

ITALY

ITALIAN CONTRIBUTIONS ON THE "PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2016/794, AS REGARDS EUROPOL'S COOPERATION WITH PRIVATE PARTIES, THE PROCESSING OF PERSONAL DATA BY EUROPOL IN SUPPORT OF CRIMINAL INVESTIGATIONS, AND EUROPOL'S ROLE ON RESEARCH AND INNOVATION" BLOCKS 1-3-5-7

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PROPOSAL OF THE COMMISSION	ITALIAN COMMENTS		
RECITALS			
<p><u>With reference to recital 3:</u></p> <p><i>“These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal organised crime groups that engage in a wide range of criminal activities”.</i></p>	<p>Italy believes that it is of utmost importance to recall the pivotal role that mafia-style and family-based criminal organizations have played in taking advantage of the opportunities of the health emergency and digitization.</p> <table><tr><td>We therefore propose a revised version of recital 3:</td></tr><tr><td><p><i>These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal, <u>mafia-style and family based</u> organised crime groups that engage in a wide range of criminal activities.</i></p></td></tr></table>	We therefore propose a revised version of recital 3:	<p><i>These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal, <u>mafia-style and family based</u> organised crime groups that engage in a wide range of criminal activities.</i></p>
We therefore propose a revised version of recital 3:			
<p><i>These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal, <u>mafia-style and family based</u> organised crime groups that engage in a wide range of criminal activities.</i></p>			
<p><u>With reference to recital 6:</u></p> <p><i>“High-risk criminals play a leading role in criminal networks and pose a high risk of serious crime to the Union’s internal security. To combat high-risk organised crime groups and their leading members, Europol should be able to support Member States in focusing their investigative response on identifying these persons,</i></p>	<p>Italy believes that with reference to the establishment of the Operational Task Forces (OTF) and the identification of the High Value Targets (HVT), it is of utmost importance to better define, in the proposal Regulation, the evaluation criteria and the selection procedures.</p> <p>Moreover Italy believes that in this part, as said with reference to recital 3, it would be pivotal to mention, mafia style and family based organised crime groups.</p>		

<p><i>their criminal activities and the members of their criminal networks”.</i></p>	
<p><u>With reference to recital 12 and connected new paragraph 4b of art.4</u></p> <p><i>“Europol should support the screening of specific cases of foreign direct investments into the Union that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes.”</i></p>	<p>Considering the different and heterogeneous Offices and Agencies involved at national level in the screening of foreign direct investments, Italy believes that further discussions on the role of Europol through ENUs in this matter are needed.</p>
<p>ARTICLES</p>	
<p><u>With reference to the amendment of art 2 (f)</u></p> <p><i>(e) ‘international organisation’ means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;</i></p> <p><i>(f) ‘private parties’ means entities and bodies established under the law of a Member State or third country, in particular companies and firms, business associations, non-profit organisations and other legal persons that are not covered by point (e);</i></p>	<p>Considering the ongoing discussion and the pivotal importance of the cooperation with Private parties in the Europol new proposed regulation, Italy believes that it is extremely useful to define further the term “private parties”.</p> <p>This would avoid any misinterpretation and would facilitate the cooperation among all stakeholders involved in the matter.</p>
<p><u>With reference to the amendment of art.4 h) and connected recital 4</u></p> <p><i>“support Member States’ cross-border information exchange activities, operations and investigations, as well as joint investigation teams, and special</i></p>	<p>Given the specific nature of the special intervention units, it would be preferable to specify the operational support given by Europol.</p>

<p><i>intervention units, including by providing <u>operational</u>, technical and financial support;</i></p>	<p>During the discussion in the LEWP's meetings and as said in the Explanatory Memorandum of the Proposal, we understood that the support to MSs would be through ATLAS, therefore it could be useful to specify this in the text proposal.</p> <p><u>We propose to rephrase the sentence as follows:</u></p> <p><i>"support Member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams, and special intervention units by means of ATLAS network, including by providing <u>operational</u>, technical and financial support"</i></p>
<p><u>With reference to the amendment of art.4 m)</u></p> <p><i>"support Member States' actions in preventing and combating forms of crime listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States, the <u>coordination of law enforcement authorities'</u> response to cyberattacks, <u>the taking down</u> of terrorist content online, and the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions;"</i></p>	<p>Italy believes that the wording of the text is not very clear. It seems to give to Europol (though in cooperation with Member States) the possibility <u>to coordinate</u> (Member State) Law enforcement authorities response and the taking down of terrorist content online. On the contrary the main role of Europol should be, in our opinion, limited to <u>supporting</u> member States and not coordinating them.</p> <p>On a general basis, Italy believes that it has to be clarified within the text of art. 4 par. 1(m) that any action taken by Europol on this matter should be upon Member States' express request.</p> <p>As a consequence we propose the following wording:</p> <p><i>"support Member States' actions in preventing and combating forms of crime listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States and upon their request, the <u>coordination of law enforcement authorities'</u> response to cyberattacks, <u>the taking down</u> of terrorist content online, and the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions;</i></p>

<p><u>With reference to the amendment of art.4 par.1 (u)</u></p> <p><i>“support Member States’ actions in preventing the dissemination of online content in an online crisis situation, in particular by providing private parties with the information necessary to identify relevant online content”.</i></p>	<p>On a general basis, as in our previous comment, Italy believes that it has to be clarified in the text of art. 4 par. 1(u) that any action taken by Europol on this matter should be at the express request of a Member State and in accordance with its national law.</p> <p>Therefore we propose to amend the text as follows:</p> <p><i>“Support, upon Member State request and in accordance to their national legislation, Member States’ actions in preventing the dissemination of online content in an online crisis situation, in particular by providing private parties with the information necessary to identify relevant online content”</i></p>
<p><u>With reference to the amendment of art.4 new paragraph 4b and connected recital 12:</u></p> <p><i>“Europol shall support the screening of specific cases of foreign direct investments into the Union under Regulation (EU) 2019/452 of the European Parliament and of the Council* that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes covered by Article 3 on the expected implications for security”</i></p>	<p>Italy recalling what said with reference to Recital 12 believes that according to Regulation (EU) 452/2019, the possibility of carrying out screening on investments from third countries into EU is an exclusive prerogative for Member States and the Commission.</p> <p>Italy believes that the provision of granting specific attributions to Europol in this sector seems to lay outside of the Law Enforcement prerogatives considering:</p> <ul style="list-style-type: none"> -the screening activities of FDI involve not only Law enforcement agencies but also Intelligence’s National Agencies, AML national Offices and national economic and fiscal Agencies; -Giving Europol such role as defined by new art. 4 par 4b could lead to unnecessary or undesirable overlaps. <p>Italy thinks that further discussion, apart from the approval of Europol new Regulation, are necessary on this matter.</p>

<p><u>With reference to the new proposed version of Article 6 and connected recital 14:</u></p> <p><i>“In specific cases where Europol considers that a criminal investigation should be initiated into a crime falling within the scope of its objectives, it shall request the competent authorities of the Member State or Member States concerned via the national units to initiate, conduct or coordinate such a criminal investigation.”</i></p>	<p>Italy believes that the current version of article 6 is in line with Council conclusion on the Future of Europol and with the July’s European Parliament Resolution which stated that “..the strengthening of Europol capacity to request an investigation has to be with regards to crimes of cross border nature”.</p> <p>Our general remark is that is not a clarifying but an amendment, considering that the current interpretation of art. 6 is that Europol can request the initiation of an investigation only in case of a cross border crime.</p> <p>Italy believes that the proposal moves the focus for the request of the investigation from the cross border approach to the common interest approach.</p> <p>As this would be an important and crucial transformation of the role of the Agency Italy believes that further discussion and explanations are required.</p> <p>This is why we are not in favour of the reviewed text proposed as the actual Europol regulation has already proved to be sufficient and adequate.</p> <p>Italy believes that no modification should involve art. 6 of the Europol actual Regulation.</p>
<p><u>With reference to the new article 18 3a:</u></p> <p><i>“Processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed by means of Europol’s research and innovation projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply.”</i></p>	<p>Italy believes that the text here should be more specific. In particular, it should be made clear that processing personal data for such purposes is possible only if needed in order to reach the projects objectives.</p> <div data-bbox="727 1422 1362 1460" style="border: 1px solid black; padding: 2px;"> <p>Therefore, we propose the following rephrasing:</p> </div> <p><i>“If needed in order to reach Europol’s research and innovation project’s objectives, processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed only by means of the mentioned projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply”.</i></p>

<p><u>With reference with the new Article 25 paragraph 5, replaced by the following:</u></p> <p><i>"By way of derogation from paragraph 1, the Executive Director may authorise the transfer or categories of transfers of personal data to third countries or international organisations on a case-by-case basis if the transfer is, or the related transfers are:"</i></p>	<p>Italy would like to have explanations on this provision. If we compare this provision with the actual art 25 under the current regulation, we notice that the powers of the Executive Director now have increased including also « categories of transfers ». Why?</p> <p>On a general basis Italy believes that any transfer of data that Europol received by Member States or private parties before being transmitted or transferred has to be approved by the originating Member State -sender- (or the MS where the PP is based).</p> <p>We appreciated the explanations given by the Commission on the expression "categories of transfers" however we believes that there is still room for a further specification in the text proposed.</p>
<p><u>With reference to the Article 26 paragraph 2 that would be replaced by the following:</u></p> <p><i>"Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 in order to identify all national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the processing of that data necessary for the purpose of establishing jurisdiction immediately to the national units concerned. Europol may forward the personal data and relevant results from the processing of that data necessary for the purpose of establishing jurisdiction in accordance with Article 25 to contact points and authorities concerned as referred to in points (b) and (c) of paragraph 1. Once Europol has identified and forwarded the relevant personal data to all the respective national units concerned, or it is not possible to identify further national units concerned, it shall erase the data, unless a national unit, contact point or authority concerned resubmits the personal data to Europol in</i></p>	<p>In general, Italy believes that any information exchange should comply with the current regulatory framework and fully involve the Europol National Units in case of a PP based in EU.</p> <p>Any direct exchange of information of Europol with PP should involve only Private Parties based in Third Countries.</p> <p>Italy believes that the first part of the article should be reworded according to the following version:</p> <div data-bbox="727 1326 1362 1426" style="border: 1px solid black; padding: 5px;"> <p><i>"Europol may only receive personal data directly from private parties, based on third countries, in compliance with national legal framework ..."</i></p> </div>

<p><i>accordance with Article 19(1) within four months after the transfer takes place.”</i></p>	
<p><u>Regarding the new paragraphs 6a and 6b of art. 26:</u></p> <p><i>“6a. Europol may request Member States, via their national units, to obtain personal data from private parties, which are established or have a legal representative in their territory, under their applicable laws, for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol with a view to identifying the national units concerned...</i></p> <p><i>(6b) Europol’s infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States’ national laws. In cases where Member States use this infrastructure for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol shall not have access to that data.</i></p>	<p>In order to avoid any overlapping with the domestic legislation Italy believes that it would be better to replace the part”...<i>under their applicable laws..</i>” with the part “<i>in accordance with the national legal framework</i>”.</p> <div data-bbox="719 629 1362 983" style="border: 1px solid black; padding: 5px;"> <p>If agreed the new version would be the following:</p> <p><i>6a. Europol may request Member States, via their national units, to obtain personal data from private parties, which are established or have a legal representative in their territory, under their applicable laws in accordance with the national legal framework , for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol with a view to identifying the national units concerned...</i></p> </div> <p>Concerning the new proposed art. 26 par 6b Italy appreciated the Europol explanation during the 8 February LEWP meeting, however we believe that further discussions are required on this new tool.</p>
<p><u>With regard to the new art. 26a</u></p> <p><i>“Exchanges of personal data with private parties in online crisis situations</i></p> <p><i>1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent the dissemination of online content related to terrorism or violent extremism in online crisis situations as set out in point (u) of Article 4(1)”.<i></i></i></p>	<p>In order to avoid any possible risk of overlapping with the national ongoing investigations Italy believes that it would be better that any exchange of data with Private parties based in EU have to be carried out via the ENUs.</p>