

SPAIN

Follow-up comments to the last LEWP meeting (08/02/2021)

REVISION OF THE EUROPOL REGULATION EXAMINATION OF THEMATIC BLOCKS 1 AND 3

- 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

- On Article 4(1), point (m):

In general, it is considered appropriate but should be included after "cooperation", "and under consent of member states"

- On Article 4.4b:

Europol's supporting role should be further defined.

- 26.5.d :

It is considered appropriate to include, together with the mention of the national units, the contact points and competent authorities.

- On Article 26.6a:

There must be possibility of choice for Member States to refuse a request to share private data.

- On Article 26.6b:

A clarification should be made: it follows from the proposed wording that, in cases falling within Europol's objectives, the agency will have access to personal data exchanged via its infrastructure by Member States with third parties, which may pose problems from a data protection point of view. Member States should be able to use Europol's infrastructure to exchange data in a secure way, without the agency being able to access them (under national authorities' criteria). EDPS should be consulted on this.

- On Article 26.b:

It is considered appropriate to add this article proposed by THE FRENCH DELEGATION.

- On Article 33.a:

EDPS should be consulted on the use of personal data and the data protection regulations of the Member States should be assessed. In any case, the use of synthetic data should be prioritized whenever possible.

INITIAL EXAMINATION OF THEMATIC BLOCKS 5 AND 7

- Strengthening Europol's cooperation with third countries

Relating to strengthening Europol's cooperation with third countries, regarding article 25.5, we propose for clarify a definition of "category of transfers" and included this definition in Art. 2.

- Clarifying that Europol may request the initiation of an investigation of a crime affecting a common interest covered by a Union policy

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.