

4. COMMENTS RECEIVED AFTER THE MEETING ON 22 FEBRUARY 2021 (BLOCK 4)

BELGIUM

Written comments of Belgium about proposed SIS alert by Europol following the LEWP meeting of 22 February 2021

We are thankful to the Portuguese Presidency for continuing to create the necessary space to focus on the principles underlying the proposed SIS alert by Europol and to find a common ground among Member States before diving into the articles. Belgium has expressed at several moments throughout the preparatory process some concerns, especially on principal grounds, related to this proposal. **These concerns are in essence two-fold: there is the unclear operational added value, and there is the unclear and/or unwanted impact of this proposal.**

The unclear operational value, is our main issue. We have consulted our Belgian partners and we have **a lot of difficulty imagining the concrete situations in which it would be useful for frontline officers to receive certain information they need and are supposedly not receiving, especially taking into account the fact that alerts can be issued for the whole of Europol's mandate.** We are trying to see the gap as well as the nature of this gap, that the Commission sees. Although the Commission's explanations sound logical in general, our frontline officers and SPOC operators do not see it. That is why we keep insisting on having this gap explained. Because otherwise, we cannot successfully determine whether this proposed solution is adequate to solve the problem.

One of the issues we have always brought forward is the **big risk of duplicating the Interpol alerts.** The Commission previously stated that these alerts are not always visible to the frontline officers in Member States. As previously stated, in Belgium all Interpol alerts and notices are visible to our frontline officers. So you can understand that we are worried to which degree the Europol alerts will create double hits for our frontline officers and to what degree it will cause a duplication with the Interpol alerts. If the proposal is trying to ensure the availability of "Interpol" information to frontline officers, this would of course mean a very strange way of ensuring implementation of the appropriate and best way to move forward; namely improving the availability of Interpol alerts. And also, how big is this Interpol gap? How many countries are we talking about? We would very much welcome clarifications on how the duplication of Interpol alerts and these new SIS alerts by Europol will be handled.

Another important issue for us is the **very new and vague kind of responsibility that is placed on the MS**. MS and their frontline officers will have to decide which action to undertake based on a lot of unclarity and in an indirect manner, but with the responsibility of adequately responding. We are not sure if this corresponds to one of the important principles mentioned in the JHA Declaration on the future of Europol: **Europol should support the MS' investigations**. The protocol developed by the Terrorist Working Party and endorsed by COSI to deal with lists of third countries on non-EU Foreign Terrorist Fighters on the other hand does clearly follow the principle of MS being in the lead of SIS alerts. Next to this, the responsibility of each MS to adequately respond to this proposed alert by Europol will result in a **diverse implementation at the national level of each MS**. Thus we will have a big risk at fragmentation.

Or do we have to see this alert as an **incentive to start proactive investigations or as an open suggestion to assist a third country** in their investigation, but thus without a clear interest for the MS themselves? If this is the case, however, MS should not receive this message in the form of an alert, which is an instrument to ask for a specific and needed concrete action. The Schengen Information System derives its strength and its credibility from dealing with actionable information, from alerts requiring concrete action. Or maybe the proposal attempts to mainly provide an **extra monitoring tool for travel movements** of third country nationals? Although it sounds surely interesting for third countries, do we want third countries and Europol to use SIS for this end? We are most likely talking about cases with no clear link to a certain MS. We are afraid this **could open the door for misuse**.

Do we want to change to SIS for these ambiguous purposes instead of looking into the **upcoming Interoperability framework and all the databases** the EU has been creating so intensely? The Commission announced that an impact assessment of the recent ETIAS and VIS amendments will follow. We want to stress the importance and necessity of taking a close look at the ETIAS watchlist. This ETIAS watchlist namely has a lot of similarities in relation to the source and content of the information, the scope of the third country nationals concerned as well as the described objectives. A lot of questions thus arise about the added value and the overlap between these two instruments. How will Europol decide on whether to introduce the proposed SIS alert or rather using the ETIAS watchlist? Also, if such a SIS alert is supposed to take precedent, this will most likely affect the actual "raison d'être" of the ETIAS watchlist.

All these concerns hopefully clarify why we are very doubtful about the operational value and why we are uncomfortable about the unclear and unwanted effects and impacts. We should only undertake this radical change to SIS if no other and better suited means are possible. That is why it is essential to have a thorough gap analysis and impact analysis which includes all these elements described above. Because otherwise we risk **undermining the strong, clear, useful and above all operational instrument** that SIS is, and turning it into a channel for information exchange with unclear benefits for the MS.

Another very important reason why all this remains so unclear is because we have little indications of how Europol will handle all the creation of alerts; **which criteria will Europol use to decide to start the procedure to enter a for information alert? What's the minimum threshold and especially where does it stop?** Europol will also have to determine the reliability of the information (which also may include whether the third country information concerns intelligence information) while the MS are often better placed to determine this aspect. Currently the MS themselves use SIS based on solid legal grounds, a solid national investigation, most of the time solid national links and often with a magistrate involved. We have policies and working processes to this end. How will Europol handle these decisions? Which thresholds will they apply? Moreover, how can one assess at all the necessity of an alert without an action to be undertaken linked to it?

In conclusion, we have a lot of questions mainly directed at helping us decide whether or not there is sufficient operational value to the proposal. **First and foremost, we need to better understand – on a concrete operational level – the specific, actual gaps.** We need clear answers of the Commission to the questions and unclarities raised above, preferably in written form. Once these answers are available, we are interested in participating in a **constructive debate in searching for the most appropriate solution** – taking into account Europol's tasks and the characteristics of our SIS system – and we are willing to join other MS that are also willing to do so.