

## **FINLAND**

With regard to your question about Europol attending future meetings we are happy to approve of this.

### **General comments and questions on block 3. Research and innovation**

Finland still has a scrutiny reservation.

We would like to ask the Commission for some clarifications and we also propose some text changes below.

In the light of Regulation (EU) 2018/1275, it is evident that proposed Article 33a would be necessary if the proposed new task in Article 18(2)(e) is included in the Europol Regulation and entails the processing of real personal data. This is even more so if, as the Commission has explained, operational data were used for the purposes of research.

1. It seems that the provisions other than those in Chapter IX of Regulation (EU) 2018/1275 would apply to the research activities. The Law Enforcement Directive, which has been used as a model for Chapter IX, is clearer on this question (LED, Art. 9(2)). It should be noted that Regulation (EU) 2018/1275 imposes strict limitations for the use of operational data. (As a main rule, Chapter IX, Article 72, of the Regulation prohibits the use of operational data for purposes other than for the performance of a task carried out by Union bodies, offices and agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU and that it is based on Union law.) Research purposes seem to be allowed, however, although the exact relationship of Article 72 with those on further processing for other purposes is not entirely clear as regards EU agencies, considering that the operational personal data are forwarded by the Member States' authorities. We would appreciate some clarity from the Commission on this matter.
2. Also, as the general data protection framework does not use the concept of "innovation activities", it raises considerable questions. First, the concept of innovation may be problematic in the context of the processing of operational personal data, which are sensitive in nature and are subject to strict limitations even in the Law Enforcement Directive. There may also be issues of fundamental rights, considering the constitutional traditions of Member States. From that point of view, and to ensure consistency with the requirement of purpose limitation in the data protection legislation, it could be safest to choose another concept, such as development of "new technologies" which is a concept used in data protection legislation. It would also be important to examine the proposed Article jointly with the other proposed changes to the provisions on the processing of personal data. We would like to hear the Commission's thoughts on this matter.
3. It is not clear whether the Commission's proposal means that the processing of special categories of operational personal data is covered by Article 33a. Article 76 in principle prevents their use for purposes other than operational purposes. We would welcome a clarification by the Commission, and can later send a text proposal if special categories of operational personal data are also meant to be included.

4. We would also like to know if Europol can use other legal data for its research and innovation activities?

Text proposal for Article 4, paragraph (1)(t)

(t) proactively monitor and contribute to research and innovation activities relevant to achieve the objectives set out in Article 3, support related activities of Member States, and implement its research and innovation activities regarding matters covered by this Regulation, including **in** the development, training, testing and validation of algorithms for the development of tools.

Text proposal for Article 18(2)(e)

(e) research and innovation ~~regarding matters covered by this Regulation~~ for the development, training, testing and validation of algorithms for the development of tools **to support activities which fall within the scope of Chapter 5 of Title V of Part Three TFEU, covered by this Regulation;**

Reasons:

This modification in our view would help to avoid possible conflicts with the requirements set out in TFEU and Regulation (EU) 2018/1275, including particularly the purposes of processing of personal data and the rights of the data subject. In particular, in the light of Articles 71 and 72 of that Regulation, it would be advisable to have reference to activities which fall within the scope of Chapter 5 of Title V of Part Three TFEU.

Text proposal for Article 33a:

(a) any project shall be subject to prior authorisation by the Executive Director, based on a description of the envisaged processing activity setting out the necessity to process personal data, such as for exploring and testing innovative **new technological** solutions and ensuring accuracy of the project results, a description of the personal data to be processed, a description of the retention period and conditions for access to the personal data, a data protection impact assessment of the risks to all rights and freedoms of data subjects, including of any bias in the outcome, and the measures envisaged to address those risks;

Reasons:

See our explanation in question 2. for adding the words “new technological”.

(d) **any no** personal data processed in the context of the project shall ~~not~~ be transmitted, transferred or otherwise accessed by other parties;

(e) **any no** processing of personal data in the context of the project shall ~~not~~ lead to measures or decisions affecting the data subjects;