

## ROMANIA

### **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**

**RO comments on doc. 5388/1/21 REV 1 and blocks 5 and 7**

- **Doc. 5388/1/21 REV 1.** We are maintaining the previous observations on blocks 1 and 3 as are mentioned in RO written comments (doc 5527/1/REV 1). Furthermore on block 3, Art. 18 (2)(e)<sup>1</sup>, additional information/clarifications are needed on what other research and innovation activities have been taken into consideration as the term “other” does not provide sufficient clarity to the text.
  
- **Block 5: strengthening Europol's cooperation with third parties**

**Recital 24:** *Europol can exchange personal data with third countries while safeguarding the protection of privacy and fundamental rights and freedoms of the data subjects. To reinforce cooperation with third countries in preventing and countering crimes falling within the scope of Europol's objectives, the Executive Director of Europol should be allowed to authorise categories of transfers of personal data to third countries **in specific situations and on a case-by-case basis**, where such a group of transfers related to a specific situation are necessary and meet all the requirements of this Regulation.*

**It is not clear what those specific situations are. It is necessary to define them, as well as the criteria for analyzing the respective situations (case-by-case basis). Clarifications are also needed on the authorization of the transfer of personal data to third parties (Europol's Executive Director level).**

**Art. 25 (5)<sup>2</sup>.** Additional information / clarifications are needed on what was taken into account when the phrase “*categories of transfers*” was used and if the current wording of art. 25 (5) of Regulation (EU) 2016/794 does not already cover transfer situations to third countries or international organizations.

**Art. 67, para 1: Member States control over the transferred data (as originators) and compliance with the third party rule are necessary elements in the process of transferring personal data to third countries. In this regard, we propose the following addition on this Article:**

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<sup>1</sup> Art 1 (5) (a) (ii) reference in proposal COM (2020) 794 final

<sup>2</sup> Art 1 (11) (a) reference in proposal COM (2020) 794 final

*Any administrative arrangement on the exchange of classified information with the relevant authorities of a third country or, in the absence of such arrangement, any exceptional ad hoc release of EUCI to those authorities, shall be subject to the Commission's prior approval **and shall be carried out in compliance with third party rule.***

- **Block 7: clarifying that Europol may request the initiation of an investigation of a crime affecting a common interest covered by a Union policy**

**Recital 13:** *Europol provides specialised expertise for countering serious crime and terrorism. Upon request by a Member State, Europol staff should be able to provide operational support to that Member State's law enforcement authorities on the ground in operations and investigations, in particular by facilitating cross-border information exchange and providing forensic and technical support in operations and investigations, including in the context of joint investigation teams. Upon request by a Member State, Europol staff should be entitled to be present when investigative measures are taken in that Member State and assist in the taking of these investigative measures. Europol staff should not have the power to execute investigative measures.*

**Recital 14:** *To strengthen that support, Europol should be able to request the competent authorities of a Member State to initiate conduct or coordinate a criminal investigation of a crime, which affects a common interest covered by a Union policy, even where the crime concerned is not of a cross-border nature. Europol should inform Eurojust of such requests.*

**Art 6, para 1:** *Request by Europol for the initiation of a criminal investigation*

*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.*

**Similar to FR position (doc. 5527/21), it is unclear how Europol staff will assist Member States in undertaking investigative measures (recital 13).**

**From the counter terrorism perspective, we consider that Europol's mandate and role must respect the limits set by the Treaties, namely supporting the action of police authorities and cooperation between them. By strengthening the Agency's capacity to request the initiation of transnational investigations, these limits are exceeded, with Europol being given a coordinating role.**

**The same position is underlined by FR and DE (doc 5527/21).**

**In this case, too, we consider it necessary to clearly define the criteria on the basis of which Europol takes the decision to initiate an investigation, namely the way in which the Agency will support the work of the MS on this component. By initiating such investigations, there could be a duplication of the efforts of the competent authorities.**