

POLAND

General remarks :

Poland positively assesses the support provided by Europol to the competent national authorities so far, while recognizing the possibility of introducing further improvements in its functioning. Poland is of the opinion that it is necessary to maintain the supportive role of Europol, while respecting the exclusive competences of the Member States.

Poland still raises the parliamentary reservation due to the ongoing consultations at the national level. We reserve our right to express further remarks and comments at a later stage of discussion and during the next LEWP VTCs.

Poland supports participation of Europol in LEWP VTCs

Recitals of Proposal:

PL suggest adding in the preamble the following motive :

Europol's new legal framework fully respects the principles enshrined in the art. 4.2 of the Treaty on the European Union as well as recognizes that national security remains the sole responsibility of each Member State. Since the objective of this Regulation is to strengthen action by the Member States' law enforcement services and their mutual cooperation in preventing and combating serious crime and terrorism Europol's institutional role has to be carefully balance in order to guarantee a necessary level of benefits for the Member States while maintaining and respecting the very essence of their exclusive competence in the area of national security.

On page 28 of 13908/20, Article 4:

<p><i>(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.</i></p>	<p><u>Comment:</u> Due to the cross-sectoral nature of the EU Innovation Hub, we believe that effective inter-agency cooperation is necessary</p>
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On page 29 of 13908/20, Article 4:

<p><i>“4a. Europol shall assist the Commission in identifying key research themes, drawing up and implementing the Union framework programmes for research and innovation activities that are relevant to achieve the objectives set out in Article 3. When Europol assists the Commission in identifying key research themes, drawing up and implementing a Union framework programme, the Agency shall not receive funding from that programme.</i></p>	<p><u>Comment:</u> We consider it important to provide adequate human and financial support to Europol, given the significant expansion of its competences and tasks.</p>
<p><i>4b. 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><u>Comment:</u> This provision enables Europol to seek active role in the process of screening foreign direct investment into the EU which may disort the balance between the Europol’s scope of competence and the issues falling within the category of the exclusive competence of the EU Member States in accordane with art 4 (2) of the Treaty on EU.</p> <p>The process of screening foreign direct investment is closely related to security-sensitive area such as critical infrastructure, dual use items or critical techologies, listed in art. 4 regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union.</p> <p>Taking into account the specific nature of the activities carried out by the competent national authorities in these areas, the practical dimension of such cooperation between these authorities and the Europol may prove to be problematic due to the fact that it touches upon economic security of the Eu Member States which, being one of the core elements of national securty, is excluded from the scopeof EU law. Therefore, in the opinion of our experts</p>

	Europol should not play an active role in the process of screening foreign direct investment.
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On page 29 of 13908/20, Article 6

<p>(3) in Article 6, paragraph 1 is replaced by the following: <i>“1. 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>In the opinion of our experts (initial remarks) : There is no consent for any amendment introducing obligation to a Member State to act on request of Europol. We believe that Europol should not interfere in investigation proceedings.</p>
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On page 31 of 13908/20, Article 18a

<p>1. Where necessary for the support of a specific criminal investigation, Europol may process personal data outside the categories of data subjects listed in Annex II where:</p> <p><i>(a) a Member State or the EPPO provides an investigative case file to Europol pursuant to point (a) of Article 17(1) for the purpose of operational analysis in support of that specific criminal investigation within the mandate of Europol pursuant to point (c) of Article 18(2); and</i></p> <p><i>(b) Europol assesses that it is not possible to carry out the operational analysis of the investigative case file without processing personal data that does not comply with the requirements of Article 18(5). This assessment shall be recorded.</i></p>	<p><u>Comment:</u> This issue requires detailed reflection in the framework of expert work and it is the subject of our analyzes, e.g. it has to be clarified if a Member State is supposed to provide whole case file to Europol ?</p>
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On page 34 of 13908/20, Article 26

PL suggests including in the text: the definition of private parties and the explanation of the scope of data which Europol is to receive from private parties

On page 36 of 13908/20, Article 26

<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>Irrespective of their jurisdiction over the specific crime in relation to which Europol seeks to identify the national units concerned, Member States shall ensure that their competent national authorities can lawfully process such requests in accordance with their national laws for the purpose of supplying Europol with the information necessary for it to fulfil its objectives.</i></p>	<p><u>Comment:</u></p> <p>This issue is analyzed by the Polish ENU, e.g. in the context of the possible generation of additional tasks for ENUs.</p> <p>The request made by Europol shall not pose any obligation to Member States. Obtaining any information from private parties should be conducted on a voluntary basis.</p>
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NETHERLANDS

Amendment of the Europol Regulation, blocks 1 and 3

Comments of the Netherlands following the LEWP meeting of 25 January

We have not been able to study all articles in detail yet, so we may have further comments on these two blocks at a later point.

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 delete 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?

Article 26(4)

Should it be “with” or “to” the country concerned in the final line?

Article 26(5)

Should “either” be deleted in para 5 sub a, since “or” has been deleted too?

Article 26(6a)

We would appreciate it if it could be clarified in the text that Member States can refuse a request from Europol to obtain personal data from private parties.

Article 26(6b)

In this article it says that: “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.” Does this mean that Europol does have access to the data if the crimes fall within its mandate? In what way?

Article 26a(2)

Should it be “with” or “to” the country concerned in the final line?

Article 26a(5)

Since this is a similar paragraph to 26(6a), maybe we should consider also clarifying in this text that Member States can refuse a request from Europol to obtain personal data from private parties.

Article 33a

There seem to be a paragraph 1 and 3, but no paragraph 2?

POLAND