

## MALTA

### Malta's Comments on the revision of the draft Europol Regulation

#### General Comments

Malta welcomes the priorities set by the Portuguese Presidency and supports the discussions to revise Europol's mandate as a response to increased operational needs and to a changing security landscape.

#### Specific Comments

The following comments are without prejudice to the Malta position and the substantive reservation placed on the revision of the Europol Regulation as a whole.

**a) the revisions made to the draft proposal amendments in bloc 1 enabling Europol to cooperate effectively with private parties and in bloc 3 strengthening Europol's role on research and innovation (including relevant new additions to support the amendments in the blocs)**

*Bloc 1 - enabling Europol to cooperate effectively with private parties:*

*Article 2(r)*

Malta agrees on the addition of a definition for 'online crisis situation'.

*Article 4(1)(u)*

Supports the deletion of part of the provision which hindered a clear understanding of the sub article. However, there is concern on the phrase 'relevant online content'. If this is not clearly defined, Europol may be legally obstructed to carry out its task based on interpretation.

*Article 25(4) and 26(5)*

Malta agrees on the linguistic changes proposed by the Presidency.

*Article 26(2a)*

Malta agrees on the addition of a new provision regarding non-duplication and non-interference.

*Article 26a*

Malta agrees on the addition of wording to reflect revised 'online crisis situation' term.

*Bloc 3: strengthening Europol's role on research and innovation:*

*Article 4(1)(t)*

Malta agrees on the addition of text which enables Europol to coordinate with other JHA agencies in the field of research and innovation in close cooperation with Member States.

*Article 4(4a)*

Malta agrees on broadening the scope of the sub article in relation to other research and innovation activities.

*Article 33(a) and 33(c)*

Malta believes that there is no added value in adding the word 'new' as the previous term 'innovative' already implies the same meaning.

Malta agrees on the addition of the wording which further safeguards against improper handling of personal data.

**b) the revisions made to the draft proposal amendments in articles 7(8) concerning Europol cooperation with financial intelligence units**

Malta agrees on clarifying further the legal relationship between Europol and financial intelligence units.

**c) the addition of a sub article 7(12) concerning the issuance of notifications by Europol to private parties on missing information**

Malta agrees on the addition of a new provision for an annual report to be drawn up on such notifications. On a linguistic point, a full stop should replace the semi colon at the end of the sub article.

**d) the request by Germany for a legal opinion by the General Secretariat of the Council on the addition of a new provision which exempts Schengen Associated Countries from article 25 of the draft proposal**

Malta agrees that a legal opinion is delivered by the General Secretariat of the Council to Member States for further examination of the German proposition.

**e) the addition of a new task enabling Europol to submit alerts on the Schengen Information System (SIS) on the suspected involvement of third country nationals on offences within the Agency's mandate**

Malta would like to continue placing a substantive scrutiny reservation on this aspect as further internal discussions at a national level are required.

**f) the clarification on article 6(1) of the draft proposal whereby Europol may request the initiation of an investigation of a crime affecting a common interest covered by a Union policy**

Malta acknowledges the reasoning behind the Commission's amendment to sub article 6(1). As the provision currently stands, there is the possibility of a legal ambiguity which may impede Europol from fulfilling its task under article 3(1) of the current Europol Regulation. Article 6(1) requires the presence of two or more Member States when Europol requests the initiation of a criminal investigation of a crime affecting a common interest covered by a Union policy. Such crimes do not necessarily require a cross-border dimension to occur. As a consequence of this, Europol may be obstructed from supporting and strengthening Member State action and mutual cooperation in preventing and combatting such forms of crime. For this reason, Malta in principle considers this proposal with a positive scrutiny and looks forward to further discussion between Member States and the Commission.

## **NETHERLANDS**

### **Comments of the Netherlands on the proposal amending the Europol Regulation, following the LEWP of 8 February 2021**

The Netherlands appreciates this opportunity to submit its comments on blocks 1, 3, 5 and 7. We very much appreciate the clarification that a Member State can refuse a request from Europol to obtain information from a private party in recital 31, that there will be no overlap between the cooperation of Europol with private parties and the activities of the FIUs through the insertion of a new paragraph 2a in article 26 and that article 26a only refers to online crisis situations. We are also grateful that the presidency has agreed to discuss the question whether Europol should be able to insert alerts in SIS at the LEWP meeting on 22 February. Please find some questions and comments

from our side below. As we are still studying several aspects of the proposal, we reserve the right to make additional comments at a later moment.

## 1) Comments on the text

<b>Block 1 Enabling Europol to cooperate effectively with private parties</b>
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### General questions

- How can we ensure that on the rare occasions that Europol shares personal data with private parties, they do not forward it to another organisation? Should private parties be able to forward personal data they have received from Europol? Article 23 paragraph 7 of the Regulation says that: “Onward transfers of personal data held by Europol by Member States, Union bodies, third countries and international organisations shall be prohibited, unless Europol has given its prior explicit authorisation.” Why are private parties not included in this paragraph? What reasons could there be for private parties to forward personal data?

Our text proposal for article 23 para 7 is:

“Onward transfers of personal data held by Europol by Member States, Union bodies, third countries, and international organisations and private parties shall be prohibited, unless Europol has given its prior explicit authorisation.”

- Should we maybe include a stipulation that the MB will establish further guidelines or conditions for the exchange of information with private parties? These could for example specify how Europol can decide whether to forward information it has received from private parties to third countries or international organisations under article 26 para 2, how Europol can decide whether to request Member States to obtain personal data from private parties under art. 26 para 6a and art. 26a para 5 or how Europol’s infrastructure may be used for exchanges between MS and private parties (art. 26 para 6b).

## Article 7 para 12

- We have two suggestions for additions to the current text (although we are not sure why the text describing the report is different here from that in article 51 para 3 sub f):

“Europol shall draw up an annual report on the number of cases in which Europol issued notifications to private parties on missing information in accordance with point (d) of paragraph 5 of Article 26 or requests to Member States to obtain personal data from private parties in accordance with paragraph 6a of Article 26 and paragraph 5 of Article 26a, including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks;”

- Furthermore, we think that the MB should not only receive the document that is described in article 51 para 3 sub f, but all the documents that the JPSG will receive.

## Article 26(2)

- The Netherlands appreciates the fact that the goal of receiving information from private parties has been limited to identifying member states. We agree with the Commission that Europol is there to support MS, not third countries or international organisations.

- Do the “national units concerned” automatically include the ENU of the Member State where the private party has been established?

- The Netherlands supports replacing “or” with “and”, as proposed by Italy.

## Article 26(6a) (en 26a lid 5)

- What does the new sentence in recital 31 mean that says: “Data processing by private parties should remain subject to their obligations under the applicable rules, notably with regard to data protection.” Which applicable rules does this refer to?

- Recital 32 stipulates that when Europol has received data from a private party in response to a request to a Member State to obtain this data and cannot expect to identify any further MS concerned, it needs to delete the data within 4 months after the last transmission had taken place. But where paragraph 2 of article 26 explicitly mentions this retention period, paragraph 6a does not. Maybe the relevant text from paragraph 2 should be included (i.e.: “Once Europol has identified and forwarded the relevant personal data to all the respective national units concerned, and or it is not possible to identify further national units concerned, it shall erase the data, unless the national unit concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the transfer takes place.”)?

- We might also consider including another sentence from paragraph 2 in article 26(6a), namely: “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.” (subject to article 19(2) of course).

## **Article 26a**

- Should article 26a contain a provision on a retention period? It seems to be a specialised version of article 26, which does contain its own retention period.
- We are still studying article 26a, so further comments on this may follow later.

### **Block 3: Strengthening Europol's role on research and innovation**

#### **Article 4(1)(t)**

How would we decide who gets the intellectual property of the innovations, including the algorithms, that are developed? Should we include something about this in the Regulation, for example that the MB will establish rules for this? Will all MS get access to the source codes of the innovations that are developed by or in cooperation with Europol?

#### **Article 4(4b)**

We are still studying the proposal for Europol to support the screening of foreign direct investments, so our comments on this will follow later.

#### **Article 18(2)(e)**

Could Europol hire (sub)contractors to process data for research and innovation, or is “Europol staff” limited to staff directly employed by Europol itself?

#### **Article 18 para 5a**

Since the processing of data for research and innovation under para 2 sub e has been excluded from paragraph 5 of article 18, we are wondering whether it should also be excluded from paragraph 5a? The aim of processing under 5a is to determine whether the data complies with the requirements of para 5, but this no longer applies to para 2 sub e.

#### **Article 33a**

- Which personal data will Europol use for research and innovation? The personal data that is already in its systems? Is Europol allowed to use data for research and innovation that has been shared with it for other purposes?
- We agree with the Belgian suggestion to include an explicit reference to a preference for synthetic/anonymised data in art. 33a and/or recital 39.
- Para 1 sub f: We understand that using the word “erase” is preferable to using the word “delete”.

## **Block 5 Strengthening Europol's cooperation with third countries**

### **Article 25 para 5**

- We would like to see a clarification that “categories of transfers” refers to a number of transfers related to one event. Maybe “categories” could be defined?
- We would appreciate it if we could receive a written opinion by the CLS on the German proposals for cooperation with third countries.

### **2) Questions to Europol**

## **Block 1 Enabling Europol to cooperate effectively with private parties**

### **Article 26(2)**

In the amended version of this article, the only aim of Europol receiving personal data directly from private parties is to identify all national units concerned. After it has forwarded the personal data to those national units, it will erase the information, unless it is resubmitted. It therefore seems that the intention of this article is that Europol receives the information on behalf of the national units concerned and then transfers ownership of the information to them. Once the national units concerned are the owners of the information, they can put restrictions on access to that information when they resubmit it.

However, in addition to those national units, Europol can also provide the information to third countries and international organisations. Since the aim of this article seems to be to transfer ownership of the information to the national units concerned, we were wondering whether Europol consults those national units before forwarding the information to a third country? What would happen if a Member State would resubmit the data with the restriction that it cannot be forwarded to third countries, but Europol has already done so? Is it desirable for Europol to forward the information to a third country before consulting the MS, or could that lead to problems for the MS concerned? Europol seemed to suggest during the meeting that it mainly intended to contact third countries in order to obtain data to be able to identify the member states concerned. Is that the intention of this article or will third countries also be sent the information for other reasons?

### **Article 26(6a)**

When does Europol expect to use this provision, that is: what kind of requests for information does Europol expect to make to private parties through the national units?