

### 3. COMMENTS RECEIVED AFTER THE MEETING ON 8 FEBRUARY 2021 (BLOCKS 1, 3, 5 AND 7)

#### AUSTRIA

##### Concerning the presence of Europol at the meetings of the LEWP (Europol Regulation)

Dear Chair, do you think it would be possible that Europol will be present for the entire duration of our meetings? This would give them the opportunity to follow the discussions and to better understand the concerns delegations have. To be present for one hour answering questions which Europol's representative doesn't know why they come up, seems to be not very effective.

EUROPOL will intervene only by request of the Presidency and for technical reasons/clarification, bilateral discussions are not possible in the format of a video conference, we don't see therefore the risk of influencing the legislative process.

##### Comments to document WK 757/2021 REV 1

#### **Article 4/4b + recital 12**

We are still not convinced that this task is within the mandate of Europol.

EUROPOL is established with a view to supporting cooperation among **law enforcement authorities**.

The screening of foreign direct investments is not necessarily the task of law enforcement authorities in the Member States.

We propose to delete Article 4/4b and recital 12.

#### **Article 7/ 8**

Article 12 of Directive (EU) 2019/1153 reads "...Member State shall ensure that its FIU is entitled to reply to duly justified requests made by Europol through the Europol national unit **or, if allowed by that Member State, by direct contacts between the FIU and Europol.**

This second part of the sentence is an important aspect for us. It should be reproduced in order to avoid confusion.

We propose the following wording:

8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 2005/60/EC of the European Parliament and of the Council are **entitled to reply to duly justified requests made by** ~~allowed to cooperate with~~ Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council, in particular via their national unit **or, if allowed by that Member State, by direct contacts between the FIU and Europol** regarding financial information and analyses, within the limits of their mandate and competence **and subject to national procedural safeguards.**

#### **Article 26/6b + recital 34**

The scope of SIENA is currently to facilitate **"the exchange of information between Member States, Europol, other Union bodies, third countries and international organisations"** (recital 24 of the current EUROPOL Regulation)

In fact, when SIENA is used by Member States for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol has not access to that data.

whereas article 26/6b and recital 34 provide for

..... “exchanges **between the competent authorities of Member States and private parties.**”

Either it is foreseen to create a new system or to use the capacities of SIENA for exchanges between competent authorities of Member States and private parties. In any case EUROPOL shall not have access to that data unless authorised by that Member State.

Therefore, we propose the following wording for article 26/6b and recital 34:

6b. Europol’s infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States’ national laws. **In cases where Member States use this infrastructure for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol shall not have access to that data. EUROPOL shall not have access to that data unless authorised by that Member State.**

#### **Recital 34**

The last part of the new sentence is not clear to us. This infrastructure provides a channel for interactions between LEAs and private parties, we do not see any connection to the access by a private party to information in Europol’s systems (related to the exchange with that private party). We propose to delete the last part of the new sentence and the last sentence.

(34) Europol should be able to provide the necessary support for national law enforcement authorities to interact with private parties, in particular by providing the necessary infrastructure for such interaction, for example, when national authorities refer terrorist content online to online service providers or exchange information with private parties in the context of cyberattacks. **Europol should ensure by technical means that any such infrastructure is strictly limited to providing a channel for such interactions between the law enforcement authorities and a private party, and that it provides for all necessary safeguards against access by a private party to any other information in Europol’s systems, which is not related to the exchange with that private party.** Where Member States use the Europol infrastructure for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol should not have access to that data. **EUROPOL shall not have access to that data unless authorised by that Member State.**