

GERMANY

Please find below Germany's written submission for agenda item 5 – Revision of the Europol Regulation – of the last LEWP meeting:

We would like to thank the Commission for this comprehensive legislative proposal that addresses important and pressing challenges not only for Europol, but also for law enforcement authorities throughout the EU. The assessment of the proposal and the consultations within the federal government are still pending. Therefore, Germany has to enter a general scrutiny reservation and will confine itself to the following initial comments:

For MS it is essential that Europol has the ability to effectively support national law enforcement authorities. This has been demonstrated by the discussion in the LEWP over the past months and years. And this is shown by the fact that the EU Home Affairs Ministers – in their Declaration on the Future of Europol – have jointly and unanimously defined the MS's core ideas for the future development of Europol.

Based on our initial assessment, Germany welcomes the general aim of the proposal insofar as it addresses existing deficits and legal challenges. This includes, in particular, the aims of remedying the EDPS' admonishment regarding the "Europol's big data challenge", improving cooperation with Private Parties and third countries as well as strengthening Europol's ability to support MS in the field of innovation. We still have to check the suitability of the proposals to achieve these objectives in detail. As for the further discussion of the proposal in the LEWP, we think it is urgent to reach first and tangible results on these crucial issues. We also take positive note of the proposed increase in resources.

Besides that, our first assessment of the proposal already led to certain points that we are not convinced of at this stage and that certainly require further examination and discussion:

The first point is the proposed active role of Europol in the SIS. We would like to raise a scrutiny reservation on this point, as we will have to look further into this issue. We still have general questions, including the following:

- We would like to ask the Commission how they assess compatibility with EU primary law, liability for the alerts and for the follow up measures taken.
- It would be interesting to learn how the Commission envisages resolving the following situation: If the information available is not sufficient for Member States to issue an alert, on what basis would Europol be able to issue an alert in such a case? What is the added value of Europol issuing an alert compared with a solution in which Europol analyses and prepares the information for the Member States in such a way that it is sufficient for issuing an alert, which the Member States can then issue themselves?
- In addition, we would be interested in how the Commission assesses the practical use of a separate alert category for Europol, when the question of how to deal with a hit is left to MS. How does the Commission assess the shift in responsibility vis-à-vis the general principles of the SIS, that include mutual trust in the decisions of law enforcement authorities of Member States and that the information in the system is actionable?

The second point relates to proposals that would give the Commission a right to issue instructions to Europol, i.e. in the context of preparing situational analyses or when it comes to evaluation research projects. This could undermine the independence of the agency and it also contradicts the clear positioning in the Ministerial Declaration.

The third point relates to the proposed cooperation with the EPPO insofar as it would go beyond the cooperation foreseen in the EPPO regulation.

The fourth point relates to the proposal to provide operational support to special intervention units. The Home Affairs Ministers have clearly stated that the agency should not have executive powers.

The fifth point concerns the numerous changes concerning data protection, including the reaction to the EDPS decision concerning “Europol’s big data challenge”. We still have to examine more closely whether the proposal appropriately addresses the concerns raised by the EDPS and at the same time ensures that Europol can continue to process big data in their support of Member States.

Lastly, we would be interested to hear the reasons why the proposal lacks an improvement of the structural exchange of personal data with third countries and did not try to find a solution that takes into account the conditions set out in the ECJ’s Schrems II decision. From an operational point of view, it seems urgently necessary to address this topic in the proposal, as no new third-country agreement has been concluded since the entry into force of the Europol Regulation in 2017 and therefore there was the conclusion in the recent discussions in LEWP that the current regime is dysfunctional.

Our further positioning will take place within the framework of discussions of the individual topics.