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DS 1532/15

LIMITE

MEETING DOCUMENT

From:	Presidency
To:	Delegations
No. prev. doc.:	DS 1497/15, DS 1371/15, DS 1289/1/15 REV 1, DS 1447/1/15 REV 1
Subject:	Preparation of the upcoming trilogues and technical meetings on the draft Europol Regulation

In view of the upcoming trilogues and technical meetings on the draft Europol Regulation and based on the outcome of recent trilogues on 22 and 28 September 2015, the Presidency would like to invite delegations to discuss and possibly agree to the drafting proposals in relation to the following topics:

1. Internet Referral Unit at Europol (EU IRU);
2. Europol's cooperation agreements with third countries and international organisations (Art. 31);
3. information processing (Art. 24);
4. parliamentary scrutiny (Art. 53);
5. certain data protection-related provisions (Art. 36 and 39);
6. evaluation by the Commission (Art. 70).

1. Internet Referral Unit at Europol (EU IRU)

At the JHA Counsellors' meeting on 18 September 2015, delegations discussed the drafting proposals of the Presidency in relation to providing the legal basis for the functioning of the Internet Referral Unit (EU IRU) in the text of the draft Europol Regulation (DS 1497/15).

There were certain suggestions raised by Member States during this discussion and some comments were submitted by delegations in writing.

In the Presidency's consultations with Europol the latter recently suggested that in the EU IRU context Europol should be able not only to transfer but also receive personal data from private parties for reasons other than identifying the Member States concerned (as currently provided in Article 32(1a)). If the EU IRU is expected to actively identify threats from, for example, terrorism propaganda, according to Europol, it is indispensable that a dialogue with the concerned private parties is possible. This would mean that e.g. Facebook is in a position to respond to a referral by Europol, by pointing out that the same IP address or the same person also has other accounts that Europol has not yet discovered. The same applies to other service providers, which generally have a very good overview of their customers' activities on their own platform, but possibly and probably also as regards other platforms. Therefore, the Presidency submits, for delegations' consideration, a new paragraph (1aa) of Article 32.

At the same time at the trilogue with the EP on 22 September 2015, the rapporteur - while recognising the need for an effective EU IRU - conveyed certain concerns expressed by some shadow rapporteurs on further amending Article 32 on the exchange of personal data with private parties.

On the basis of these developments and taking into account Member States' and Europol's comments, the Presidency would like to propose the following revised text in relation to the provisions on EU IRU (the amended parts are marked in shading):

(1) Proposal for a new indent (m) in Article 4(1) “Tasks of Europol”:

(m) to process information in order to support Member States in preventing and combating forms of crime listed in Annex 1 which are facilitated, promoted or committed using the internet, and to process personal data in so far as it is necessary for such a purpose. This includes receiving reports, collecting and analysing information from publicly available sources, notably the internet, identifying content, by which facilitates or promotes such forms of crime are facilitated, promoted or committed, and taking action in cooperation with Member States to ~~secure~~ request its removal in voluntary cooperation with online service providers.

Article 4(1)(m) would be accompanied by a new recital (9a) explaining the new task set out in Art. 4(1)(m):

“(9a) Whilst the internet provides a common global infrastructure for the exchange of ideas, services and goods, it can also be used for cross-border criminal activities. Europol should therefore be able to process information, including personal data, also from the internet and other publicly available sources to support Member States in preventing and combating forms of crime that fall under Europol's competence when criminal acts are facilitated, promoted and or committed using the internet. As criminal activity on the internet has increased in recent years, [such as the amount of online material facilitating or promoting terrorism, illegal migrant smuggling], Europol should, in close cooperation with the Member States and focusing in particular on priority areas defined by the Management Board, identify such content, analyse it, and take appropriate action to ~~secure~~ request its removal in voluntary cooperation with online service providers.”

(2) Proposal for a new indent (occ) in Article 14(1) “Functions of the Management Board”

“(occ) adopt the procedures and business processes required for the processing of personal data for the purpose of analysing, identifying and requesting the removal of internet content, by which facilitates or promotes forms of crime referred to in Article 4(1)(m) are facilitated, promoted or committed, having obtained the opinion of the European Data Protection Supervisor;”

3. Proposals for new amendments to Article 32:

Article 32: *Exchanges of Personal data from with private parties*

1. ~~Without prejudice to paragraph 1c,~~ In so far as necessary for Europol to perform its tasks, Europol may process personal data originating from private parties on condition that *they* are received via:

(a) a ~~National~~ ~~Unit~~ of a Member State in accordance with national law;

(b) the contact point of a third country *or an international organisation* with which Europol has concluded a cooperation agreement *allowing for the exchange of personal data* in accordance with Article 23 of the Decision 2009/371/JHA prior to date of application of this Regulation; or

(c) an authority of a third country or an international organisation *which is subject to an adequacy decision as referred to in Article 31(1)(a) or* with which the Union has concluded an international agreement pursuant to Article 218 of the Treaty.

1a. In cases where Europol nonetheless receives personal data directly from private parties and where the National Unit, contact point or authority concerned referred to in paragraph 1 cannot be identified, Europol may process that personal data solely for the purpose of identifying these entities. Subsequently, the personal data shall be forwarded immediately to the National Unit, contact point or authority concerned and shall immediately be deleted after that transfer takes place who shall define in accordance with Article 25(1), where relevant, the purpose for which Europol may further process the data.¹

OR alternatively: "and shall be deleted if the National Unit, contact point or authority concerned does not authorise its further processing by Europol in accordance with Article 25(1)."

[1aa. Following the transfer of personal data in accordance with paragraph (1c)(c), Europol may in connection thereto receive personal data directly from private parties in order to process such data for the performance of the task set out in Article 4(1)(m)].²

¹ The amendment in this paragraph is in line with the request of the EP at the trilogue on 22 September 2015.

² This proposal is in line with the suggestion by Europol mentioned in the introductory part in relation to the need to further cooperate with private parties in the context of EU IRU.

1b. If Europol receives personal data from a private party in a third country with which there is no agreement, either concluded on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 of the Treaty or which is not subject to an adequacy decision as referred to in Article 31(1)(a), Europol may forward that information only to a Member State, or a third country concerned with which such agreement has been concluded.

~~3a1c.~~ Europol may not transfer personal data to private parties except where, subject to any possible restrictions stipulated pursuant to Article 25(2) or (3) and Article 69:

(a) the transfer is undoubtedly in the interests of the data subject and either the data subject has consented or circumstances are such as to allow a clear presumption of such a consent; or

(b) the transfer is absolutely necessary in the interests of preventing imminent danger associated with crime or terrorist offences; or

(c) the transfer is strictly necessary for the performance of the task set out in Article 4(1)(m) and the following conditions are fulfilled:

(i) the transfer concerns individual and specific cases; and

(ii) no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transfer in the case at hand.

2. If the *personal* data ~~received~~ *or to be transferred* ~~exchanged~~ affect the interests of a Member State, Europol shall immediately inform the National Unit of the Member State concerned.

3. Europol shall not contact private parties directly to retrieve personal data.

[4. The Commission shall evaluate the necessity and possible impact of direct exchanges of personal data with private parties within three years after this Regulation is applicable. ~~Such an evaluation shall specify among others the reasons whether the exchanges of personal data with private parties is necessary for Europol.~~]

2. Europol's cooperation agreements with third countries and international organisations (Article 31)

As mentioned in DS 1371/15, the EP initially proposed an amendment in Article 31 that Europol's current *"cooperation agreements shall be amended within five years after the entry into force of this Regulation and replaced by a subsequent agreement in accordance with point (b)."*

Taking into account various counter-arguments presented by the Presidency in the previous meetings, at the trilogue on 22 September 2015 the rapporteur suggested that the Commission should evaluate the conformity of all Europol's cooperation agreements with the new legal framework of Europol and the new data protection standards, and propose amendments to such agreements in order to bring them in line with the new Regulation on Europol.

In the recent opinion of the Advocate General in relation to the 'safe harbour' scheme between the EU and the US³, he concluded that given a finding of infringements of the fundamental rights of citizens of the Union, the Commission ought to have suspended the application of the decision, even though it is currently conducting negotiations with the United States in order to put an end to the shortcomings found. The Advocate General observes that, if the Commission decided to enter into negotiations with the United States, that is because it considered beforehand that the level of protection ensured by that third country, under the safe harbour scheme, was no longer adequate and that the decision adopted in 2000 was no longer adapted to the reality of the situation.

Although this opinion was delivered in a different context and might not be followed by the Court, it could be used to argue from it that there is a need to evaluate whether the exchange of personal data on the basis of the current Europol's operational cooperation agreements still ensures an adequate level of protection of such data over time. Therefore, and based on the request by the EP at the trilogue on 22 September 2015, the Presidency would like to propose the following compromise in relation to this topic as a new paragraph (1b) in Article 31:

"1b. Within five years after the entry into force of this Regulation, the Commission shall assess the provisions contained in the cooperation agreements referred to in Article 31(1)(c), in particular on data protection. The Commission shall inform the European Parliament and the Council about the outcome of this assessment, and, if appropriate, may submit to the Council a recommendation for a decision authorising the opening of negotiations of international agreements referred to in Article 31(1)(b)."

³ See press release of Court of Justice of the European Union No 106/15 of 23 September 2015: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-09/cp150106en.pdf>

3. Information processing (Article 24)

Due to the high sensitivity of the provisions of this Article, it has only been discussed at one technical meeting. The EP held a number of internal consultations and also consultations with Europol and EDPS in order to reflect further within the EP on its amendments in this Article and their possible impact on the operational functioning of Europol. As the outcome of this reflection, the new drafting proposals were submitted by the EP to the Presidency following the trilogue on 28 September 2015 with the new changes compared to the initial EP amendments underlined (also see Annex 1):

"Article 24

Purposes of information processing activities

1. In so far as necessary for the achievement of its objectives as laid down in Article 3 (1) ~~and (2)~~, Europol ~~shall~~ **may**⁴ process information, including personal data.

1a. Personal data may be processed⁵ only for the purposes of:

(a) cross-checking aimed at identifying connections ***or other relevant links*** between information ~~limited~~ ***related*** to:

(i) persons who are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who have been convicted for such an offence,

(ii) persons regarding whom there are factual indications or reasonable grounds that they will commit criminal offences⁶;

(b) analyses of a strategic or thematic nature;

(c) operational analyses; ~~in specific cases~~.

(d) facilitating the exchange of information between Member States, Europol, other Union bodies, third countries and international organisations⁷.

⁴ This change corresponds to the Council's general approach

⁵ This change corresponds to the Council's general approach

⁶ These two sub-points generally correspond to the definition of categories in Annex 2

⁷ This change corresponds to the Council's general approach

The execution of these tasks shall be performed under the following criteria:

~~the checks under point (a) shall be carried out in accordance with the necessary data protection guarantees, and shall, especially, provide sufficient justification for the data request and its purpose. The necessary measures shall also be taken to ensure that only those authorities that are initially responsible for collecting the data may subsequently change them;~~

1b. Processing for the purpose of ~~for each operational analysis~~ as referred to in point (c) of paragraph 1a shall be performed by means of operational analysis projects, for which the following specific safeguards shall apply:

(- i) at the start of any new project, the Executive Director shall define the specific purpose, categories of data, participants, duration of storage and conditions for access, transfer and use and shall inform the Management Board and the European Data Protection Supervisor thereof;

(i) personal data may only be processed where they are relevant for ~~their~~ specific purpose of the relevant project;

(ii) ~~all cross-matching operations by Europol staff shall be specifically motivated; the retrieval of data following a consultation shall be limited to the strict minimum required and specifically motivated;~~

(iii) only authorized staff ~~in charge of the purpose for which the data were initially collected~~ may access and modify ~~theat~~ data of the relevant project.

1c. The processing as referred to in paragraph 1a and 1b shall be carried out in compliance with the data protection safeguards provided for in this Regulation. Europol shall duly document ~~these~~ those processing operations. The documentation shall be made available, at request, to the Data Protection Officer and to the European Data Protection Supervisor for the purpose of verifying the lawfulness of the processing operations.

2. Categories of personal data and categories of data subjects whose data may be collected for each ~~specific~~ purpose referred to under paragraph 1a are listed in Annex 2.

2a. Europol may temporarily, ~~in exceptional cases,~~ process data for the purpose of determining whether such data are relevant to its tasks and for which of the purposes referred to under paragraph 1a. The Management Board, acting on a proposal from the Director and after consulting the European Data Protection Supervisor, shall determine the conditions relating to the processing of such data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data that may not exceed six months, having due regard to the principles referred to in Article 34.

2b. The Management Board, in consultation with the European Data Protection Supervisor, shall, as appropriate, ~~will~~ draft guidelines further specifying the purposes listed in points (a), (b) and (c) of paragraph 1a."

4. Parliamentary scrutiny (Article 53)

On the basis of the outcome of discussion on the parliamentary scrutiny at the JHA Counsellors' meeting on 17 June 2015, the Presidency raised the concerns by delegations regarding the amendments proposed by the EP in Article 53 at the trilogue on 23 June 2015. On that basis, the EP has submitted the following compromise proposals to the Presidency following the trilogue on 28 September 2015 with the new changes compared to the initial EP amendments underlined (also see Annex 2):

"Article 53

Joint Parliamentary scrutiny

1. The ~~mechanism for the~~ control of Europol's activities by the European Parliament, together with national Parliaments, pursuant to Article 88 TFEU, shall ~~take the form of be performed by a specialised Joint Parliamentary Scrutiny Group (JPSG). The JPSG shall, to be established within the competent committee of the European Parliament and shall,~~ comprising the full members of the competent committee of the European Parliament and together with one representative of the competent committee of the national parliament for each of any Member State wishing to participate and a substitute. Member States with bicameral parliamentary systems may instead be represented by a representative from each chamber.

2. The JPSG shall convene when needed and at least once a year and Joint Parliamentary Scrutiny Group meetings shall always be convened in the European Parliament premises

by the Chair of the European Parliament's competent committee. The meetings shall be co-chaired by the Chair of the competent committee of the European Parliament and the representative from the national Parliament of the Member State holding the rotating Council Presidency. Pursuant to Article 9 of Protocol No 1 to the TFEU, the JPSG shall adopt its rules of procedure at its first meeting by a simple majority of its members. Further working methods shall be developed jointly as necessary.

3. The Joint Parliamentary Scrutiny Group JPSG shall exercise political monitoring⁸ of Europol's activities. In doing so, it shall, as appropriate, monitor the application of the provisions of this Regulation, in particular in relation to their impact of Europol's activities and the relevant safeguards set out in this Regulation on the fundamental rights and freedoms of natural persons.

4. To this that end, the Joint Parliamentary Scrutiny Group shall have the following duties:

~~1. The~~ a) ~~the~~ Chairperson of the Management Board, ~~and~~ the Executive Director ~~and a representative of the Commission~~ shall appear before the European Parliament, jointly with national Parliaments, ~~before the Joint Parliamentary Scrutiny Group JPSG~~ at their ~~its~~ request to discuss matters relating to Europol, taking into account, if appropriate, the obligations of discretion and confidentiality. ~~The Group may decide to invite to its meetings other relevant persons, if appropriate;~~

(b) ~~the European Data Protection Supervisor shall appear before the Joint Parliamentary Scrutiny Group JPSG at its request and at least once per year to discuss matters relating to the protection of fundamental rights and freedoms of natural persons, and in particular the protection of personal data, with regard to Europol's operations, taking into account, if appropriate, the obligations of discretion and confidentiality.~~

(ba)⁹ a representative of the JPSG shall be invited to attend meetings of the Management Board with observer status. That representative shall not be entitled to vote;

The following documents shall be presented and debated in meetings of the Joint Parliamentary Scrutiny Group meetings JPSG:

⁸ Comment EP: wording of Art 12c(TEU) and Art 88 TFEU.

⁹ Comment EP: If such provision is inserted, the corresponding provisions from Art 13, 17 and 18 could be deleted.

- the draft annual and multiannual work programmes of Europol, referred to in Article 15;*
- the consolidated annual activity report on Europol’s activities, referred to in Article 14;*
- the annual report of the European Data Protection Supervisor on the supervisory activities of Europol, referred to in Article 46;*
- the evaluation report drawn up by the Commission to review the effectiveness and efficiency of Europol, referred to in Article 70.*

The following persons shall appear before the Joint Parliamentary Scrutiny Group JPSG at its request:

- the selected candidates for the posts of Executive Director, as referred to in Article 56(2);*
- the Executive Director whose term of office is intended to be extended, as provided for in Article 56(5);*
- the Executive Director, in order to report on the performance of ~~their~~ his or her duties.*

The Chairperson of the Management Board shall inform the Joint Parliamentary Scrutiny Group JPSG before removing the Executive Director from office, as well as to stating the reasons or grounds for such decision.

~~3- 5. In addition to the obligations of information and consultation set out in this Regulation, Europol shall transmit the following documents for information to the European Parliament and to the national parliaments, to the Joint Parliamentary Scrutiny Group JPSG, taking into account, *if appropriate*, the obligations of discretion and confidentiality, for information:~~

(a) threat assessments, strategic analyses and general situation reports relating to Europol's objective as well as the results of studies and evaluations commissioned by Europol;

(b) the ~~working~~ administrative arrangements adopted pursuant to Article 31(1);

(ba)¹⁰ the final draft estimate referred to in Article 60;

(bb) the report on the budgetary and financial management and the final accounts referred to in Article 62;

(bc) the evaluation report referred to in Article 70.

~~6. The Joint Parliamentary Scrutiny Group JPSG may request any relevant document necessary for the fulfilment of its tasks, subject to Regulation (EC) No 1049/2001 as well as and any rules governing the treatment of confidential information by the European Parliament.~~

~~7. The Joint Parliamentary Scrutiny Group JPSG may draw up summary conclusions on the supervisory activities on Europol and submit those conclusions to the European Parliament."~~

¹⁰ Comment EP: If provisions (ba), (bb) and (bc) are inserted, the corresponding amendments to Articles 60, 62 and 70 could be withdrawn.

5. Data protection-related provisions (Art. 36 and 39)

Following the technical meeting of 27 March 2015 and taking into account the outcome of discussion at the JHA Counsellors' meeting on 1 June 2015, the Presidency submitted provisional compromise texts in relation to Articles 34-44 as set out in DS 1289/1/15 REV 1 to the EP.

At the trilogue on 28 September 2015 the rapporteur agreed to all the proposed compromises in DS 1289/1/15 REV 1 with the exception of the following ones, which the Presidency kindly asks delegations to consider once again:

(A) Article 36(1), 36(2) and 36(5) in relation to the processing of special categories of personal data and of different categories of data subjects: the EP - because of the need to differentiate between the processing of "usual" and sensitive data - insists on the wording of the initial Commission proposal in relation to the permission for processing, as indicated in the highlighted parts below. Also, the EP insists that the processing should also be "proportionate", and asks for this reference to be inserted in paragraphs (1), (2) and (5) of this Article as highlighted below:

"1. Processing of personal data on victims of a criminal offence, witnesses or other persons who can provide information on criminal offences, or on persons under the age of 18 shall be prohibited unless it is strictly necessary ***and proportionate*** for preventing or combating crime that falls under Europol's objectives.

2. Processing of personal data, by automated or other means, ~~revealing~~ ***on*** racial or ethnic origin, political opinions, religious or ***philosophical*** beliefs, trade-union membership and of ***[genetic data or]*** data concerning health or sex life shall be prohibited, unless it is strictly necessary ***and proportionate*** for preventing or combating crime that falls under Europol's objectives and if those data supplement other personal data already processed by Europol. ***The selection of a particular group of persons solely on the basis of such personal data shall be prohibited¹¹.***

5. Personal data referred to in paragraphs 1 and 2 shall not be transmitted to Member States, Union bodies, third countries or international organisations unless strictly necessary ***and proportionate*** in individual cases concerning crime that falls under Europol's objectives ***and in accordance with the rules laid down in Chapter VI¹².***

¹¹ The additions by the Council in the rest of this paragraph were accepted by the EP.

¹² The additions by the Council in the rest of this paragraph were accepted by the EP.

(B) in Article 39(1)(c) in relation to the right of access for the data subject, the EP suggests to reinsert the reference to "any available information as to their sources" as proposed by the Commission in its initial text (see the highlighted part), arguing that in any case Europol will have the possibility to restrict access to any information listed in paragraph 1, including the details about the sources of information:

"(c) communication in an intelligible form of the data undergoing processing and of any available information as to their sources."

6. Evaluation by the Commission (Art. 70)

Following the technical meeting of 26 June 2015 and taking into account the outcome of discussion at the JHA Counsellors' meeting on 20 July 2015, the Presidency submitted provisional compromise texts in relation to Chapter X (Articles 55, 57-58) and Chapters XI-XIV (Articles 59-79) as set out in DS 1447/1/15 REV 1 to the EP.

At the trilogue on 28 September 2015 the rapporteur agreed to all the proposed compromises with the exception of Article 70(1) and made the following drafting suggestion, which the Presidency kindly asks delegations to consider (the changes compared to the compromise text in DS 1447/1/15 REV 1 are highlighted):

(1) No later than five years after ... [~~the~~ date of application of this Regulation], and every five years thereafter, the Commission shall commission an evaluation to assess particularly the impact, effectiveness and efficiency of Europol Europol's structure, operation, field of action and tasks, and its working practices. The evaluation shall may, in particular, address the possible need possibility to modify the objectives structure, operation, field of action and tasks of Europol, and the financial implications of any such modification.

Delegations will also find enclosed for their information in Annex 3 an overview of meetings in relation to the trilogue process on the draft Europol Regulation.

New compromise proposal by the EP on Article 24

COM Proposal (27.03.2013, doc. 8229/13)	EP Position/Amendments (vote on 24.02.2014, doc. 6745/1/14 REV 1)	Council Position (approved by the Council on 05.06.2014, doc. 10033/14)	New compromise proposal by the EP
<i>Article 24</i>			
Purposes of information processing activities			
1. In so far as necessary for the achievement of its objectives as laid down in Article 3(1) and (2), Europol shall process information, including personal data only for the purposes of:	1. In so far as necessary for the achievement of its objectives as laid down in Article 3(1) and (2) , Europol shall may process information, including personal data. <i>Personal data may be processed only for the purposes of:</i>	1. In so far as necessary for the achievement performance of its objectives tasks as laid down in Article 3(1) and (2) 4 , Europol shall may process information, including personal data. <i>Personal data may be processed</i> only for the purposes of:	1. In so far as necessary for the achievement of its objectives as laid down in Article 3 (1) and (2) , Europol shall may process information, including personal data. <i>1a. Personal data may be processed only for the purposes of:</i>
(a) cross-checking aimed at identifying connections between information;	(a) cross-checking aimed at identifying connections <i>or other relevant links</i> between information <i>limited to</i> ;		(a) cross-checking aimed at identifying connections <i>or other relevant links</i> between information limited <i>related</i> to:

	<i>(i) persons who are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who have been convicted for such an offence,</i>		<i>(i) persons who are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who have been convicted for such an offence,</i>
	<i>(ii) persons regarding whom there are factual indications or reasonable grounds that they will commit criminal offences;</i>		<i>(ii) persons regarding whom there are factual indications or reasonable grounds that they will commit criminal offences¹³;</i>
(b) analyses of a strategic or thematic nature;			(b) analyses of a strategic or thematic nature;
(c) operational analyses in specific cases.			(c) operational analyses; in specific cases.
		<i>(d) facilitating the exchange of information between Member States, Europol, other Union bodies, third countries and international organisations.</i>	<i><u>(d) facilitating the exchange of information between Member States, Europol, other Union bodies, third countries and international organisations.</u></i>
	<i>The execution of these tasks shall be performed under the following criteria:</i>		The execution of these tasks shall be performed under the following criteria:

¹³ These two sub-points generally correspond to the definition of categories in Annex 2

	<p><i>- the checks under point (a) shall be carried out in accordance with the necessary data protection guarantees, and shall, especially, provide sufficient justification for the data request and its purpose. The necessary measures shall also be taken to ensure that only those authorities that are initially responsible for collecting the data may subsequently change them;</i></p>		<p>the checks under point (a) shall be carried out in accordance with the necessary data protection guarantees, and shall, especially, provide sufficient justification for the data request and its purpose. The necessary measures shall also be taken to ensure that only those authorities that are initially responsible for collecting the data may subsequently change them;</p>
	<p><i>- for each operational analysis case referred to in point (c) the following specific safeguards shall apply:</i></p>		<p><u>1b. Processing for the purpose of - for each operational analysis case as referred to in point (c) of paragraph 1a shall be performed by means of operational analysis projects, for which the following specific safeguards shall apply:</u></p>
			<p><u>(- i) at the start of any new project, the Executive Director shall define the specific purpose, categories of data, participants, duration of storage and conditions for access, transfer and use and shall inform the Management Board and the European Data Protection Supervisor thereof;</u></p>

	<i>(i) a specified purpose shall be defined; personal data may only be processed where they are relevant for this specific purpose;</i>		<i>(i) personal data may only be processed where they are relevant for <u>theis</u> specific purpose of the relevant project;</i>
	<i>(ii) all cross-matching operations by Europol staff shall be specifically motivated; the retrieval of data following a consultation shall be limited to the strict minimum required and specifically motivated;</i>		<i><u>(ii) all cross-matching operations by Europol staff shall be specifically motivated; the retrieval of data following a consultation shall be limited to the strict minimum required and specifically motivated;</u></i>
	<i>(iii) only authorized staff in charge of the purpose for which the data were initially collected may modify that data.</i>		<i>(iii) only authorized staff <u>in charge of the purpose for which the data were initially collected</u> may access and modify <u>theat</u> data of the relevant project.</i>
	<i>Europol shall duly document these operations. The documentation shall be made available, at request, to the Data Protection Officer and to the European Data Protection Supervisor for the purpose of verifying the lawfulness of the processing operation.</i>		<i><u>1c. The processing as referred to in paragraph 1a and 1b shall be carried out in compliance with the data protection safeguards provided for in this Regulation. Europol shall duly document thoes processing operations. The documentation shall be made available, at request, to the Data Protection Officer and to the European Data Protection Supervisor for the purpose of verifying the lawfulness of the processing operations.</u></i>

<p>2. Categories of personal data and categories of data subjects whose data may be collected for each specific purpose referred to under paragraph 1 are listed in Annex 2.</p>			<p>2. Categories of personal data and categories of data subjects whose data may be collected for each specific purpose referred to under paragraph <u>1a</u> are listed in Annex 2.</p>
	<p><i>2a. Europol may temporarily, in exceptional cases, process data for the purpose of determining whether such data are relevant to its tasks and for which of the purposes referred to under paragraph 1. The Management Board, acting on a proposal from the Director and after consulting the European Data Protection Supervisor, shall determine the conditions relating to the processing of such data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data that may not exceed six months, having due regard to the principles referred to in Article 34.</i></p>		<p><i>2a. Europol may temporarily, in exceptional cases, process data for the purpose of determining whether such data are relevant to its tasks and for which of the purposes referred to under paragraph 1a. The Management Board, acting on a proposal from the Director and after consulting the European Data Protection Supervisor, shall determine the conditions relating to the processing of such data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data that may not exceed six months, having due regard to the principles referred to in Article 34.</i></p>
	<p><i>2b. The European Data Protection Supervisor will draft guidelines specifying the purposes listed in points (a), (b) and (c) of paragraph 1.</i></p>		<p><i>2b. The <u>Management Board</u>, in <u>consultation with the European Data Protection Supervisor</u>, shall, as <u>appropriate</u>, will draft guidelines <u>further specifying the purposes listed in <u>points (a), (b) and (c) of paragraph 1a.</u></u></i></p>

New compromise proposal by the EP on Article 53

COM Proposal (27.03.2013, doc. 8229/13)	EP Position/Amendments (vote on 24.02.2014, doc. 6745/1/14 REV 1)	Council Position (approved by the Council on 05.06.2014, doc. 10033/14)	New compromise proposal by the EP
<i>Article 53</i>			
Parliamentary scrutiny	Joint Parliamentary scrutiny	Parliamentary scrutiny	Joint Parliamentary scrutiny
	<i>1. The mechanism for the control of Europol's activities by the European Parliament, together with national Parliaments, shall take the form of a specialised Joint Parliamentary Scrutiny Group, to be established within the competent committee of the European Parliament, comprising the full members of the competent committee of the European Parliament and one representative of the competent committee of the national parliament for each Member State and a substitute. Member States with bicameral parliamentary systems may instead be represented by a</i>		<i>1. The mechanism for the control of Europol's activities by the European Parliament, together with national Parliaments, <u>pursuant to Article 88 TFEU, shall take the form of be performed by a specialised Joint Parliamentary Scrutiny Group (JPSG). The JPSG shall, to be established within the competent committee of the European Parliament and shall, comprising the full members of the competent committee of the European Parliament and together with one representative of the competent committee of the national parliament for each of any Member State wishing to participate and a substitute. Member States with bicameral parliamentary systems</u></i>

	<i>representative from each chamber.</i>		<i>may instead be represented by a representative from each chamber.</i>
	<i>2. The Joint Parliamentary Scrutiny Group meetings shall always be convened in the European Parliament premises by the Chair of the European Parliament's competent committee. The meetings shall be co-chaired by the Chair of the competent committee of the European Parliament and the representative from the national Parliament of the Member State holding the rotating Council Presidency.</i>		<i>2. The <u>JPSG shall convene when needed and at least once a year and Joint Parliamentary Scrutiny Group meetings shall always be convened in the European Parliament premises by the Chair of the European Parliament's competent committee.</u> The meetings shall be co-chaired by the Chair of the competent committee of the European Parliament and the representative from the national Parliament of the Member State holding the rotating Council Presidency. <u>Pursuant to Article 9 of Protocol No 1 to the TFEU, the JPSG shall adopt its rules of procedure at its first meeting by a simple majority of its members. Further working methods shall be developed jointly as necessary.</u></i>

	<p>3. The Joint Parliamentary Scrutiny Group shall monitor the application of the provisions of this Regulation, in particular in relation to their impact on the fundamental rights and freedoms of natural persons.</p>		<p>3. The <u>Joint Parliamentary Scrutiny Group JPSG shall exercise political monitoring¹⁴ of Europol's activities. In doing so, it shall, as appropriate, monitor the application of the provisions of this Regulation, in particular in relation to their impact of Europol's activities and the relevant safeguards set out in this Regulation on the fundamental rights and freedoms of natural persons.</u></p>
	<p>4. To this end, the Joint Parliamentary Scrutiny Group shall have the following duties:</p>		<p>4. To <u>this that end, the Joint Parliamentary Scrutiny Group shall have the following duties:</u></p>
<p>1. The Chairperson of the Management Board and the Executive Director shall appear before the European Parliament, jointly with national Parliaments, at their request to discuss matters relating to Europol, taking into account the obligations of discretion and confidentiality.</p>	<p>1. The a) the Chairperson of the Management Board, and the Executive Director and a representative of the Commission shall appear before the European Parliament, jointly with national Parliaments, before the Joint Parliamentary Scrutiny Group at their its request to discuss matters relating to Europol, taking into account, if appropriate, the obligations of discretion and confidentiality.</p>	<p>1. The Chairperson of the Management Board and/or the Executive Director or their Deputies shall appear before the European Parliament, where appropriate jointly with national Parliaments, at their request to discuss matters relating to Europol, taking into account the obligations of discretion and confidentiality.</p>	<p>1. The a) the Chairperson of the Management Board, and the Executive Director and a representative of the Commission shall appear before the European Parliament, jointly with national Parliaments, before the Joint Parliamentary Scrutiny Group JPSG at their its request to discuss matters relating to Europol, taking into account, if appropriate, the obligations of discretion and confidentiality. The Group may</p>

¹⁴ Comment EP: wording of Art 12c(TEU) and Art 88 TFEU.

	<i>The Group may decide to invite to its meetings other relevant persons, if appropriate;</i>		<i>decide to invite to its meetings other relevant persons, if appropriate;</i>
2. Parliamentary scrutiny by the European Parliament, together with national Parliaments, of Europol's activities shall be exercised in accordance with this Regulation.	<p>2. Parliamentary scrutiny by the European Parliament, together with national Parliaments, of Europol's activities shall be exercised in accordance with this Regulation.</p> <p><i>b) the European Data Protection Supervisor shall appear before the Joint Parliamentary Scrutiny Group at its request and at least once per year to discuss matters relating to the protection of fundamental rights and freedoms of natural persons, and in particular the protection of personal data, with regard to Europol's operations, taking into account, if appropriate, the obligations of discretion and confidentiality.</i></p>	2. Parliamentary scrutiny by the European Parliament, together with national Parliaments, of Europol's activities shall be exercised in accordance with this Regulation <i>taking into account Europol's character as an operational law enforcement agency.</i>	<i>(b) the European Data Protection Supervisor shall appear before the <u>Joint Parliamentary Scrutiny Group JPSG</u> at its request and at least once per year to discuss matters relating to the protection of fundamental rights and freedoms of natural persons, and in particular the protection of personal data, with regard to Europol's operations, taking into account, if appropriate, the obligations of discretion and confidentiality.</i>
			<i>(ba)¹⁵ a representative of the <u>JPSG</u> shall be invited to attend meetings of the <u>Management Board</u> with <u>observer status</u>. That representative</i>

¹⁵ Comment EP: If such provision is inserted, the corresponding provisions from Art 13, 17 and 18 could be deleted.

			<i><u>shall not be entitled to vote;</u></i>
	<i>The following documents shall be presented and debated in the Joint Parliamentary Scrutiny Group meetings:</i>		<i>The following documents shall be presented and debated in <u>meetings of the Joint Parliamentary Scrutiny Group meetings JPSG:</u></i>
	<i>- the draft annual and multiannual work programmes, referred to in Article 15;</i>		<i>– the draft annual and multiannual work programmes <u>of Europol,</u> referred to in Article 15;</i>
	<i>- the consolidated annual activity report on Europol’s activities, referred to in Article 14;</i>		<i>– the consolidated annual activity report on Europol’s activities, referred to in Article 14;</i>
	<i>- the annual report of the European Data Protection Supervisor on the supervisory activities of Europol, referred to in Article 46;</i>		<i>– the annual report of the European Data Protection Supervisor on the supervisory activities of Europol, referred to in Article 46;</i>
	<i>- the evaluation report drawn up by the Commission to review the effectiveness and efficiency of Europol, referred to in Article 70.</i>		<i>– the evaluation report drawn up by the Commission to review the effectiveness and efficiency of Europol, referred to in Article 70.</i>
	<i>The following persons shall appear before the Joint Parliamentary Scrutiny Group at its request:</i>		<i>The following persons shall appear before the <u>Joint Parliamentary Scrutiny Group</u> JPSG at its request:</i>
	<i>- the selected candidates for the posts of Executive Director,</i>		<i>– the selected candidates for the posts of Executive Director, <u>as</u> referred to</i>

	<i>referred to in Article 56(2);</i>		<i>in Article 56(2);</i>
	<i>- the Executive Director, whose term of office is intended to be extended, as provided for in Article 56(5);</i>		<i>- the Executive Director whose term of office is intended to be extended, as provided for in Article 56(5);</i>
	<i>- the Executive Director, in order to report on the performance of their duties.</i>		<i>- the Executive Director, in order to report on the performance of <u>their</u> his or her duties.</i>
	<i>The Chairperson of the Management Board shall inform the Joint Parliamentary Scrutiny Group before removing the Executive Director from office, as well as to the reasons or grounds for such decision.</i>		<i>The Chairperson of the Management Board shall inform the <u>Joint Parliamentary Scrutiny Group JPSG</u> before removing the Executive Director from office, <u>as well as to stating</u> the reasons or grounds for such decision.</i>
3. In addition to the obligations of information and consultation set out in this Regulation, Europol shall transmit to the European Parliament and to the national parliaments, taking into account the obligations of discretion and confidentiality, for information:	3. 5. In addition to the obligations of information and consultation set out in this Regulation, Europol shall transmit to the European Parliament and to the national parliaments, to the Joint Parliamentary Scrutiny Group, taking into account, if appropriate, the obligations of discretion and confidentiality, for information:	3. In addition to the obligations of information and consultation set out in this Regulation, Europol shall <i>where relevant</i> transmit to the European Parliament and to the national parliaments, taking into account the obligations of discretion and confidentiality, for information:	3. 5. In addition to the obligations of information and consultation set out in this Regulation, Europol shall transmit <i><u>the following documents for information</u></i> to the European Parliament and to the national parliaments, to the Joint Parliamentary Scrutiny Group JPSG, taking into account, <i>if appropriate,</i> the obligations of discretion and confidentiality, for information:

(a) threat assessments, strategic analyses and general situation reports relating to Europol's objective as well as the results of studies and evaluations commissioned by Europol;			(a) threat assessments, strategic analyses and general situation reports relating to Europol's objective as well as the results of studies and evaluations commissioned by Europol;
(b) the working arrangements adopted pursuant to Article 31(1).		(b) the working administrative arrangements adopted pursuant to Article 31(1).	(b) the working administrative arrangements adopted pursuant to Article 31(1);
			<u>(ba)¹⁶ the final draft estimate referred to in Article 60;</u>
			<u>(bb) the report on the budgetary and financial management and the final accounts referred to in Article 62;</u>
			<u>(bc) the evaluation report referred to in Article 70.</u>
	<i>6. The Joint Parliamentary Scrutiny Group may request any relevant document necessary for the fulfilment of its tasks, subject to Regulation (EC) No 1049/2001^{40e} as well as rules governing the treatment of confidential information by the European Parliament.</i>		<i>6. The <u>Joint Parliamentary Scrutiny Group</u> JPSG may request any relevant document necessary for the fulfilment of its tasks, subject to Regulation (EC) No 1049/2001 as well as <u>and any</u> rules governing the treatment of confidential information by the European Parliament.</i>

¹⁶ Comment EP: If provisions (ba), (bb) and (bc) are inserted, the corresponding amendments to Articles 60, 62 and 70 could be withdrawn.

	<i>40e Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).</i>		<i>40e Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).</i>
	<i>7. The Joint Parliamentary Scrutiny Group may draw up summary conclusions on the supervisory activities on Europol to the European Parliament.</i>		<i>7. The <u>Joint Parliamentary Scrutiny Group</u> JPSG may draw up summary conclusions on the supervisory activities on Europol <u>and submit those conclusions</u> to the European Parliament.</i>

Trilogue process on the draft EUROPOL Regulation:

Trilogues/date	Technical meetings/date	JHA Counsellors' meetings	Topics
IT Presidency			
1st trilogue: 13/10/2014			Articles 1-4 (partly Art. 5)
	1st TM: 4/11/2014		Articles 1-4 (partly Art. 5)
		1st meeting: 17/11/2014 (CM 4943/14)	Outcome of the first trilogue and technical meeting on the draft Europol Regulation on Articles 1-4 (DS 1511/14)
2nd trilogue: 18/11/2014			Articles 6-8, 12-19
	2nd TM: 1/12/2014		Articles 6-8, 12-19
3rd trilogue: 8/12/2014			<ul style="list-style-type: none"> - Appointment of Executive Director, - parliamentary scrutiny, - establishment of the Executive Board

LV Presidency			
	3rd TM: 9/1/2015		Chapter V: information processing
	4th TM: 23/1/2015		Chapters VI-VII: relations with partners, data protection
	5th TM: 26/1/2015		Chapters VI-VII: relations with partners, data protection
		2nd meeting: 26/01/2015 (CM 1086/15)	Outcome of the recent trilogues and technical meeting: Articles 5-8, 12-19; Executive Board, parliamentary scrutiny (DS 1628/14)
4th trilogue: 4/2/2015			<ul style="list-style-type: none"> - Access to Europol's information to Eurojust and OLAF, - Europol's existing cooperation agreements with third countries; - receipt and transfer of personal data from/to private parties
		3rd meeting: 23/02/2015 (CM 1564/15)	<ul style="list-style-type: none"> - Preparation of the technical meetings and trilogues in relation to Chapters V-VIII (DS 1119/15) - Overview of the compromise proposals based on the previous trilogues and technical meetings in relation to Chapters I, II and IV (Articles 1-8 and 12-19) (DS 1120/15)
5th trilogue: 24/3/2015			<ul style="list-style-type: none"> - The provisional agreement on Articles 1-8 and 12-19 was confirmed with some exceptions; - the cooperation of EDPS with the national supervisory authorities and the Council's proposal to establish a Cooperation Board
	6th TM: 27/3/2015		Chapter VII: data protection

		4th meeting: 01/06/2015 (CM 2554/1/15 REV 1)	<ul style="list-style-type: none"> - Compromise proposals based on the technical meeting of 27 March 2015 in relation to Chapter VII (Articles 34-44) (DS 1289/15) - Proposal to move the transitional rules on Europol staff contracts from the REFIT proposal to the draft Europol Regulation (8858/15 + COR 1)
		5th meeting: 17/06/2015 (CM 2968/15)	<ul style="list-style-type: none"> - Preparation of the trilogue of 23 June 2015 (DS 1371/15) - Certain revised compromise proposals in relation to Articles 1-8 and 12-19, based on the outcome of the trilogue of 24 March 2015 (DS 1372/15)
6th trilogue: 23/06/2015			<ul style="list-style-type: none"> - Parliamentary scrutiny - the appointment procedure Executive Director - EP representative as observer in MB - Executive Board
	7th TM: 26/6/2015		Going through the articles that were not discussed before: Art 48-52, 55, 57-79. Discussion on the non-controversial parts of Chapter V (art 23, 25) started but was not completed due to the lack of time.

LU Presidency			
		6th meeting: 20/07/2015 (CM 3359/15)	<ul style="list-style-type: none"> - Outcome of the trilogue held on 23 June 2015 - Compromise proposals based on the technical meeting of 26 June 2015 on Chapter VII (Article 48) and Chapter VIII (Articles 49-52) (DS 1446/15) - Compromise proposals based on the technical meeting of 26 June 2015 on Chapter X (Articles 55, 57-58) and Chapters XI-XIV (Articles 59-79) (DS 1447/15)
		7th meeting: 18/09/2015 (CM 3788/15)	<ul style="list-style-type: none"> - EU IRU in the context of the Europol Regulation (DS 1497/15)
7th trilogue: 22/09/2015			<ul style="list-style-type: none"> - Existing Europol's cooperation agreements - Data from private parties
8th trilogue: 28/09/2015			<ul style="list-style-type: none"> - Data protection supervision (Art 47) - Compromise proposals in relation to Articles 34-44 (further to outcome technical meeting 27 March 2015) - Compromise proposals based on the technical meeting of 26 June 2015 on Chapter VII (Article 48) and Chapter VIII (Articles 49-52) (DS 1446/15) - Compromise proposals based on the technical meeting of 26 June 2015 on Chapter X (Articles 55, 57-58) and Chapters XI-XIV (Articles 59-79) (DS 1447/15) - Access to Europol's information to Eurojust and OLAF
		8th meeting: 02/10/2015 (CM 3982/15)	Preparation of the upcoming technical meetings and trilogues (DS 1532/15)
	8th TM: 09/10/2015 (TBC)		
9th trilogue: 20/10/2015 (TBC)			