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#### **'I' ITEM NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	13908/20 + COR 1
Subject:	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 – Progress report

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#### **INTRODUCTION**

1. The above proposal<sup>1</sup> was presented by the Commission on 9 December 2020. The proposal is based on Article 88 of the Treaty on the Functioning of the European Union and is subject to the ordinary legislative procedure. Upon presentation, it was accompanied by an impact assessment<sup>2</sup>.
2. At the same time, the Commission presented a related proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of

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<sup>1</sup> 13908/20 + COR 1.

<sup>2</sup> 13908/20 ADD 1 + ADD 2 + ADD 3 (+ COR).

police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol<sup>3</sup>.

3. The objective of the main proposal is to strengthen the mandate of Europol in a number of areas where the Member States indicated strong operational needs – for instance to improve Europol’s cooperation with private parties and with third countries, to clarify Europol's ability to process large and complex datasets, or to strengthen the role of Europol in the area of research and innovation. The proposal also aims at strengthening Europol’s cooperation with the European Public Prosecutor’s Office (EPPO), aligning Europol’s data protection regime with Regulation (EU) 2018/1725, strengthening Europol's capacity to request the initiation of a criminal investigation in a Member State, and enabling Europol to make third-country data available to frontline officers through the Schengen Information System (SIS).
4. On 30 June 2021, COREPER approved the mandate for negotiations with the European Parliament (EP) regarding the main proposal on the Europol Regulation, and on 13 October 2021, it approved the mandate relating to the SIS Regulation.
5. The European Parliament (EP) appointed Mr Javier ZARZALEJOS (EPP, ES) as rapporteur. On 26 May 2021, Mr ZARZALEJOS presented his draft report to the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the EP. On 12 October 2021, the LIBE Committee adopted its report and the mandate for negotiations with the Council (approved in plenary on 21 October 2021).
6. Interinstitutional negotiations started on 27 October 2021 with a first informal trilogue, and a second trilogue took place on 30 November 2021. Seven technical meetings took place between 28 October and 9 December 2021. The Council discussed the proposed compromise suggestions in meetings of JHA Counsellors (Europol) on 7, 23 and 30 November and on 8 December 2021.

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<sup>3</sup> 13882/20.

## STATE OF PLAY

7. Significant progress has been achieved under the Slovenian Presidency in a number of key areas of the proposal where operational needs are the strongest: handling of big datasets, cooperation with private parties and Europol's role in research and innovation are nearly finalised, and outstanding provisions pertain to broader data protection or governance implications that should be addressed in dedicated compromise packages. Provisional agreement with the EP has been found on the regime of cooperation with third countries, and a number of provisions have been agreed upon regarding the alignment of Europol's data protection regime with Regulation (EU) 2018/1725 ('EUDPR').
8. More specifically, the advances on the individual thematic blocks can be outlined as follows:
  - a) **Cooperation with private parties (block 1)**: provisional agreement has been reached on the general regimes set out in Articles 26 and 26a, as well as on the addition of a new Article 26b that would cover processing of information provided by private parties with respect to child sexual abuse. The co-legislators are still discussing the exact wording of the definition of 'online crisis situation' and the ensuing tasks set out in Article 4 of the Regulation, but agreement is likely to be found at technical level.
  - b) **Handling of big data (block 2)**: despite the technical complexity of this topic, provisional agreement has been found on all of the main parameters, including the possibility to cross-check information in certain situations, the reference to investigative data instead of investigative case files and the deletion of the requirement for Europol to assess whether data originating in third countries has been obtained in compliance with fundamental rights. Outstanding issues such as the exact time-limit for data pre-processing or the role of the EDPS should be solved in the framework of a specific data protection compromise package, as mentioned above.

- c) **Innovation (block 3):** this very important part of the proposal has also seen very significant progress: besides provisional agreement on the safeguards set out in Article 33a, the EP accepted the clarification ensuring that the Member States retain full control and flexibility over the use of past data by Europol for innovation, and the position that innovation projects should not be limited to algorithms for tools used by law enforcement. Significant work has been done on the articulation between the roles of Europol's Innovation Lab and the wider EU Innovation Hub for internal security: while the exact compromise wording still has to be finalised at technical level, the underlying principles regarding conflict of interest and the entities to be covered by the provision on the Innovation Hub are agreed.
- d) **Cooperation with third countries (block 5):** as mentioned above, full provisional agreement has been reached between the co-legislators on this thematic block. The compromise wording is inspired by the Eurojust Regulation and allows for transfers of data to third countries for which appropriate safeguards with regard to the protection of operational personal data are provided for in a legally binding instrument, or are established as being in existence on the basis of Europol's self-assessment.
- e) **Relationship between Europol and the EPPO (block 6):** very importantly, the Council convinced the EP that the so-called data ownership principle has to be respected when it comes to the provision of information belonging to Member States by Europol to the EPPO. The last remaining point is the extension of this principle to information owned by third countries and international organisations, as is the case in the Council's mandate.
- f) **Europol's data protection regime (block 8):** a large number of provisions pertaining to the horizontal alignment of Europol's data protection regime with the EUDPR have been provisionally agreed between the co-legislators (e.g. Articles 24 and 27, 34-38, 39a-42). Outstanding provisions such as rules for prior consultation or the prerogatives of the EDPS will be discussed in the framework of the abovementioned data protection compromise package.

- g) **Other provisions not included in any of the preceding blocks (block 9):** Most of the provisions included in this thematic area have also been provisionally agreed – by way of example, this pertains to Europol’s support to EMPACT activities, to investigations on High Value Targets (HVTs) and to Europol’s provision of support to special intervention units, and also to Europol’s cooperation with OLAF, ENISA and the FIUs. Outstanding issues include the EP’s wish to task Europol with monitoring of Interpol alerts and with FDI screening, both opposed by the Member States.
9. The above shows that substantial progress was achieved in seven of the nine thematic areas into which the work at the Council has been divided throughout the examination of the Regulation.
10. In the remaining two blocks – entering of third-country information into the SIS and the capacity for Europol to request the initiation of investigations in a Member State – a satisfactory compromise solution has not been found yet despite several attempts by the Presidency. Finally, other amendments by the EP, especially in the area of Europol’s governance (a new Fundamental Rights Officer with a consultative forum, and a strengthened role for the JPSG), constitute a third area in which further efforts will be required.

## **CONCLUSION**

11. In the Conclusions adopted at its meeting of 10 and 11 December 2020, the European Council invited the co-legislators to examine the proposal on the strengthening of Europol’s mandate with a view to its rapid adoption.
12. The Presidency made every effort to deliver on this task but the negotiations have shown that more time is needed to achieve an overall compromise acceptable for both co-legislators.
13. **In view of the above, the Permanent Representatives Committee is invited to take note of the progress achieved in the negotiations on this proposal.**