to add here: "*as well as exchange information with all members of the joint investigation team*"

⁵³ CZ suggests to delete "*and exchange information with all members*"

⁵⁴ NL suggests to add here "*however*"

4. ~~Europol shall not apply coercive measures~~⁵⁵.

Article 6

Requests by Europol for the initiation of criminal investigations

1. ⁵⁶In specific cases where Europol considers that a criminal investigation should be initiated into a crime that falls under its objectives, ~~it shall inform Eurojust~~ **it shall request**⁵⁷ **the competent authorities of the Member States concerned via the National Units to initiate, conduct or coordinate**⁵⁸ **a criminal investigation**⁵⁹.

⁵⁵ BG suggests to replace this paragraph with the following new paragraphs:

"4. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

"4a. Management Board shall adopt rules regulating participation of Europol staff in joint investigation teams, their privileges and immunity, as well as exchange of information and involvement of national units in the framework of a JIT."

DE suggests to replace this paragraph with the following new paragraphs:

"4. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

4a. Information obtained by a Europol staff member while part of joint investigation team may, with the consent and under the responsibility of the Member State which provided the information, be included in the information processing systems of Europol"

ES suggests to replace this paragraph with the following new paragraphs:

"4. The agreement setting up the Joint Investigation Team shall include an annex which shall specify the conditions under which Europol staff are placed at the disposal of the joint investigation team, including the regulation of the privileges and immunities of the staff and the liability resulting from improper conduct on their part.

4a. During the operations of a joint investigation team, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

4b. Europol staff participating in a joint investigation team may exchange information from any of Europol's information processing systems with the members of the team. Europol shall at the same time inform the national units of the Member States represented in the team as well as those of the Member States which provided the information.

4c. Information obtained by a Europol staff member while part of a joint investigation team may, with the consent of the competent authority which provided the information, be included via the national units in any of Europol's information processing systems."

FR suggests to replace this paragraph with the following new paragraph:

"4. The administrative implementation of participation by Europol staff in a joint investigation team shall be laid down in an arrangement between the Director and the competent authorities of the Member States participating in the joint investigation team, with the involvement of the National Units established on the basis of Article 7. The rules governing such arrangements shall be determined by the Management Board"

⁵⁶ FR suggests to combine paragraphs 1 and 2

⁵⁷ DE, SI suggest to replace "request" with "suggest"

⁵⁸ EL suggests to delete "~~conduct or coordinate~~"

2. ~~At the same time, Europol shall⁶⁰ request the National Units of the Member States concerned established on the basis of Article 7(2) to initiate, conduct or coordinate a criminal investigation~~ *inform Eurojust of requests made under paragraph 1.*
3. The National Units⁶¹ shall inform Europol without delay⁶² of the *decision of the competent authorities of the Member States concerning Europol's request to initiate*~~ion of a~~ *criminal investigation*⁶³.

⁵⁹ UK suggests to add here: "*Member States shall deal with any request by Europol to initiate, conduct or coordinate investigations in specific cases. They shall give such requests due consideration, but shall have absolute discretion over whether or not to comply with them.*"

⁶⁰ ES, FR, UK suggest to replace "~~shall~~" with "*may*"

NL, SE suggest to add here: "*when relevant*"

⁶¹ UK suggests to add here: "The Member States, *via their* National Units"

⁶² BG suggests "without *undue* delay"

ES, UK suggest to delete "~~without delay~~"

⁶³ UK suggests the following wording: "*whether an initiation of the investigation will be initiated*"

4. If the competent authorities of the Member States concerned decide not to comply with the request⁶⁴ made by Europol *to initiate a criminal investigation*, they shall⁶⁵ ~~provide~~ *inform* Europol ~~of~~ *with* the reasons for ~~their~~ decision, within one month of the request^{66,67}. The reasons may be withheld if giving them would⁶⁸:
- (e) harm essential⁶⁹ national security interests; or
 - (f) jeopardise the success of *current* investigations ~~under way~~ or the safety of individuals.
5. Europol shall⁷⁰ inform Eurojust⁷¹ of the decision of a competent authority of a Member State to initiate or refuse to initiate ~~an~~ *criminal* investigation.

⁶⁴ DE suggests to replace "request" with "*suggestion*"

⁶⁵ FR suggests to replace "they" with "*their national units*", "shall" with "*may*"

⁶⁶ BG, EL suggest to delete "~~within one month of the request~~", DE, PL suggest to replace it with "*without undue delay*"

⁶⁷ UK suggests to replace this sentence with: "If the competent authorities of the Member States concerned decide not to ~~comply~~ *initiate, conduct or coordinate such an investigation* ~~with the request made by Europol~~, they shall, *via their National Unit* ~~provide~~ *inform* Europol *of their decision within a reasonable timeframe*"

⁶⁸ ES suggests to replace this paragraph with: "*The national units shall not provide Europol with the reasons not to comply with the request if giving them would:*"

⁶⁹ EL, ES, CY, SI, SE, UK suggest to delete "essential"

⁷⁰ EL, ES, FR, LU, SE, UK suggest to replace "shall" with "*may*"

⁷¹ FR suggests to add here: "*of its requests to Member States and, without prejudice to Article 25(2), of the decision of a their competent authority*"

Article 7

~~Member States~~^{72,73} Cooperation between Member States with and Europol

1. ⁷⁴Member States *and Europol* shall cooperate with ~~Europol~~ *each other* in the fulfilment of ~~its~~ *their* tasks.
2. Each Member State shall establish or designate⁷⁵ a National Unit which shall be the⁷⁶ liaison body between Europol and the⁷⁷ competent authorities ~~in~~ *of the* Member States [as well as with training institutes for law enforcement officers]⁷⁸. Each Member State shall appoint an official as the head of the National Unit⁷⁹.

⁷² FR suggests to replace the title with "*Europol National Units*"

⁷³ BG suggests to split this Article into two Articles: Article 7 "Cooperation with MS" and Article 7a "National Units". Article 7 would consist of:

"1. Europol shall liaise with a single national unit in each Member State, to be established or designated in accordance with Article [7a] and national liaison bureaux at Europol established in accordance with Article [8].

2. Member States may allow direct contacts between designated competent authorities and Europol subject to conditions determined by the Member State in question, including prior involvement of the national unit.

The national unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relations between the national unit and the competent authorities shall be governed by national law, and in particular, the relevant national constitutional requirements.

3. Each year Europol *in close cooperation with Member States concerned* shall draw up a report on ~~the quantity and quality of information provided by the cooperation with~~ each Member State pursuant to paragraph 5(a) and on the performance of its National Unit. *The Management Board shall decide the evaluation criteria and procedure to draw up and publish the report.* The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments". (former Art 7(10))

⁷⁴ BG, FR, CY, UK suggest to delete this paragraph

CZ suggests to replace words "~~Member States~~" with "*Competent authorities*" or to delete the entire paragraph 1

⁷⁵ EL, NL suggest to delete "~~or designate~~"

⁷⁶ BG suggests to add here: "the *only* liaison body"

⁷⁷ EL, ES, NL suggest to add here "*designated*"

⁷⁸ BG suggests to add here the current paragraph 7(7) "*Each Member State shall define the organisation and the staff of the National Unit according to its national legislation*"

⁷⁹ NL suggests to replace this sentence with: " Each Member State *instruct the organisation in which the National Unit is established to designate a* head of the National Unit"

3. Member States shall ensure that their National Units are able to fulfil ~~the their~~ tasks as set out in this Regulation, in particular⁸⁰ that they have access to⁸¹ *relevant* national ~~law enforcement~~ databases⁸².

3a.⁸³ *Each Member State shall define the organisation and the staff of the National Unit according to its national legislation.*

⁸⁰ DE suggests to replace the rest of the sentence with: "*to transmit data originating from other competent authorities to Europol in accordance with national law*"

⁸¹ CZ suggests to add here "**appropriate**"

⁸² FR, PL suggest to replace "~~databases~~" with "*data*"

ES suggests to add here: "*according to national law*"

⁸³ **Moved up from paragraph 7**

CZ suggests to delete this paragraph

4.⁸⁴ Europol may⁸⁵ ~~directly cooperate with~~ **contact** competent authorities of the Member States in respect of individual investigations. In that case, Europol shall inform the National Unit without delay *of such contact. Any exchange of information between Europol and these authorities may only occur after the authorisation of the National Unit. In such case, Europol shall* ~~and~~ provide a copy of any information exchanged ~~in the course of direct contacts between Europol and the respective competent authorities.~~

⁸⁴ BE, BG, DE, EL, FR, CY, LU suggest to replace this paragraph with:
"Member States may allow direct contacts between designated competent authorities and Europol subject to conditions determined by the Member State in question, including prior involvement of the national unit."
FR suggests to also add in the beginning: *"The national unit shall be the only liaison body between Europol and the competent authorities of the Member States."*
BG suggests to also add in the end: *"The national unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relations between the national unit and the competent authorities shall be governed by national law, and in particular, the relevant national constitutional requirements".*
DE suggests to also add in the end: *"If Member States designate competent authorities Member States may also determine that Europol may only transmit relevant data to this or these competent authorities."*
ES suggests the following wording: *"Europol staff may liaise directly ~~cooperate~~ with the designated competent authorities of the Member States in respect of individual investigations in the framework of particular investigations conducted by these authorities in so far as that direct contact has an added value for the investigation. In that case, Europol shall inform the national unit without delay and shall provide a copy of the information exchanged in the course by virtue of that direct contact (...)"*
NL, SE suggest the following wording: *"Europol may directly cooperate with competent authorities of the Member States in respect of individual investigations. In that case, Europol shall coordinate on beforehand with ~~inform~~ the National Unit without delay and offer to provide a copy of any information exchanged in the course of direct contacts between Europol and the respective competent authorities."*
AT suggests the following wording: *"Europol may directly cooperate with competent authorities of the MS in the framework of individual investigations being carried out by those authorities provided that this direct contact represents added value with a view to the successful conclusion of the investigation. Europol shall inform the National Unit of the need for such contact in advance and shall provide, as soon as possible, a copy of the information exchanged through these direct contacts".*
PL suggests the following wording: *"Europol may directly cooperate with competent authorities of the Member States in respect of individual investigations. In that case, Europol shall coordinate on beforehand ~~inform~~ with the National Unit without delay and shall provide, as soon as possible, a copy of any information exchanged in the course of direct contacts between Europol and the respective competent authorities. In urgent cases, Europol may directly cooperate with competent authorities of the Member States informing, in parallel, the National Unit and providing a copy of any information exchanged in this mode."*
⁸⁵ UK suggests to add here: *"where considered appropriate and in agreement with a Member State's National Unit"*

5. Member States shall⁸⁶, via their National Unit or a competent authority, ~~of a Member State~~⁸⁷, in particular⁸⁸:

(a) supply Europol⁸⁹ ***without delay*** with the information⁹⁰ necessary for it to fulfil its objectives⁹¹. ~~This includes⁹² providing Europol without delay⁹³ with⁹⁴ information relating to crime areas that are considered a priority by⁹⁵ the Union. It also~~ ***This*** includes, ***when relevant***, providing a copy of bilateral or multilateral exchanges with another Member State or Member States in so far as the exchange refers to crime that falls under Europol's objectives^{96,97,98,99};

86 ES suggests to replace "shall" with "***may***"

87 BG, EL, UK suggest to delete "~~or a competent authority of a Member State~~"

DE suggests to add here: "***in the framework of paragraph 4***"

88 FR suggests to replace this paragraph with: "***The National Unit shall in particular:***"

89 BG, CZ, EL, FR, CY, MT, PT, UK suggest to add here: "***on their own initiative***"

90 EL, CY suggest to add here: "***and intelligence***"

91 EL, FR, CY suggest to replace "~~to fulfil its objectives~~" with "***to carry out its tasks***"

EL, ES, CY suggest to add here: "***and respond to Europol's requests for information, the supply of intelligence and advice***"

92 BE, PL suggest to add "***in particular***".

93 BG, BE, EL, PL, UK suggest to delete "~~without delay~~".

94 LU, FR, NL, SE suggest to add here: "***relevant***"

95 NL, SE suggest to add here: "***Europol and***"

96 BG, BE, EL, ES, CY, LU, MT, PT, UK suggest to delete the last sentence: "~~It also includes providing a copy of bilateral or multilateral exchanges with another Member State or Member States in so far as the exchange refers to crime that falls under Europol's objectives~~"

97 BE suggests to add here: "***Europol shall within one month following the receipt of the information guarantee a systematic cross-match of all information available at Europol in order to fulfil its task pursuant to articles 4 (1) (b) and 28***"

98 DE suggests to replace this paragraph with: "(a) supply Europol with the information, ***in cases mentioned in para 4 including information derived from criminal proceeding for tax crimes***, necessary for it to fulfil its objectives. This includes providing Europol without delay with information relating to crime ***as mentioned in Article 3 para*** ~~areas that are considered a priority by the Union~~. ***If it seems appropriate*** it also includes ***giving notice*** ~~providing a copy of bilateral or multilateral information exchanges~~ with another Member State or Member States in so far as the exchange refers to crime ***mentioned in Article 3 para (1)***; ~~that falls under Europol's objectives~~;

99 DE, EL, ES suggest to add here:

Without prejudice to the Member States" discharging the responsibilities incumbent upon them with regard to the maintenance of law and order and the safeguarding of internal security, a national unit* shall not in any particular case be obliged to supply information or intelligence if that would entail:

(aa) harming** national security interest;

(bb) jeopardising the success of a current investigation or the safety of individuals; or

(cc) disclosing information relating to organisations or specific intelligence activities in the field of State security.

****DE additionally suggest to add here "or other competent authorities"***

***** DE suggests to add here "essential"***

(b) ¹⁰⁰ ensure effective communication and cooperation of all relevant competent authorities of the Member States [and training institutes for law enforcement officers within the Member States, with Europol]¹⁰¹;

(c) raise awareness of Europol's activities¹⁰².

5a. Without prejudice to Member States discharging the responsibilities incumbent upon them, with regard to the maintenance of law and order and the safeguarding of internal security, Member States¹⁰³ shall not in any particular case be obliged to supply information¹⁰⁴ that would:

(a) harm essential¹⁰⁵ national security interests;

(b) jeopardise the success of a current investigation or the safety of individuals; or

(c) disclose information relating to organisations or specific intelligence activities in the field of national security.

Information shall be supplied as soon as it no longer falls under points (a), (b) or (c) of this paragraph.

¹⁰⁰ FR suggests to delete this subparagraph

¹⁰¹ BG, EL, ES suggest to add the following paragraph here:

"(ba) ensure compliance with the law in every exchange of information between themselves and Europol"

BG (and ES in similar wording) also suggests to include:

"(bb) respond to Europol's requests for information, intelligence and advice and to keep provided information up to date"

EL, ES (in similar wording) also suggest to include:

"(bc) to ask Europol for all relevant information in support of investigations conducted by the designated competent authorities"

"(bd) to evaluate information and intelligence in accordance with national law for the competent authorities and to transmit that material to them"

¹⁰² BG, CZ, EL suggest to delete this paragraph

¹⁰³ BG, EL, ES, PL, UK suggest instead of "Member States" the words "*a National Unit*"

DE suggests instead of "Member States" the words "*a national unit or other competent authorities*"

¹⁰⁴ BE, LU, FI suggest to add here "*under Article 7(5)(a)*".

¹⁰⁵ EL, ES, PL, UK suggest the text without "essential"

6. The heads of National Units shall meet on a regular basis¹⁰⁶, particularly to discuss and solve problems that occur in the context of their operational cooperation with Europol¹⁰⁷.
7. ~~¹⁰⁸Each Member State shall define the organisation and the staff of the National Unit according to its national legislation.~~
8. The costs incurred by National Units ~~and of the competent authorities in Member States~~ in communications with Europol shall be borne by the Member States and, ~~apart from~~ *with the exception of* the costs of connection, shall not be charged to Europol.
- 9.¹⁰⁹ ~~Member States shall ensure a minimum level of security of all systems used to connect to Europol.~~

¹⁰⁶ ES suggests to replace the rest of the sentence with: "*on their own initiative or at the request of the Director or the Management Board.*"

¹⁰⁷ BE, EL suggest to add here: "*When deemed relevant, the heads of National Units shall provide advice to the Management Board*"

¹⁰⁸ Moved up as article 7(3a)

¹⁰⁹ This will be included into Article 38.

10.¹¹⁰ ~~Each year~~ Europol shall draw up *an annual* report on the quantity and quality of information provided by each Member State pursuant to paragraph 5(a) and on the performance of its National Unit *on the basis of the evaluation criteria defined by the Management Board*. The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments.^{111, 112}

¹¹⁰ CZ, EL, ES, PT suggest to delete this paragraph

¹¹¹ UK suggests to add here the following subparagraph: "*(b) In addition to the annual report as in paragraph (a) above, the Europol Director may regularly report on Member States performance in data provision to Europol as part of his evaluation of the effectiveness of Europol. Following this assessment he may raise any concerns direct with the relevant Member State.*"

¹¹² BG suggests the following wording of this paragraph:

"Each year Europol *in close cooperation with Member States concerned* shall draw up a report on ~~the quantity and quality of information provided by the cooperation with~~ each Member State pursuant to paragraph 5(a) and on the performance of its National Unit. *The Management Board shall decide the evaluation criteria and procedure to draw up and publish the report.* The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments."

DE, NL, SE, UK suggest the following wording of this paragraph:

"Each year Europol shall draw up a report ~~on the quantity and quality of~~ *regarding* information ~~provided~~ *sharing* by each Member State pursuant to paragraph 5(a) and on the performance of its National Unit. *The report should be analysed by the Management Board with the objective of continuously improving the mutual cooperation between Europol and the Member States. A summary of the* The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments."

FR suggests the following wording of this paragraph:

"Each year Europol shall draw up a report on the ~~quantity and quality of information provided by~~ each Member State pursuant to paragraph 5(a) and on the performance of its National Unit. *information exchange falling within its mandate, with the objective to continuously improve the mutual cooperation between law enforcement services. When relevant, Europol and the national units concerned jointly undertake the necessary evaluations.* The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments."

Article 8

Liaison officers

1. Each National Unit shall designate at least one liaison officer to Europol. Except as otherwise laid down in this Regulation, liaison officers shall be subject to the national law of the designating Member State.
2. Liaison officers shall constitute the national liaison bureaux at Europol and shall be instructed by their National Units¹¹³ within Europol in accordance with the national law of the designating Member State and the provisions applicable to the administration of Europol.
3. Liaison officers shall assist in the exchange of¹¹⁴ information between Europol and their Member States¹¹⁵.
4. Liaison officers shall assist in the exchange of information between their Member States and the liaison officers of other Member States, *third countries and international organisations* in accordance with national law. Europol's infrastructure may be used, in line with national law, for such bilateral exchanges¹¹⁶ also to cover crimes outside the objectives of Europol. The Management Board shall determine the rights and obligations of liaison officers in relation to Europol¹¹⁷.

¹¹³ **BG, FR** suggest to add here "*to represent the interests of the latter*"

¹¹⁴ **EL, ES** suggest to replace "~~assist in the exchange of~~" with "*transmit/provide*"

¹¹⁵ **FR** suggests to add "*and conversely*"

¹¹⁶ **BE, EL** suggest to add "*between Member States and between Member States and third countries*".

¹¹⁷ **ES** suggests to replace this paragraph with:

"Liaison officers shall assist in the exchange of information from their national units with the liaison officers of other Member States in accordance with national law. *Such bilateral exchanges may also cover crimes outwith the competence of Europol.*"

5. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 65¹¹⁸.
6. Europol shall ensure that liaison officers are fully informed of and associated with all of its activities, insofar as this is necessary for the performance of their tasks.
7. Europol shall cover the costs of providing Member States with the necessary premises in the Europol building and adequate support for liaison officers to carry out their duties. All other costs that arise in connection with the designation of liaison officers shall be borne by the designating Member State, including the costs of equipment for liaison officers, unless the budgetary authority decides otherwise on the recommendation of the Management Board.

¹¹⁸ DE suggests to add here: "*Article 65(2)*"

ANNEX 1¹¹⁹

List of offences¹²⁰ with respect to which Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in accordance with Article 3(1) of this Regulation

- terrorism¹²¹,
- organised crime¹²²,
- unlawful drug trafficking¹²³,
- illegal money-laundering activities,
- crime connected with nuclear and radioactive¹²⁴ substances¹²⁵,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,

¹¹⁹ **FI** questions the usefulness of this Annex

¹²⁰ **BE** suggests that this list is replaced with list of EAW

FR suggests that this list is identical to the list in the draft Eurojust regulation. A reference to the European arrest warrant list might be preferable

¹²¹ **DE** suggests to delete "~~terrorism~~" as it is explicitly mentioned in Article 3(1)

EL suggests to add here: "*and its financing as well as the recruitment of persons for terrorist purposes*"

¹²² **DE** suggests to delete "~~organised crime~~" as it is explicitly mentioned in Article 3(1)

EL suggests to add here: "*in all its forms*"

¹²³ **EL** suggests to replace this indent with: "*illegal cultivation, production, import, export, transport and trafficking in drugs, psychotropic substances and precursors*"

¹²⁴ **EL** suggests to add here: "*materials and poisonous*"

¹²⁵ **DE** suggests to add here: "*biological agents and high-risk chemicals*"

- ¹²⁶racism and xenophobia,
- ¹²⁷- robbery¹²⁸,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud, including fraud affecting the financial interests of the Union¹²⁹
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime¹³⁰,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime, including ship source pollution,
- illicit trafficking in hormonal substances and other growth promoters,
- sexual abuse and sexual exploitation of women, and children¹³¹.

132

¹²⁶ DE suggests to add here: "*violent hate crime, especially crime related to racism and xenophobia*"

¹²⁷ DE suggests to add a new indent here: "*violent left wing crime and related offences*"

¹²⁸ EL, AT, SE suggest to add here: "*and aggravated theft*"

¹²⁹ DE suggests to add here: "*and its Member States*"

¹³⁰ EL suggests to add here:

- *cybercrime, targeting in particular large IT systems,*
- ~~computer crime,~~ *crimes committed with the use of computers, in particular frauds,*

¹³¹ DE, FR, SE suggest to add here: "*and men*"

¹³² PL suggests to add a new indent here: "- *unlawful seizure of aircraft or ships*"