

BELGIUM

Written comments by Belgium concerning the proposed revision of the Europol Regulation (EU) 2016/794

We welcome the negotiations on the proposed revision of the Europol Regulation (EU) 2016/794, based on the European Commission's document COM(2020)796 as presented in Council document 13908/20. As requested by the Portuguese Presidency we have some general preliminary comments to share as well as some questions, which indicate certain desired clarifications or concerns. Most of these however will require consultations with the European Commission and/or Europol. We thank you for your consideration.

In general, we consider the proposed changes to the Europol Regulation to reflect very well the current concerns and necessities in relation to Europol's support to the MS. For example, we are pleased to note a delicate balance that has been sought in relation to the cooperation with private parties, the processing of large data sets and the request to the MS to initiate investigations. We also welcome the codification of several important existing and emerging tasks, such as concerning EMPACT or in relation to research and innovation.

We would like to focus on the articles to be discussed during the meeting of 25 January 2021. Our preliminary concerns regarding the first building block are the following:

- As for the determining the **private parties** in question we note that there is no definition or limitation to them, we welcome exchanging of views on this extremely important matter. We would like clarifications by the Commission and/or Europol on the intended cooperation with financial institutions. We believe the topic of Europol's cooperation with FIUs is closely linked to the debate on Europol's cooperation with private parties. It is necessary to receive further information about *how* this current proposal will coexist with and not duplicate the way in which FIUs function amongst themselves and cooperate with reporting entities. In this regard we are also very interested to hear about FR's idea during the meeting of 17 December 2020 about including the content of recital 33 in relation to Europol's cooperation with financial intelligence units into article 7. We note that the Commission is not eager to describe in an article what Europol cannot do, but we do find it essential to not interfere with FIU functioning through the rules on Europol's cooperation with private parties. As an alternative it thus seems logical as well as necessary to exclude obliged entities from the private parties Europol can cooperate with directly. Moreover, when it concerns information from financial institutions that is not subjected to FIU reporting (namely non-suspicious activity), how will Europol process such information based on the current proposal? The proposed articles concerning processing information outside Annex II does not seem to allow for this.
- Next to this, regarding the possibility of Europol to request a MS to contact a private party (namely article 26(6a)), we would like to enquire whether this process is also subjected to same reasoning of §2 of article 26 that the concerned MS has/have to resubmit the information to Europol via their national units. The text of paragraph 6a namely doesn't seem to suggest such a reasoning.
- We would welcome a clarification on the reason for deleting the phrasing concerning "the circumstances allow(ing) a clear presumption of consent" in article 26(5).

- Furthermore, we would welcome clarifications concerning the use of the terminology and the differences between “transmission” and “transfer” throughout the text, namely in article 26(5), taking into account the terminology used in Regulation (EU) 2018/1725.
- We would welcome clarifications on the added value and the intended impact of the proposed changes concerning **terrorist content online**. How does article 4(1)(m) relate to article 4(1)(u)?

Moreover, we already want to highlight certain other aspects concerning the other topics:

- As regards article 18a, namely the possibility of Europol to **process large data files** related to an “investigative case file” we wonder how this phrasing relates to proactive investigations. The definition does not seem to clarify this aspect, which we however consider to be important. Throughout the text we also note other phrasings, such as “specific criminal investigation” (in article 51(3)(g)) and “individual investigation or specific project” (in article 21(8)). We wonder about the meaning of these types of phrasing and how they are linked to the concept of the “investigative case file”.
- We note in recital 21 on **giving evidence in proceedings** the condition of taking into account “applicable use restrictions”, which we of course welcome. In article 20(5) however we do not see any reference to such restrictions and we wonder whether a reference to for example article 19(2) could be considered.
- We do not consider beneficial to refer in recital 7 concerning **EMPACT** to the certain terminology which is more suited to be flexible and based on Council conclusions. We thus suggest to amend the last sentence as follows: *“Europol should be able to provide administrative, logistical, financial and operational support to such activities, supporting the identification of **cross-cutting** priorities and the implementation of **horizontal** strategic goals in countering serious crime.”*

In conclusion, we look forward to fruitful discussions within the LEWP in order to strengthen the Europol mandate where appropriate. As requested by the Portuguese Presidency, we will express our position on the proposed information alert by Europol in the Schengen Information System within the IXIM community before addressing this topic again in the LEWP.