

BULGARIA

Bulgarian contribution to the draft Regulation amending Regulation (EU) 2016/794, as regards to enabling Europol to enter data into the Schengen Information System (Block 4)

Bulgaria agrees that there is an operational need to make verified third-country sourced information on terrorists and other criminals available to frontline officers.

Without any doubts, the Schengen Information System is the most widely used system by the frontline police officers. In this regard it could be considered that SIS is the right tool to make this information available to frontline officers.

We could agree that there is a clear need to overcome the security gap, related to the large amount of data on criminals and suspects, mainly foreign terrorist fighters, who are not accessible to the Member States because they are not entered in the SIS. It could be done by entering this information in the SIS, but we should find the most appropriate solution on the modalities of this approach.

As stated in the Explanatory Memorandum of the European Commission, Europol has the above-mentioned information. Therefore, the current proposal could provide a real benefit and positive effect on increasing the level of security in the EU, as well as enhancing the effectiveness of the largest European data base in the field of security – SIS. Nevertheless, up to the moment there are many issues of concern by the Member States which do not allow us to fully support the draft Regulation amending Regulation 2018/1862. But we are ready to further discuss and find possible compromise solutions.

In this regard, we have several comments on the text:

1. The introduction of new category of alerts - we propose **not** to introduce a new category (Alerts entered by Europol on persons of interest), but to use the current provisions of the SIS Regulation. Europol should be able to introduce alerts **only under Art. 36, para 2¹ with a measure "discreet checks" for persons third-country nationals** (Alerts on persons for discreet checks). First, this alert will provide the possibility for collecting information which is in line with the tasks of the Agency under Art. 4 (1) (a)² of the Europol Regulation. And secondly - the measures under this alert, which are clearly described, are close to the concept of the proposed measures in the new art. 37b of the SIS Regulation. Thus, there will be no confusion regarding the procedures and measures to be applied by the end users.

The added value for the Member States will be not so much the existence of a hit in the SIS, but the **sharing of useful and relevant information with the national competent authorities**, which would help them to prevent the commitment of serious crimes. In this regard, we suggest in the post-hit procedure to be added that Europol shall carry out additional checks in its databases after the Agency has been notified for a hit on its alert. The summarized/ analysed information should be shared with the competent authorities of the MS where the hit is identified. If other Member States are identified

¹ When entering alerts for discreet checks, inquiry checks or specific checks and where the information sought by the issuing Member State is additional to that provided for in points (a) to (h) of Article 37(1), the issuing Member State shall add to the alert all the information that is sought. If that information relates to special categories of personal data referred to in Article 10 of Directive (EU) 2016/680, it shall only be sought if it is strictly necessary for the specific purpose of the alert and in relation to the criminal offence for which the alert has been entered.

² Article 4 Tasks

1. Europol shall perform the following tasks in order to achieve the objectives set out in Article 3: (a) collect, store, process, analyse and exchange information, including criminal intelligence

during the subsequent processing of the hit information, they should also be notified.³ For example a person subject of Europol alert under art.36.2 is entering in Bulgaria accompanied by a person who is German citizen or has a permission for stay in Germany. In this case Europol during the subsequent processing of the hit information should inform Bulgaria and Germany and should provide both countries with the collected and analysed information.

In all cases, end-users will benefit if the alerts entered by Europol are only under **Article 36, paragraph 2 "discreet checks"**:

- at the first line / border control - there will be no change in the working processes;
- when the MS investigating officers make a search in the SIS and identify that there is an alert entered by Europol, they will know that the Agency has information on the person and will be able to request it and thus support their investigation.

Last but not least, as an argument it can be pointed out that by avoiding the introduction of a new category of alert for Europol, but providing the right to enter alerts only under Article 36, paragraph 2, "discreet checks", it will not be necessary to change the current procedures with small exceptions.

2. The quality of the data entered / consultation procedure before entering an alert - we believe that the procedures proposed by the EC to ensure the quality of the data and the preliminary consultations before entering an alert by Europol in the SIS in Article 37a, paragraph 3 are in the right direction, but more guarantees for the data completeness are needed. It is important for us, reliable mechanisms to be provided in order to ensure the completeness and accuracy of the information received from third countries and organizations. As a front-line MS located at the transit routes of foreign fighters, this issue is of particular importance for us.

With regard to the **pre-alert consultation procedure**, some questions arise:

The current proposal⁴ should be implemented through the Europol National Units under Article 7 of the Europol Regulation, but the question arises in case consultation is needed with the Schengen associated countries, which do not fall within the scope of Article 7 of the Europol Regulation and should be considered as third countries, as in the case of Denmark.

In addition, the SIRENE Bureaus operate 24/7 and the ENU do not. In case of an urgent need for a consultation procedure for entering an alert by Europol in the SIS, how will this be done? If there are deadlines for the consultation procedure it will be a challenge.

3. Duplication with the already agreed Protocol in the Terrorism WP for entering data from third countries on terrorism.

We support the European Commission's desire to have a long-term solution to the issue of entering data from third countries regarding foreign fighters. From our point of view, duplication with the Protocol already agreed in the Terrorism Working Party can be avoided, if Europol will introduce information received from third countries with which it has an agreement for operational cooperation. Member States could enter information from other third countries except those with which Europol has agreements, such as the MENA countries.

We would like once again to emphasize the necessity of qualitative and reliable data.

³ Which can be done by an explicit entry in the SIS Regulation or based on Article 22 of the Europol Regulation

⁴ In both Europol Regulations (art.4, para.1 new letter (r)) and for SIS (art. 37a, para 3, letter (d))

In addition, as another compromise solution, we propose to be considered, the Europol's right to enter alerts in the SIS to be initially limited only to alerts on terrorism-related activities (again only under Article 36, paragraph 2 "discreet checks"). After a certain period of time, the use of this instrument can be analysed and evaluated, and then its scope can be extended to include other offenses under Europol's mandate.

Based on the above, we believe that if a compromise solution is found to the outlined issues, the introduction of Europol alerts in the SIS would have added value in enhancing security in Europe.

Finally, Bulgaria supports the proposal of the Netherlands to have an Ad Hoc working group for discussing SIS and Europol related issues. In order to ensure the best possible effectiveness of this format, we believe that the Presidency and the Commission should present concrete provisions as alternative of the current text, in order to serve as a basis for the forthcoming discussions.