

## GERMANY

### **Germany's follow-up comments to the LEWP meeting on 25 January 2021 (Revision of the Europol Regulation)**

In addition to the comments made at the last LEWP meeting on 25 January 2021 please find below Germany's written comments on thematic blocks 1 (cooperation with private parties) and 3 (research and innovation). Further comments may be raised following ongoing scrutiny of the proposal.

#### **Thematic block 1: Cooperation with private parties**

##### Article 4(1)(m):

Please rephrase to clarify Europol's exact mandate on "Terrorist Content Online" more precisely, in particular in respect of the provisions of the TCO Regulation. For example, the latter's Article 13(1), (3) and (4) could be referred in order to specify Europol's role.

##### Article 4(1)(u):

In order to align Europol's proposed activities with the EUCP, the wording of the new Article 4(1)(u) should be amended as follows:

"(u) support Member States' actions in **a crisis within the meaning of the EU Crisis Protocol (EUCP) that constitutes a critical incident online where** preventing the dissemination of online content **is linked to or suspected as being carried out in the context of** related to terrorism or violent extremism in crisis situations, which **stemmings** from an ongoing or recent real-world event, **which** depicts harm to life or physical integrity or calls for imminent harm to life or physical integrity, and **where the content** aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers."

If this amendment is included, the provision describes the scenario which it aims to govern but it does not yet precisely address what will be the exact action by Europol to support Member States, inter alia vis-à-vis Article 4(1)(m). We are not sure the new Article 26a sheds complete light on this. Could this be described more precisely?

##### Article 26(2):

According to the explanation given by the Commission at the meeting, the last clause of the new Article 26(2) (which reads as follows: "unless a national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the transfer takes place") could be deleted. This deletion would clarify that the obligation to delete the data takes effect immediately after the transfer to all concerned units has been completed. In our view, this does not preclude the receiving Member State from resubmitting the data as national data to Europol in accordance with its national legislation for purposes covered by the Europol Regulation.

##### Article 26(4):

Editorial comment: The second sentence should read: "... may transfer the result of its analysis and verification of such data to the third country concerned."

Article 26(5):

As stated by the Commission at the meeting, "transfer" is used in the context of data exchange with states and international organisations. Based on this, "transfer" would seem to be the correct term in Article 26(5). As a general remark. Germany would prefer a definition of the terms "transfer" and "transmission" and its consistent use in the whole text.

Furthermore, if the provision aims at informing the private party that the information received is insufficient, why is there a need to transfer other personal data than the data already received from that party?

Article 26(6a):

According to the explanation given by the Commission at the meeting, it should be clarified that Member States are not legally bound to fulfil the requests made by Europol. Therefore, the first sentence should be amended as follows:

“Europol may request Member States, via their national units, to obtain personal data from private parties [...] **in accordance with the applicable national law.**”.

This applies accordingly to Art. 26a(5).

Article 26(6b):

How does this provision relate to the subjects covered by Art 88 TFEU?

Art. 26a:

As mentioned above in respect to Article 4(1)(u), it remains unclear what the supporting task of Europol would be, including the relationship to the current tasks under Article 4(1)(m).

### **Thematic block 3: Research and innovation**

#### Article 4(1)(t):

Following the call of the Home Affairs Ministers in paragraph 6 of their Joint Declaration on the Future of Europol, it is important that measures to strengthen Europol in the area of research and innovation build upon the EU Innovation Hub for Internal Security in order to ensure a coherent approach. The creation of the EU Innovation Hub for Internal Security was supported by Ministers at the JHA Council on 8 October 2019 and taken up by the Commission in its EU Security Union Strategy 2020-2025.

Therefore, the proposed new Article 4(1)(t) should be amended as follows:

“(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 the development, training, testing and validation of algorithms for the development of tools, **and contribute to the coordination of activities of Justice and Home Affairs agencies in the field of research and innovation in close cooperation with Member States;**”

#### Article 4(4a):

The proposed new Article 4(4a) should be deleted. In line with the Agency’s core mandate, measures to strengthen Europol in the area of innovation and research should be focused on supporting MS’ law enforcement authorities and not the Commission. From a governance perspective, giving the Commission a right to issue instructions to Europol would undermine the independence of the Agency, thus contradicting the clear position of Home Affairs Ministers in their Joint Declaration. Moreover, the proposal would create a paradoxical situation to the detriment of Member States. Excluding Europol from funding in the areas where it assists the Commission would at the same time limit its own possibilities to implement innovation projects. Therefore, the proposed new Article 4(4a) would have a negative impact on one of the very objectives of the legislative proposal, namely to strengthen Europol’s capacity to effectively support Member States in the field of innovation.

#### Article 4(4b):

Considering that screening mechanisms based on Regulation (EU) 2019/452 are conducted by Member States at national level and that said Regulation does not foresee a role for Europol, the proposed new Article 4(4b) should be deleted.

#### Article 18(2)(e):

Could „matters covered by this Regulation“ be specified more precisely, e.g. by referring to specific tasks from the Europol mandate?

Although the Commission referred to Article 33a at the meeting, the preference of synthetic/anonymized data is not yet explicitly mentioned. This should be clarified here or in Article 33a.