

Follow-up comments to the last LEWP meeting (25/01/2021)

REVISION OF THE EUROPOL REGULATION

DEFINITION CRISIS SITUATION (Article 4.1 u)

Regarding “crisis situations” definition pursuant to **Article 4.1 u**, this Delegation suggest the crisis situation definition offers in Commission Recommendation (EU) 2017/1584 of 13 September 2017 on coordinated response to large-scale cybersecurity incidents and crises, adding the requirements of the Europol mandate:

“It is considered a crisis situation at Union level when a crime under Europol’s mandate (serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, as listed in Annex I- Art. 3) and the disruption caused an incident with such a wide-ranging impact of technical or political significance that it requires timely coordination and response at Union political level”.

Moreover, taking as a reference the definitions of crisis provided by the Council of the European Union in documents such as the Decision on the modalities for the implementation by the Union of the solidarity clause (2014/415/EU), this concept should be understood as follows:

"crisis" means a disaster or terrorist attack whose far-reaching effects or political significance are such as to require timely coordination of measures and a response at the political level of the Union.

In order to clarify the casuistry covered by this concept beyond terrorism - the purpose of which is to subvert the constitutional order or seriously alter public peace - in the case of Spain, and taking the terms used from Organic Law 5/2010, of 22 June, which modifies Organic Law 10/1995, of 23 November, of the Criminal Code, the concept of crisis situation should include any act with criminal casuistry that directly undermines the very basis of democracy and quantitatively multiplies its damaging potential by altering the normal functioning of markets and institutions, corrupting the nature of legal business, and even affecting the management and capacity for action of the organs of the State.

CLARIFYING THE ROLE OF EUROPOL IN THE REQUEST FOR THE INITIATION OF AN INVESTIGATION (Art.6.1)

Pertaining to clarify the role of Europol in the request for the initiation of an investigation into offences affecting the common interests of the Union, our position of this refers to the article 6 Europol Regulation (REGULATION (EU) 2016/794 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016). In this sense, it is considered that this Article provides sufficient legal cover to request the initiation of investigations and therefore it is not considered necessary to amend the regulation to this effect.

ON INTERPRETATION OF ARTICLE 7.8 AND POSSIBLE DYSFUNCTIONS OF FINANCIAL INTELLIGENCE UNITS

With regard to Article 7.8, it is specified that the cooperation of the above-mentioned Financial Intelligence Units (FIUs) may cooperate with Europol within the terms and limits set by the national units and always within their competences as laid down in Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules to facilitate the use of financial and other information for the prevention, detection, investigation or prosecution of criminal offences.

In particular, Chapter IV of the above-mentioned Directive on Exchange of Information with Europol, and in particular Article 12 thereof, which provides that each Member State shall ensure that its FIU is empowered to respond to duly motivated requests made by Europol through the Europol national unit or, if permitted by that Member State, through direct contacts between the FIU and Europol. This is within Europol's responsibilities and for the performance of its tasks.

In this regard, it is considered that the wording of this article is appropriate and respects the interests of Spain, being consistent with our legal system and regulations regarding the entity responsible for the management of the Financial Titles File (FTF), which is SEPBLAC.

REQUEST FOR THE PRESENCE OF STAFF TO DEAL WITH TECHNICAL ISSUES THAT MAY ARISE IN CONNECTION WITH THE NEW EUROPOL REGULATION.

Given the technical complexity of certain terms and concepts of the regulation to be reformed and of the proposed new wording, it is considered of interest to have Europol staff present to clarify the doubts raised by the different delegations, such as those that arose at the last VTC meeting held on 25 January:

- discussion of terms: transfer of data, crisis situations, key themes, private parties, etc.
- data protection declarations
- other