

07/12/2021

2020/0349 (COD)

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

Colour codes

Technical provisions or identical text not requiring further attention
Provisional agreement between co-legislators
Text under discussion at technical level
Text reserved for political discussions

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
1.	2020/0349 (COD)		2020/0349 (COD)	
2.	<p>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</p>		<p>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</p>	
3.	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
4.	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 88 thereof,		Having regard to the Treaty on the Functioning of the European Union, and in particular Article 88 thereof,	
5.	Having regard to the proposal from the European Commission,		Having regard to the proposal from the European Commission,	

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6.	After transmission of the draft legislative act to the national parliaments,		After transmission of the draft legislative act to the national parliaments,	
7.	Acting in accordance with the ordinary legislative procedure,		Acting in accordance with the ordinary legislative procedure,	
8.	Whereas:		Whereas:	
9.	(1) The European Union Agency for Law Enforcement Cooperation (Europol) was established by Regulation (EU) 2016/794 of the European Parliament and of the Council ¹ to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.		(1) The European Union Agency for Law Enforcement Cooperation (Europol) was established by Regulation (EU) 2016/794 of the European Parliament and of the Council ¹ to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.	
10.	¹ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for		¹ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)	

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	Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).		and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).	
11.	(2) Europe faces a security landscape in flux, with evolving and increasingly complex security threats. Criminals and terrorists exploit the advantages that the digital transformation and new technologies bring about, including the inter-connectivity and blurring of the boundaries between the physical and digital world. The COVID-19 crisis has added to this, as criminals have quickly seized opportunities to exploit the crisis by adapting their modes of operation or developing new criminal activities. Terrorism remains a significant threat to the freedom and way of life of the Union and its citizens.	AM 1 (2) Europe faces a security landscape in flux, with evolving and increasingly complex security threats. Criminals and terrorists exploit the <i>capabilities</i> that the digital transformation and new technologies bring about, including the inter-connectivity and blurring of the boundaries between the physical and digital world and the possibility to conceal their crimes or identities through the use of increasingly sophisticated techniques. Criminals have proven their ability to adapt their modes of operation or develop new criminal activities in times of crisis, including by leveraging technology-enabled tools for multiplying and expanding the	(2) Europe faces a security landscape in flux, with evolving and increasingly complex security threats. Criminals and terrorists exploit the advantages that the digital transformation and new technologies bring about, including the inter-connectivity and blurring of the boundaries between the physical and digital world. The COVID-19 crisis has added to this, as criminals have quickly seized opportunities to exploit the crisis by adapting their modes of operation or developing new criminal activities. Terrorism remains a significant threat to the freedom and way of life of the Union and its citizens.	

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		<i>range and scale of the criminal activities they engage in.</i> Terrorism remains a significant threat to the freedom and way of life of the Union and its citizens.		
12.	(3) These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal organised crime groups that engage in a wide range of criminal activities. As action at national level alone does not suffice to address these transnational security challenges, Member States' law enforcement authorities have increasingly made use of the support and expertise that Europol offers to counter serious crime and terrorism. Since Regulation (EU) 2016/794 became applicable, the operational importance of Europol's tasks has changed substantially. The new threat environment also changes the support Member States need and expect from Europol to keep citizens safe.	AM 2 (3) These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal organised crime groups that engage in a wide range of criminal activities. As action at national level <i>and cross-border cooperation do</i> not suffice to address these transnational security challenges, Member States' law enforcement authorities have increasingly made use of the support and expertise that Europol offers to <i>prevent and</i> counter serious crime and terrorism. Since Regulation (EU) 2016/794 became applicable, the operational importance of Europol's tasks has <i>increased</i> substantially. The new threat environment also changes the <i>scope and type of</i> support	(3) These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal organised crime groups that engage in a wide range of criminal activities. As action at national level alone does not suffice to address these transnational security challenges, Member States' law enforcement authorities have increasingly made use of the support and expertise that Europol offers to counter serious crime and terrorism. Since Regulation (EU) 2016/794 became applicable, the operational importance of Europol's tasks has changed substantially. The new threat environment also changes the support Member States need and expect from Europol to keep citizens safe.	

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		Member States need and expect from Europol to keep citizens safe.		
13.		<p>AM 3</p> <p>Recital 3 a (new)</p> <p><i>(3a) The additional tasks conferred upon Europol by this Regulation should allow Europol to better support national law enforcement authorities while fully preserving the responsibilities of the Member States in the area of national security laid down in Article 4(2) of the Treaty on the European Union. The reinforced mandate of Europol should be balanced with strengthened safeguards with regard to fundamental rights and increased accountability, liability and oversight, including parliamentary oversight. To allow Europol to fulfil its mandate, its additional competences and tasks should be matched with adequate human and financial resources.</i></p>		
14.	(4) As Europe faces increasing threats from	<p>AM 4</p> <p>(4) As Europe faces</p>	(4) As Europe faces increasing threats from organised crime groups	

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	organised crime groups and terrorist attacks, an effective law enforcement response must include the availability of well-trained interoperable special intervention units specialised in the control of crisis situations. In the Union, the law enforcement units of the Member State cooperate on the basis of Council Decision 2008/617. ² Europol should be able to provide support to these special intervention units, including by providing operational, technical and financial support.	increasing threats from organised crime groups and terrorist attacks, an effective law enforcement response must include the availability of well-trained interoperable special intervention units specialised in the control of <i>man-made</i> crisis situations <i>presenting a serious direct physical threat to persons, property, infrastructure or institutions, in particular hostage taking, hijacking and similar events.</i> In the Union, <i>those</i> law enforcement units of the Member State cooperate on the basis of Council Decision 2008/617 ⁵³ . Europol should be able to provide support to these special intervention units, including by providing operational, technical and financial support. <i>Such support is always to be complementary to the efforts undertaken by Member States to ensure the security of their citizens</i>	and terrorist attacks, an effective law enforcement response must include the availability of well-trained interoperable special intervention units specialised in the control of crisis situations. In the Union, the law enforcement units of the Member State cooperate on the basis of Council Decision 2008/617. ² Europol should be able to provide support to these special intervention units, including by providing operational, technical and financial support.	
15.	² Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the	⁵³ Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the	² Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention	

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	special intervention units of the Member States of the European Union in crisis situations (OJ L 210, 6.8.2008).	special intervention units of the Member States of the European Union in crisis situations (OJ L 210, 6.8.2008, <i>p. 73</i>).	units of the Member States of the European Union in crisis situations (OJ L 210, 6.8.2008).	
16.	(5) In recent years large scale cyber attacks targeted public and private entities alike across many jurisdictions in the Union and beyond, affecting various sectors including transport, health and financial services. Cybercrime and cybersecurity cannot be separated in an interconnected environment. The prevention, investigation and prosecution of such activities is supported by coordination and cooperation between relevant actors, including the European Union Agency for Cybersecurity ('ENISA'), competent authorities for the security of network and information systems ('NIS authorities') as defined by Directive (EU) 2016/1148 ³ , law enforcement authorities and private parties. In order to ensure the effective cooperation between all	AM 5 (5) In recent years, <i>large-scale cyber-attacks, including attacks originating in third countries</i> , targeted public and private entities alike across many jurisdictions in the Union and beyond, affecting various sectors including transport, health and financial services. The prevention, <i>detection</i> , investigation and prosecution of such activities is supported by coordination and cooperation between relevant actors, including the European Union Agency for Cybersecurity (ENISA), competent authorities for the security of network and information systems (NIS authorities) as defined by Directive (EU) 2016/1148 ⁵⁴ , law enforcement authorities and private parties. In order to ensure the effective cooperation between all	(5) In recent years large scale cyber attacks targeted public and private entities alike across many jurisdictions in the Union and beyond, affecting various sectors including transport, health and financial services. Cybercrime and cybersecurity cannot be separated in an interconnected environment. The prevention, investigation and prosecution of such activities is supported by coordination and cooperation between relevant actors, including the European Union Agency for Cybersecurity ('ENISA'), competent authorities for the security of network and information systems ('NIS authorities') as defined by Directive (EU) 2016/1148 ³ , law enforcement authorities and private parties. In order to ensure the effective cooperation between all relevant actors at Union and national level on cyber attacks and security threats, Europol should cooperate with the ENISA through the	

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	relevant actors at Union and national level on cyber attacks and security threats, Europol should cooperate with the ENISA through the exchange of information and by providing analytical support.	relevant actors at Union and national level on <i>cyber-attacks and cybersecurity</i> threats, Europol should cooperate with the ENISA <i>within their respective mandates</i> through the exchange of information and by providing analytical support.	exchange of information and by providing analytical support.	
17.	³ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1–30).	⁵⁴ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).	³ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1–30).	
18.	(6) High-risk criminals play a leading role in criminal networks and pose a high risk of serious crime to the Union's internal security. To combat high-risk organised crime groups and their leading members, Europol should be able to support Member States in focusing their investigative response on identifying these persons, their criminal	AM 6 (6) High-risk criminals play a leading role in criminal networks and pose a high risk of serious crime to the Union's internal security. To combat high-risk organised crime groups and their leading members, Europol should be able to support Member States in focusing their investigative response on identifying these persons, their criminal activities and <i>financial assets</i> ,	(6) High-risk criminals play a leading role in criminal networks and pose a high risk of serious crime to the Union's internal security. To combat high-risk organised crime groups and their leading members, Europol should be able to support Member States in focusing their investigative response on identifying these persons, their criminal activities and the members of their criminal networks.	

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	activities and the members of their criminal networks.	<i>and the members of their criminal networks, as well as persons belonging to the national, political and financial institutions who are involved in crimes via corruption schemes.</i>		
19.	(7) The threats posed by serious crime require a coordinated, coherent, multi-disciplinary and multi-agency response. Europol should be able to facilitate and support such intelligence-led security initiatives driven by Member States to identify, prioritize and address serious crime threats, such as the European Multidisciplinary Platform Against Criminal Threats. Europol should be able to provide administrative, logistical, financial and operational support to such activities, supporting the identification of cross-cutting priorities and the implementation of horizontal strategic goals in countering serious crime.	AM 7 (7) The threats posed by serious crime require a coordinated, coherent, multi-disciplinary and multi-agency response. Europol should be able to facilitate and support such <i>operational and strategic activities</i> driven by Member States to identify, <i>prioritise</i> and address serious crime threats, such as the European Multidisciplinary Platform Against Criminal Threats. Europol should be able to provide administrative, logistical, financial and operational support to such activities, supporting the identification of cross-cutting priorities and the implementation of horizontal strategic goals in countering serious crime.	(7) The threats posed by serious crime require a coordinated, coherent, multi-disciplinary and multi-agency response. Europol should be able to facilitate and support such intelligence-led security initiatives driven by Member States to identify, prioritize and address serious crime threats, such as the European Multidisciplinary Platform Against Criminal Threats. Europol should be able to provide administrative, logistical, financial and operational support to such activities, supporting the identification of cross-cutting priorities and the implementation of horizontal strategic goals education of in countering serious crime.	

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20.	<p>(8) The Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council⁴ ⁵, is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from third countries and international organisations on persons suspected to be involved in crimes falling within the scope of Europol's mandate. Following consultation with the Member States, Europol should be able to enter data on these persons in the SIS in order to make it available directly and in real-time to SIS end-users.</p>	<p>AM 8</p> <p>(8) Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council⁵⁵, is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from third countries and international organisations on persons suspected <i>of being</i> involved in <i>or convicted for a criminal offence in respect of which Europol is competent.</i> Following consultation with the Member States, Europol should be able to enter <i>alerts</i> on these persons in <i>SIS pursuant to Regulation (EU) 2018/1862, provided that they are third-country nationals and that the information is received from a third country that is the subject of a Commission decision finding that it ensures</i></p>	<p>(8) The Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council⁴⁵, is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from third countries and international organisations on persons suspected to be involved in crimes falling within the scope of Europol's mandate. Following consultation with the Member States, Europol should be able to enter data on these persons in the SIS in order to make it available directly and in real-time to SIS end-users. <u>In the framework of its mandate and its task of supporting the Member States in preventing and combating serious crime and terrorism, Europol should support the Member States in processing third-country data and data from international organisations by proposing the possible entry by Member States</u></p>	<p><u>COM compromise proposal 26/11/2021:</u></p> <p>(8) The Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council⁴⁵, is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from third countries and international organisations on persons suspected to be involved in crimes falling within the scope of Europol's mandate. Following consultation with the Member States, <u>and upon request by at least one Member State</u>, Europol should be able to enter <u>alerts</u> data on these persons in the SIS <u>pursuant to Regulation (EU) 2018/1862, in order to make the information available directly and in real-time to SIS end-users.</u> <u>Europol should only enter alerts in the SIS on third-country nationals on the basis of</u></p>

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		<p><i>an adequate level of data protection ('adequacy decision'), from a third country with which the Union has concluded an international agreement pursuant to Article 218 of the Treaty on the Functioning of the European Union (TFEU) that includes the transfer of personal data for law enforcement purposes, or from a third country with which Europol has concluded a cooperation agreement allowing for the exchange of personal data prior to the entry into force of Regulation (EU) 2016/794. Where information is received from another third country, Europol should be allowed to enter alerts into SIS where such a third country, has confirmed the information or where the information provided concerns a terrorist offence or organised crime. Europol should be able to enter alerts in SIS in order to make them available directly and in real-time to SIS end-users at the frontline, such as border</i></p>	<p><u>of a new category of information alerts in the interest of the Union into the SIS, in order to make it available to the end-users of the SIS. To that end, a periodic reporting mechanism should be put in place in order to ensure that Member States and Europol are informed on the data inserted in the SIS. The modalities for Member States' cooperation for the processing of data and the insertion of alerts into the SIS, notably as concerns the fight against terrorism, should be subject to continuous coordination amongst the Member States. Criteria on the basis of which Europol would issue proposals for the entry of alerts into the Schengen Information System should be further specified by the Management Board.</u></p>	<p><u>information received from a trusted third country or an international organisation. Where information is received from another third country, Europol should be allowed to enter alerts in the SIS where a trusted third country, has confirmed the information.</u></p> <p><u>A mechanism should be put in place in order to ensure that Member States are informed on the alerts inserted in the SIS by Europol.</u></p> <p><u>Alerts should be entered in SIS by Europol in full respect of fundamental rights and data protection rules.</u></p>

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		<i>guards or police officers, who do not have access to the Europol information system and the ETIAS watch-list, through which such information is also shared. Alerts should be entered in SIS by Europol in full respect of fundamental rights and data protection rules.</i>		
21.	⁴ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56–106).	⁵⁵ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).	⁴ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56–106).	
22..	⁵ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the		⁵ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and	

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	establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56–106).		use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56–106).	
23.		AM 9 Recital 8 a (new) <i>(8a) Europol has an important role to play in supporting Member States to fight serious crime and terrorism through its expertise and analysis capabilities. To ensure better cooperation between Member States and Interpol in accordance with Union and international law, Europol should actively monitor, analyse and appraise red alerts which Interpol publishes at the request of third countries and notify</i>		

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		<i>Member States, the European External Action Service and the Commission when there is reasonable suspicion that an alert was issued in violation of Article 3 of the Interpol constitution.</i>		
24.	(9) Europol has an important role to play in support of the evaluation and monitoring mechanism to verify the application of the Schengen <i>acquis</i> as established by Council Regulation (EU) No 1053/2013. Given the need to reinforce the Union's internal security, Europol should contribute with its expertise, analysis, reports and other relevant information to the entire evaluation and monitoring process, from programming to on-site visits and the follow-up. Europol should also assist in developing and updating the evaluation and monitoring tools.	AM 10 (9) Europol has an important role to play in support of the evaluation and monitoring mechanism to verify the application of the Schengen <i>acquis</i> as established by Council Regulation (EU) No 1053/2013. Europol should <i>therefore, upon request,</i> contribute with its expertise, <i>analyses,</i> reports and other relevant information to the entire <i>Schengen Evaluation Mechanism,</i> from programming to on-site visits and the follow-up. Europol should also assist in developing and updating the evaluation and monitoring tools.	(9) Europol has an important role to play in support of the evaluation and monitoring mechanism to verify the application of the Schengen <i>acquis</i> as established by Council Regulation (EU) No 1053/2013. Given the need to reinforce the Union's internal security, Europol should contribute with its expertise, analysis, reports and other relevant information to the entire evaluation and monitoring <i>mechanism process, from programming to on-site visits and the follow-up. Europol should also assist in developing and updating the evaluation and monitoring tools.</i>	
25.	(10) Risk assessments are an essential element of foresight to anticipate new	AM 11 (10) Risk assessments <i>contribute</i> to anticipate new	(10) Risk assessments are an essential element of foresight to anticipate new trends and to address	

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	trends and to address new threats in serious crime and terrorism. To support the Commission and the Member States in carrying out effective risk assessments, Europol should provide threats assessment analysis based on the information it holds on criminal phenomena and trends, without prejudice to the EU law provisions on customs risk management.	trends and threats in serious crime and terrorism. Europol should provide threats assessment <i>analyses to the Member States</i> based on the information it holds on criminal phenomena and trends, without prejudice to <i>Union</i> law provisions on customs risk management.	new threats in serious crime and terrorism. To support the Commission and the Member States in carrying out effective risk assessments, Europol should provide threats assessment analysis based on the information it holds on criminal phenomena and trends, without prejudice to the EU law provisions on customs risk management.	
26.	(11) In order to help EU funding for security research to develop its full potential and address the needs of law enforcement, Europol should assist the Commission in identifying key research themes, drawing up and implementing the Union framework programmes for research and innovation that are relevant to Europol's objectives. When Europol assists the Commission in identifying key research themes, drawing up and implementing a Union framework programme, it should not receive funding	AM 12 (11) In order to help EU funding for security research to develop its full potential and address the needs of law enforcement, Europol should assist the Commission in identifying key research themes, drawing up and implementing the Union framework programmes for research and innovation that are relevant to Europol's objectives. <i>In order to avoid any conflicts of interest,</i> Europol should not receive funding from <i>Union framework programmes in whose design or</i>	(11) In order to help EU funding for security research to develop its full potential and address the needs of law enforcement, Europol should assist the Commission in identifying key research themes, drawing up and implementing the Union framework programmes for research and innovation that are relevant to Europol's objectives. When Europol assists the Commission in identifying key research themes, drawing up and implementing a Union framework programme, it should not receive funding from that programme in accordance with the conflict of interest principle. <u>It is therefore necessary to provide for adequate</u>	

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	from that programme in accordance with the conflict of interest principle.	<i>implementation it plays a role.</i>	<u>and reliable funding of the research and innovation efforts at Europol so that it can assist the Member States and the Commission in that area.</u>	
27.	(12) It is possible for the Union and the Members States to adopt restrictive measures relating to foreign direct investment on the grounds of security or public order. To that end, Regulation (EU) 2019/452 of the European Parliament and of the Council ⁶ establishes a framework for the screening of foreign direct investments into the Union that provides Member States and the Commission with the means to address risks to security or public order in a comprehensive manner. As part of the assessment of expected implications for security or public order, Europol should support the screening of specific cases of foreign direct investments into the Union that concern undertakings providing technologies used or being developed by Europol or by	AM 13 (12) It is possible for the Union and the Members States to adopt restrictive measures relating to foreign direct investment on the grounds of security or public order. To that end, Regulation (EU) 2019/452 of the European Parliament and of the Council ⁵⁷ establishes a framework for the screening of foreign direct investments into the Union that provides Member States and the Commission with the means to address risks to security or public order in a comprehensive manner. <i>Foreign direct investments in emerging technologies deserve particular attention as they can have far-reaching implications for security and public order, in particular when such technologies are deployed by law enforcement authorities. Given its role in</i>	(12) — It is possible for the Union and the Members States to adopt restrictive measures relating to foreign direct investment on the grounds of security or public order. To that end, Regulation (EU) 2019/452 of the European Parliament and of the Council⁶ establishes a framework for the screening of foreign direct investments into the Union that provides Member States and the Commission with the means to address risks to security or public order in a comprehensive manner. As part of the assessment of expected implications for security or public order, Europol should support the screening of specific cases of foreign direct investments into the Union that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes.	

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	Member States for the prevention and investigation of crimes.	<i>monitoring emerging technologies and its active involvement in developing new ways of using those technologies for law enforcement purposes, notably through its Innovation Lab and Innovation Hub, Europol has extensive knowledge regarding the opportunities offered by such technologies as well as the risks associated to their use. Europol should therefore support Member States and the Commission in the screening of foreign direct investments into the Union that concern undertakings providing technologies, including software used by Europol or by Member States for the prevention and investigation of crimes covered by Europol's objectives or critical technologies that could be used to facilitate terrorism. In this context, Europol's expertise should support the screening of the foreign direct investments and the related risks to security. Particular account should be taken of whether the foreign investor</i>		

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		<i>has already been involved in activities affecting security in a Member State, whether there is a serious risk that the foreign investor engages in illegal or criminal activities, or whether the foreign investor is controlled directly or indirectly by the government of a third country, including through subsidies.</i>		
28.	⁶ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1–14).	⁵⁷ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1).	⁶ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1–14).	
29.	(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		(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	

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	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.		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.	
30.	(14) One of Europol's objectives is to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combatting forms of crime which affect a common interest covered by a Union policy. 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	<i>AM 14</i> (14) One of Europol's objectives is to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combatting forms of crime which affect a common interest covered by a Union policy. 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	(14) One of Europol's objectives is to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combatting forms of crime which affect a common interest covered by a Union policy. 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-	

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	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.	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 <i>and, where relevant, the European Public Prosecutor's Office ('the EPPO')</i> , of such requests.	border nature. Europol should inform Eurojust of such requests.	
31.	(15) Publishing the identity and certain personal data of suspects or convicted individuals, who are wanted based on a Member State's judicial decision, increases the chances of locating and arresting such individuals. To support Member States in this task, Europol should be able to publish on its website information on Europe's most wanted fugitives for criminal offences in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals.	AM 15 (15) Publishing the identity and certain personal data of suspects or convicted individuals, who are wanted based on a Member State's judicial decision, increases the chances of locating and arresting such individuals. To support Member States in this task, Europol should be able to publish on its website information on Europe's most wanted fugitives for criminal offences in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals <i>to Europol or the competent national authorities</i> .	(15) Publishing the identity and certain personal data of suspects or convicted individuals, who are wanted based on a Member State's judicial decision, increases the chances of locating and arresting such individuals. To support Member States in this task, Europol should be able to publish on its website information on Europe's most wanted fugitives for criminal offences in respect of which Europol is competent, and facilitate the provision of information by the public <u>to the Member States</u> on these individuals.	
32.			<u>(15a) When receiving personal data, Europol may be faced with</u>	15/11/2021: COM suggestion linked to Art. 18(5) to use CSL text

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>three situations. First, Europol may receive personal data that falls into the categories of data subjects set out in Annex II of this Regulation. Second, Europol may receive investigative data that national authorities are authorised to process in a criminal investigation in accordance with procedural requirements and safeguards applicable under their national law, for which they request Europol's support for a specific criminal investigation, and that does not fall into the categories of data subjects set out in Annex II of this Regulation. In that case, Europol should be able to process that investigative data for as long as it supports the specific criminal investigation. Third, and without the request for support for a specific criminal investigation, Europol may receive personal data that might not fall into the categories of data subjects set out in Annex II of this Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects. In all three situations,</u></p>	<p>with a modified explanation regarding the distinction between the personal data of different categories of data subjects:</p> <p>(15a) When receiving personal data, and after having ascertained that this data falls under its tasks, Europol may be faced with three situations. First, Europol may receive personal data that falls into the categories of data subjects set out in Annex II of this Regulation. Second, Europol may receive for <i>research and innovation projects as well as for</i> investigative data that national authorities are authorised to process in a criminal investigation in accordance with procedural requirements and safeguards applicable under their national law, for which they request Europol's support for a specific criminal investigation, and that does not fall into the categories of data subjects set out in Annex II of this Regulation. In that case, Europol should be able to process that investigative data for as long as it supports the specific criminal investigation. Once confirmed that personal data falls within one of</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>Europol may process the personal data to support Member States in countering serious crime and terrorism. Where applicable and as far as possible, Europol should make a clear distinction between the operational personal data of different categories of data subjects.</u></p>	<p>the data categories set out in Annex II or that data may be processed by Europol in one of other the situations specified above, Europol should, where applicable and as far as possible, make a clear distinction between the personal data of different categories of data subjects. Third, and without the request for support for a specific criminal investigation, Europol may receive personal data <i>without the request for support for a specific criminal investigation</i> that might not fall into the categories of data subjects set out in Annex II of this Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects. In all three situations, Europol may process the personal data to support Member States in countering serious crime and terrorism. Where applicable and as far as possible, Europol should make a clear distinction between the operational personal data of different categories of data subjects.</p>
33.	(16) To ensure that processing of personal data by	AM 16 (16) To ensure that	(16) <u>While respecting the principle of data minimisation</u> To	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	<p>Europol is limited to the categories of data subjects whose data may be processed under this Regulation, Europol should be able to verify if personal data received in the context of preventing and countering crimes falling within the scope of Europol's objectives corresponds to one of those categories of data subjects. To that end, Europol should be able to carry out a pre-analysis of personal data received with the sole purpose of determining whether such data falls into those categories of data subjects. To this end, Europol should be able to filter the data by checking it against data already held by Europol. Such pre-analysis should take place prior to Europol's data processing for cross-checking, strategic analysis, operational analysis or exchange of information. If the pre-analysis indicates that personal data does not fall into the categories of data subjects whose data may be processed under this Regulation, Europol should delete that data.</p>	<p>processing of personal data by Europol is limited to the categories of data subjects whose data may be processed under this Regulation, Europol should be able to verify if personal data received in the context of preventing and countering crimes falling within the scope of Europol's objectives corresponds to one of those categories of data subjects. To that end, Europol should be able to carry out a pre-analysis of personal data received with the sole purpose of determining whether such data falls into those categories of data subjects by checking <i>the data</i> against data <i>it</i> already <i>holds, without further analysing the data for additional leads at this stage.</i> Such pre-analysis should take place prior to, <i>and separate from,</i> Europol's data processing for cross-checking, strategic analysis, operational analysis or exchange of information <i>and after</i> Europol <i>has established that the data are relevant and necessary for the performance of its tasks.</i></p>	<p>ensure that processing of personal data by Europol is limited to the categories of data subjects whose data may be processed under this Regulation, Europol should be able to verify if personal data received in the context of preventing and countering crimes falling within the scope of Europol's objectives corresponds to one of these categories of data subjects <u>set out in Annex II of this Regulation.</u> To that end, Europol should be able to carry out a pre-analysis of personal data received with the sole purpose of determining whether such data falls into those categories of data subjects. To this end, Europol should be able to filter the data by checking it against data already held by Europol. Such pre-analysis should take place prior to Europol's data processing for cross-checking, strategic analysis, operational analysis or exchange of information. If the pre-analysis indicates that personal data does not fall into the categories of data subjects whose data may be processed under this Regulation, Europol should delete that data.</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
34.		<p>AM 17</p> <p>Recital 16a (new)</p> <p><i>(16a) As a result of new available information in the context of investigations, for example regarding additional suspects, the categorisation of personal data in a given dataset may change over time. For this reason, Europol should exceptionally be allowed to process personal data for the purpose of determining the categories of data subjects for a maximum period of one year. Europol should be able to extend the maximum processing period by up to six months in duly justified cases and provided that such an extension is necessary and proportionate. The European Data Protection Supervisor (EDPS) should be informed of the extension. Where the processing of personal data for the purpose of determining the categories of data subjects is no longer necessary and justified, and in any case after the end of the</i></p>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>maximum processing period, Europol should delete the relevant data.</i>		
35.	<p>(17) Data collected in criminal investigations have been increasing in size and have become more complex. Member States submit large and complex datasets to Europol, requesting Europol's operational analysis to detect links to other crimes and criminals in other Member States and outside the Union. Member States cannot detect such cross-border links through their own analysis of the data. Europol should be able to support Member States' criminal investigations by processing large and complex datasets to detect such cross-border links where the strict requirements set out in this Regulation are fulfilled. Where necessary to support effectively a specific criminal investigation in a Member State, Europol should be able to process those data sets that national authorities have</p>	<p>AM 18</p> <p>(17) Data collected in criminal investigations have been increasing in size and have become more complex. Member States submit large and complex datasets to Europol, requesting Europol's operational analysis to detect links to other crimes and criminals in other Member States and outside the Union. Member States <i>can</i> detect such cross-border links <i>less effectively</i> through their own analysis of the data. Europol should <i>therefore</i> be able to support Member States' criminal investigations by processing large and complex datasets to detect such cross-border links where the strict requirements <i>and safeguards</i> set out in this Regulation are fulfilled. Where necessary to support effectively a specific criminal investigation in a Member State <i>or where a</i></p>	<p>(17) Data collected in criminal investigations have been increasing in size and have become more complex. Member States submit large and complex datasets to Europol, requesting Europol's operational analysis to detect links to other crimes and criminals in other Member States and outside the Union. Member States cannot detect such cross-border links through their own analysis of the data. Europol should be able to support Member States' criminal investigations by processing large and complex datasets to detect such cross-border links where the strict requirements set out in this Regulation are fulfilled. Where necessary to support effectively a specific criminal investigation in a Member State, Europol should be able to process those <u>such investigative data sets</u> that national authorities have acquired <u>are authorised to process</u> in the context of that criminal investigation in accordance with</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	<p>acquired in the context of that criminal investigation in accordance with procedural requirements and safeguards applicable under their national criminal law and subsequently submitted to Europol. Where a Member State provides Europol with an investigative case file requesting Europol's support for a specific criminal investigation, Europol should be able to process all data contained in that file for as long as it supports that specific criminal investigation. Europol should also be able to process personal data that is necessary for its support to a specific criminal investigation in a Member State if that data originates from a third country, provided that the third country is subject to a Commission decision finding that the country ensures an adequate level of data protection ('adequacy decision'), or, in the absence of an adequacy decision, an international agreement concluded by the Union pursuant to Article 218 TFEU,</p>	<p><i>Member State or Union body requests a strategic analysis within the mandate of Europol</i>, Europol should be able to process those data sets that national authorities have acquired in the context of that criminal investigation in accordance with procedural requirements and safeguards applicable under their national criminal law and subsequently submitted to Europol. Where a Member State, <i>the EPPO or Eurojust provide</i> Europol with an investigative case file requesting <i>Europol to</i> support a specific criminal investigation <i>within the mandate of Europol by providing operational analysis</i>, Europol should be able to process all data contained in that file for as long as it supports that specific criminal investigation.</p>	<p>procedural requirements and safeguards applicable under their national criminal law and subsequently submitted to Europol. <u>This should include personal data where a Member State has not been able to ascertain whether that data falls into the categories of data subjects set out in Annex II of this Regulation.</u> Where a Member State provides Europol with an investigative <u>data case file</u> requesting Europol's support for a specific criminal investigation, Europol should be able to process all that data contained in that file for as long as it supports that specific criminal investigation. Europol should also be able to process personal data that is necessary for its support to a specific criminal investigation in a Member State if that data originates from a third country, provided that the third country is subject to a Commission decision finding that the country ensures an adequate level of data protection ('adequacy decision'), or, in the absence of an adequacy decision, an international agreement concluded by the Union pursuant to Article 218 TFEU, or a cooperation agreement allowing for</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	or a cooperation agreement allowing for the exchange of personal data concluded between Europol and the third country prior to the entry into force of Regulation (EU) 2016/794, and provided that the third country acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law.		the exchange of personal data concluded between Europol and the third country prior to the entry into force of Regulation (EU) 2016/794, and provided that the third country acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law.	
36.			<u>(17a) Europol should also be able to process investigative data that the European Public Prosecutor's Office ('EPPO') is authorised to process in a criminal investigation in accordance with procedural requirements and safeguards applicable under Union law and national law and which was submitted by EPPO within its competences to Europol for support.</u>	
37.	(18) To ensure that any data processing is necessary and proportionate, Member States should ensure compliance with national and Union law when	AM 19 (18) To ensure that any <i>personal data to be processed by Europol</i> is necessary and	(18) To ensure that any data processing is necessary and proportionate, Member States should ensure compliance with national and Union law when they	<u>Commission compromise proposal (6/12/2021):</u>

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	<p>they submit an investigative case file to Europol. Europol should verify whether, in order to support a specific criminal investigation, it is necessary and proportionate to process personal data that may not fall into the categories of data subjects whose data may generally be processed under Annex II of Regulation (EU) 2016/794. Europol should document that assessment. Europol should store such data with functional separation from other data and should only process it where necessary for its support to the specific criminal investigation, such as in case of a new lead.</p>	<p>proportionate, Member States should ensure compliance with national and Union law when they submit an investigative case file <i>containing personal data</i> to Europol, <i>including, where applicable, prior judicial authorisation. Bearing in mind that the Court of Justice of the European Union (the ‘Court of Justice’) considers that access to personal data with a view to its retention or use affects the fundamental right to respect for private life guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union (‘the Charter’)</i>, Europol should verify whether, in order to support a specific criminal investigation, it is necessary and proportionate to process personal data that may not fall into the categories of data subjects whose data may be processed under Annex II of Regulation (EU) 2016/794. Europol should document that assessment. Europol should store such data with functional separation from other data and</p>	<p>submit an investigative case file <u>data</u> to Europol. <u>Member States should inform Europol when their authorisation to process data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable national law has ceased to exist.</u> Europol should verify whether, in order to support a specific criminal investigation, it is necessary and proportionate to process personal data that may not fall into the categories of data subjects whose data may generally be processed under Annex II of Regulation (EU) 2016/794. Europol should document that assessment. Europol should store such data with functional separation from other data and should only process it where necessary for its support to the specific criminal investigation, such as in case of a new lead.</p>	<p>“(18) To ensure that any data processing is necessary and proportionate, Member States should ensure compliance with national and Union law when they submit an investigative case file <u>data</u> to Europol. <u>When submitting investigative data to Europol to request Europol’s support for a specific criminal investigation, Member States should take account of the scale and complexity of the processing and the type and importance of the investigation. Member States should inform Europol when their authorisation to process data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable national law has ceased to exist.</u> Europol should verify whether, in order to support a specific criminal investigation, it is necessary and proportionate to process personal data that may not fall into the categories of data subjects whose data may generally be processed under Annex II of Regulation (EU) 2016/794. Europol should document that assessment. Europol should store such data with functional separation from other data</p>

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		should only process it where necessary for its support to the specific criminal investigation, such as in case of a new lead.		and should only process it where necessary for its support to the specific criminal investigation, such as in case of a new lead.”
38.		<p>AM 20</p> <p>Recital 18 a (new)</p> <p><i>(18a) Europol should also be able to process personal data that is necessary for its support to a specific criminal investigation in one or more Member States if that data originates from a third country, provided that the third country is the subject of an adequacy decision, an international agreement concluded by the Union pursuant to Article 218 TFEU that includes the transfer of personal data for law enforcement purposes, or a cooperation agreement allowing for the exchange of personal data concluded between Europol and the third country prior to the entry into force of Regulation (EU) 2016/794, and provided that the third county acquired the data in the context of a</i></p>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<p><i>criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law. Where an investigative case file is provided to Europol by a third country, Europol should verify that the amount of personal data is not disproportionate in relation to the specific investigation in a Member State that Europol supports, and that there are no objective elements indicating that the case file has been obtained by the third country in manifest violation of fundamental rights. Where Europol reaches the conclusion that those conditions are not met, it should not process the data. The EDPS should be informed of the processing and should be provided the investigative case file, the justification for the necessity of the processing by Europol, and a general description of the categories of data.</i></p>		

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39.	<p>(19) To ensure that a Member State can use Europol's analytical reports as part of judicial proceedings following a criminal investigation, Europol should be able to store the related investigative case file upon request of that Member State for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. Europol should store such data separately and only for as long as the judicial proceedings related to that criminal investigation are on-going in the Member State. There is a need to ensure access of competent judicial authorities as well as the rights of defence, in particular the right of suspects or accused persons or their lawyers of access to the materials of the case.</p>	<p>AM 21</p> <p>(19) To ensure that a Member State can use Europol's analytical reports as part of judicial proceedings following a criminal investigation, Europol should be able to store the related investigative case file upon request of that Member State, <i>the EPPO or Eurojust until the judicial proceeding is concluded</i> for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. Europol should store such data separately and only for as long as the judicial proceedings related to that criminal investigation are on-going in the Member State. There is a need to ensure access of competent judicial authorities as well as the rights of defence, in particular the right of suspects or accused persons or their lawyers of access to the materials of the case. <i>To this end, Europol should log all evidence and the methods by which it has been produced or</i></p>	<p>(19) To ensure that a Member State can use Europol's analytical reports as part of judicial proceedings following a criminal investigation, Europol should be able to store the related investigative case file <i>data</i> upon request of that Member State for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. Europol should store such data separately and only for as long as the judicial proceedings related to that criminal investigation are on-going in the Member State. There is a need to ensure access of competent judicial authorities as well as the rights of defence, in particular the right of suspects or accused persons or their lawyers of access to the materials of the case.</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>acquired by Europol to allow for effective scrutiny of evidence by the defence.</i>		
40.	<p>(20) Cross-border cases of serious crime or terrorism require close collaboration between the law enforcement authorities of the Member States concerned. Europol provides tools to support such cooperation in investigations, notably through the exchange of information. To further enhance such cooperation in specific investigations by way of joint operational analysis, Member States should be able to allow other Member States to access directly the information they provided to Europol, without prejudice to any restrictions they put on access to that information. Any processing of personal data by Member States in joint operational analysis should take place in accordance with the rules and safeguards set out in this Regulation.</p>	<p>AM 22</p> <p>(20) Cross-border cases of serious crime or terrorism require close cooperation between the law enforcement authorities of the Member States concerned. Europol provides tools to support such cooperation in investigations, notably through the exchange of information. To further enhance such cooperation in specific investigations by way of joint operational analysis, Member States should be able to allow other Member States to directly access the information they provided to Europol, without prejudice to any general or specific restrictions they put on access to that information. Any processing of personal data by Member States in joint operational analysis should take place in compliance with personal data rules in accordance with Directive</p>	<p>(20) Cross-border cases of serious crime or terrorism require close collaboration between the law enforcement authorities of the Member States concerned. Europol provides tools to support such cooperation in investigations, notably through the exchange of information. To further enhance such cooperation in specific investigations by way of joint operational analysis, Member States should be able to allow other Member States to access directly the information they provided to Europol, without prejudice to any restrictions they put on access to that information. Any processing of personal data by Member States in joint operational analysis should take place in accordance with the rules and safeguards set out in this Regulation.</p>	

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		<p><i>(EU) 2016/680 of the European Parliament and of the Council^{1a} as well as the safeguards set out in this Regulation.</i></p> <hr/> <p><i>^{1a} Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).</i></p>		
41.	(21) Europol provides operational support to the criminal investigations of the competent authorities of the Member States, especially by providing operational and forensic analysis. Member	<p>AM 23</p> <p>(21) Europol provides operational support to the criminal investigations of the competent authorities of the Member States, including by providing operational and</p>	(21) Europol provides operational support to the criminal investigations of the competent authorities of the Member States, especially by providing operational and forensic analysis. Member States should be able to make the	

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	States should be able to make the results of these activities available to their relevant other authorities, including prosecutors and criminal courts, throughout the whole lifecycle of criminal proceedings]. To that end, Europol staff should be enabled to give evidence, which came to their knowledge in the performance of their duties or the exercise of their activities, in criminal proceedings, without prejudice to the applicable use restrictions and national criminal procedural law.	forensic analysis. Member States should be able to make the results of these activities available to their relevant other authorities, including prosecutors and criminal courts, <i>as well as defence lawyers</i> , throughout the whole lifecycle of criminal proceedings. To that end, Europol staff <i>authorised by the Executive Director</i> should be enabled to give evidence, which came to their knowledge in the performance of their duties or the exercise of their activities, in criminal proceedings, without prejudice to the applicable use restrictions and national procedural law.	results of these activities available to their relevant other authorities, including prosecutors and criminal courts, throughout the whole lifecycle of criminal proceedings]. To that end, Europol staff should be enabled to give evidence, which came to their knowledge in the performance of their duties or the exercise of their activities, in criminal proceedings, without prejudice to the applicable use restrictions and national criminal procedural law.	
42.	(22) Europol and the European Public Prosecutor's Office ('EPPO') established by Council Regulation (EU) 2017/1939 ⁷ , should put necessary arrangements in place to optimise their operational cooperation, taking due account of their respective tasks and mandates. Europol	AM 24 (22) Europol and the EPPO established by Council Regulation (EU) 2017/1939 ⁵⁸ , should <i>conclude working arrangements setting out the process for</i> their cooperation <i>and</i> , taking due account of their respective tasks and mandates. Europol should work closely	(22) Europol and the European Public Prosecutor's Office ('EPPO') established by Council Regulation (EU) 2017/1939 ⁷ , should put necessary arrangements in place to optimise their operational cooperation, taking due account of their respective tasks and mandates. Europol should work closely with the EPPO and actively	

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	<p>should work closely with the EPPO and actively support the investigations and prosecutions of the EPPO upon its request, including by providing analytical support and exchanging relevant information, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case. Europol should, without undue delay, report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence. To enhance operational cooperation between Europol and the EPPO, Europol should enable the EPPO to have access, on the basis of a hit/no hit system, to data available at Europol, in accordance with the safeguards and data protection guarantees provided for in this Regulation. The rules on the transmission to Union bodies set out in this Regulation should apply to Europol's cooperation with the</p>	<p>with the EPPO and actively support the investigations of the EPPO upon its request, including by providing analytical support and exchanging relevant information, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case. Europol should, without undue delay, report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence. To enhance operational cooperation between Europol and the EPPO, Europol should enable the EPPO to have access, on the basis of a hit/no hit system, to data <i>provided to</i> Europol <i>for strategic or operational analysis or cross-checking</i>, in accordance with the safeguards and data protection guarantees provided for in this Regulation. The rules on the transmission to Union bodies set out in this Regulation should apply to Europol's cooperation with the</p>	<p>support the investigations and prosecutions of the EPPO upon its request, including by providing analytical support and exchanging relevant information, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case. Europol should, without undue delay, report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence. To enhance operational cooperation between Europol and the EPPO, Europol should enable the EPPO to have access, on the basis of a hit/no hit system, to data available at Europol, in accordance with the safeguards and data protection guarantees provided for in this Regulation, <u>including any restrictions indicated by the entity which provided the information to Europol.</u> The rules on the transmission to Union bodies set out in this Regulation should apply to Europol's cooperation with the EPPO. Europol should also be able to support criminal investigations</p>	

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	EPPO. Europol should also be able to support criminal investigations by the EPPO by way of analysis of large and complex datasets.	EPPO. Europol should also be able to support criminal investigations by the EPPO by way of analysis of large and complex datasets <i>in accordance with the safeguards and data protection guarantees provided for in this Regulation.</i>	by the EPPO by way of analysis of large and complex datasets.	
43.	⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71).	⁵⁸ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).	⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71).	
44.	(23) Europol should cooperate closely with the European Anti-Fraud Office (OLAF) to detect fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, Europol should transmit to OLAF without delay any information in respect of which OLAF could exercise its competence. The rules on the transmission		(23) Europol should cooperate closely with the European Anti-Fraud Office (OLAF) to detect fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, Europol should transmit to OLAF without delay any information in respect of which OLAF could exercise its competence. The rules on the transmission to Union bodies set out in this Regulation should apply	

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	to Union bodies set out in this Regulation should apply to Europol's cooperation with OLAF.		to Europol's cooperation with OLAF.	
45.	<p>(24) Serious crime and terrorism often have links beyond the territory of the Union. 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.</p>	<p>AM 25</p> <p>(24) Serious crime and terrorism often have links beyond the territory of the Union. Europol can exchange personal data with third countries while safeguarding the protection of privacy and fundamental rights and freedoms of the data subjects. <i>In circumstances where it is essential to the investigation of</i> crimes falling within the scope of Europol's objectives, the Executive Director of Europol should be allowed to authorise <i>a category</i> of transfers of personal data to third countries in specific situations and on a case-by-case basis, where such <i>category</i> of transfers related to a specific situation <i>is</i> necessary and <i>proportionate for the investigation of the specific crime and meets</i> all the requirements of this Regulation.</p>	<p>(24) Serious crime and terrorism often have links beyond the territory of the Union. 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 <u>a category</u> 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 <u>the same</u> specific situation, <u>consist of the same categories of personal data and the same categories of data subjects and</u> are necessary and meet all the requirements of this Regulation. <u>This should cover situations where the transfer of personal data is necessary in order to protect the vital interests of the data subject or of another</u></p>	<p>TM 26/11/2021: CSL positive scrutiny; to check internally</p> <p>EP compromise proposal (25/11/2021):</p> <p>Serious crime and terrorism often have links beyond the territory of the Union. Europol can exchange personal data with third countries while safeguarding the protection of privacy and fundamental rights and freedoms of the data subjects. <i>In circumstances where it is essential to the investigation of</i> crimes falling within the scope of Europol's objectives, the Executive Director of Europol should be allowed to authorise <i>a category of</i> transfers of personal data to third countries in specific situations and on a case-by-case basis, where such a group of <i>a category of</i> transfers relates to a <u>the same</u> specific situation, <u>consists of the same categories of personal data and the same categories of data subjects, is</u> necessary and <u>proportionate for the investigation</u></p>

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			<p><u>person; necessary to safeguard legitimate interests of the data subject; essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country; necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal sanctions; or necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal sanction.</u></p>	<p><i>of the specific crime and meets</i> all the requirements of this Regulation. <i>A category of transfers of personal data to third countries should be possible in specific situations This should cover [address] [specifically] situations where the transfer of personal data is necessary either in order to protect the vital interests of the data subject or of another person or essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or ; necessary to safeguard legitimate interests of the data subject, or ; necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal sanctions, or ; necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal sanction.</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>TM 17/11/2021: CSL can accept COMP proposal by COM, EP considers that the second part taken over from CSL's text needs to be improved; will make a proposal in this regard.</p> <p><u>COM compromise suggestion (15/11/2021) to complement Article 2(s):</u></p> <p>Serious crime and terrorism often have links beyond the territory of the Union. Europol can exchange personal data with third countries while safeguarding the protection of privacy and fundamental rights and freedoms of the data subjects. <i>In circumstances where it is essential to the investigation of</i> crimes falling within the scope of Europol's objectives, the Executive Director of Europol should be allowed to authorise <i>a category</i> of transfers of personal data to third countries in specific situations and on a case-by-case basis, where such <i>category</i> of transfers related to a specific situation <i>is necessary and proportionate for the investigation of the specific crime and meets</i> all the requirements of this Regulation.</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>This should cover [address] [specifically] situations <u>where the transfer of personal data is necessary in order to protect the vital interests of the data subject or of another person or essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country; necessary to safeguard legitimate interests of the data subject; necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal sanctions; or necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal sanction.</u></p>
46.			<p><u>(24a) Transfers not based on the abovementioned authorisation by the Executive Director, an adequacy decision, an international agreement or a cooperation agreement should be</u></p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>allowed only where appropriate safeguards have been provided in a legally binding instrument which ensures the protection of personal data or where Europol has assessed all the circumstances surrounding the data transfer and, on the basis of that assessment, considers that appropriate safeguards with regard to the protection of personal data exist. Such legally binding instruments could, for example, be legally binding bilateral agreements which have been concluded by the Member States and implemented in their legal order and which could be enforced by their data subjects, ensuring compliance with data protection requirements and the rights of the data subjects, including the right to obtain effective administrative or judicial redress. Europol should be able to take into account bilateral agreements concluded between Member States and third countries which allow for the exchange of personal data when carrying out the assessment of all the circumstances surrounding the data transfer. Europol should</u></p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>be able to also take into account the fact that the transfer of personal data will be subject to confidentiality obligations and the principle of specificity, ensuring that the data will not be processed for other purposes than for the purposes of the transfer. In addition, Europol should take into account that the personal data will not be used to request, hand down or execute a death penalty or any form of cruel and inhuman treatment. While those conditions could be considered to be appropriate safeguards allowing the transfer of data, Europol should be able to require additional safeguards.</u></p>	
47	<p>(25) To support Member States in cooperating with private parties providing cross-border services where those private parties hold information relevant for preventing and combatting crime, Europol should be able to receive, and in specific circumstances, exchange personal data with private parties.</p>	<p>AM 26</p> <p>(25) To support Member States in cooperating with private parties where those private parties hold information relevant for preventing and combatting <i>serious</i> crime <i>and terrorism</i>, Europol should be able to receive, and in <i>exceptional</i> circumstances, exchange personal data with private parties.</p>	<p>(25) To support Member States in cooperating with private parties providing cross-border services where those private parties hold information relevant for preventing and combatting crime, Europol should be able to receive, and in specific circumstances, exchange personal data with private parties.</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
48	<p>(26) Criminals increasingly use cross-border services of private parties to communicate and carry out illegal activities. Sex offenders abuse children and share pictures and videos world-wide using online platforms on the internet. Terrorists abuse cross-border services by online service providers to recruit volunteers, plan and coordinate attacks, and disseminate propaganda. Cyber criminals profit from the digitalisation of our societies using phishing and social engineering to commit other types of cybercrime such as online scams, ransomware attacks or payment fraud. As a result from the increased use of online services by criminals, private parties hold increasing amounts of personal data that may be relevant for criminal investigations.</p>	<p>AM 27</p> <p>(26) Criminals increasingly use <i>the</i> services <i>offered by</i> private parties to communicate and carry out illegal activities. Sex offenders <i>exploit</i> children and share pictures and videos <i>constituting child sexual abuse material</i> world-wide <i>on</i> online platforms <i>or with peers via number-independent interpersonal communications services</i>. Terrorists <i>utilise the</i> services <i>offered</i> by online service providers to recruit volunteers, plan and coordinate attacks, and disseminate propaganda. Cyber criminals profit from the digitalisation of our societies <i>and from the lack of digital literacy and skills of the general population</i> using phishing and social engineering to commit other types of cybercrime such as online scams, ransomware attacks or payment fraud. As a result <i>of</i> the increased use of online services by criminals, private parties hold increasing amounts of personal data, <i>including</i></p>	<p>(26) Criminals increasingly use cross-border services of private parties to communicate and carry out illegal activities. Sex offenders abuse children and share pictures and videos world-wide using online platforms on the internet. Terrorists abuse cross-border services by online service providers to recruit volunteers, plan and coordinate attacks, and disseminate propaganda. Cyber criminals profit from the digitalisation of our societies using phishing and social engineering to commit other types of cybercrime such as online scams, ransomware attacks or payment fraud. As a result from the increased use of online services by criminals, private parties hold increasing amounts of personal data that may be relevant for criminal investigations.</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>subscriber, traffic and content data</i> , that may be relevant for criminal investigations.		
49	(27) Given the borderless nature of the internet, these services can often be provided from anywhere in the world. As a result, victims, perpetrators, and the digital infrastructure in which the personal data is stored and the service provider providing the service may all be subject to different national jurisdictions, within the Union and beyond. Private parties may therefore hold data sets relevant for law enforcement which contain personal data with links to multiple jurisdictions as well as personal data which cannot easily be attributed to any specific jurisdiction. National authorities find it difficult to effectively analyse such multi-jurisdictional or non-attributable data sets through national solutions. When private parties decide to lawfully and voluntarily share the data with law enforcement	AM 28 (27) Given the borderless nature of the internet, victims, perpetrators, <i>the online service provider</i> and the digital infrastructure in which the personal data is stored may all be subject to different national jurisdictions, within the Union and beyond. Private parties may therefore hold <i>datasets</i> relevant for law enforcement which contain personal data with links to multiple jurisdictions as well as personal data which cannot easily be attributed to any specific jurisdiction. National authorities find it difficult to effectively analyse such multi-jurisdictional or non-attributable <i>datasets</i> through national solutions. <i>Europol should have measures in place to facilitate the cooperation with private parties, including with respect to the sharing of information.</i> When private	(27) Given the borderless nature of the internet, these services can often be provided from anywhere in the world. As a result, victims, perpetrators, and the digital infrastructure in which the personal data is stored and the service provider providing the service may all be subject to different national jurisdictions, within the Union and beyond. Private parties may therefore hold data sets relevant for law enforcement which contain personal data with links to multiple jurisdictions as well as personal data which cannot easily be attributed to any specific jurisdiction. National authorities find it difficult to effectively analyse such multi-jurisdictional or non-attributable data sets through national solutions. When private parties decide to lawfully and voluntarily share the data with law enforcement authorities, they do currently not have a single point of contact with which they can share such data sets at Union-level.	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	authorities, they do currently not have a single point of contact with which they can share such data sets at Union-level. Moreover, private parties face difficulties when receiving multiple requests from law enforcement authorities of different countries.	parties decide to lawfully and voluntarily share the data with law enforcement authorities, they do <i>not</i> currently have a single point of contact with which they can share such <i>datasets at Union level.</i>	Moreover, private parties face difficulties when receiving multiple requests from law enforcement authorities of different countries.	
50.	(28) To ensure that private parties have a point of contact at Union level to lawfully share multi-jurisdictional data sets or data sets that could not be easily attributed so far to one or several specific jurisdictions, Europol should be able to receive personal data directly from private parties.	AM 29 (28) To ensure that private parties have a point of contact at Union level to lawfully <i>and voluntarily provide</i> multi-jurisdictional <i>datasets or datasets that cannot</i> be easily attributed so far to one or several specific jurisdictions, Europol should be able to receive personal data directly from private parties <i>for the sole purpose of establishing jurisdiction, in accordance with the safeguards and data protection guarantees provided for in this Regulation, including reports relating to moderated content that can reasonably be assumed to be linked to the criminal activities within the remit of Europol.</i>	(28) To ensure that private parties have a point of contact at Union level to lawfully share multi-jurisdictional data sets or data sets that could not be easily attributed so far to one or several specific jurisdictions, Europol should be able to receive personal data directly from private parties.	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
51	<p>(29) To ensure that Member States receive quickly the relevant information necessary to initiate investigations to prevent and combat serious crime and terrorism, Europol should be able to process and analyse such data sets in order to identify the relevant Member States and forward to the national law enforcement authorities concerned the information and analysis necessary to investigate these crimes under their respective jurisdictions.</p>	<p>AM 30</p> <p>(29) To ensure that Member States receive <i>without undue delay</i> the information necessary to initiate investigations to prevent and combat serious crime and terrorism, Europol should be able to process and analyse such <i>datasets</i> in order to identify the relevant Member States' <i>national units concerned</i> and forward <i>those national units the personal data and any results relevant to establish jurisdiction. Europol should also be able to forward the personal data and results relevant to establish jurisdiction to contact points and third countries concerned with which Europol has concluded a cooperation agreement allowing for the exchange of personal data, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU providing for appropriate safeguards, or which is the subject of an adequacy decision. Where the</i></p>	<p>(29) To ensure that Member States receive quickly the relevant information necessary to initiate investigations to prevent and combat serious crime and terrorism, Europol should be able to process and analyse such data sets in order to identify the relevant Member States and forward to the national law enforcement authorities concerned the information and analysis necessary to investigate these crimes under their respective jurisdictions.</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>third country concerned is not subject to such an agreement or decision, Europol should be able to transfer the result of its analysis and verification of such data to the third country concerned where the conditions laid down in this Regulation are fulfilled.</i>		
52		<p>AM 31</p> <p>Recital 29 a (new)</p> <p><i>(29a) In certain cases and subject to clear conditions, both of which are set out in this Regulation, it may be necessary and proportionate for Europol to transfer personal data to private parties which are not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU providing for appropriate safeguards, or which is the subject of an adequacy decision by the Commission.</i></p>		

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		<i>In such cases, the transfer should be subject to prior authorisation by the Executive Director and the EDPS should be informed about the transfer.</i>		
53	<p>(30) To ensure that it can identify all relevant national law enforcement authorities concerned, Europol should be able to inform private parties when the information received from them is insufficient to enable Europol to identify the law enforcement authorities concerned. This would enable private parties which have shared information with Europol to decide whether it is in their interest to share additional information with Europol and whether they can lawfully do so. To this end, Europol can inform private parties of missing information, as far as this is strictly necessary for the identification of the relevant law enforcement authorities. Special safeguards should apply to such transfers in</p>	<p>AM 32</p> <p>(30) To ensure that Europol can identify all relevant national units concerned, it should be able to inform private parties when the information received from them is insufficient to enable Europol to identify the national units concerned. To this end, Europol should be able to inform private parties of missing information, as far as this is strictly necessary for the sole purpose of identifying the national units concerned. Special safeguards should apply to such transfers where the private party concerned is not established within the Union or in a third country with which Europol has a cooperation agreement allowing for the exchange of personal data, or with which</p>	<p>(30) To ensure that it can identify all relevant national law enforcement authorities concerned, Europol should be able to inform private parties when the information received from them is insufficient to enable Europol to identify the law enforcement authorities concerned. This would enable private parties which have shared information with Europol to decide whether it is in their interest to share additional information with Europol and whether they can lawfully do so. To this end, Europol can inform private parties of missing information, as far as this is strictly necessary for the identification of the relevant law enforcement authorities. Special safeguards should apply to such transfers in particular when the private party concerned is not established within the Union or in a third country with which Europol</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	particular when the private party concerned is not established within the Union or in a third country with which Europol has a cooperation agreement allowing for the exchange of personal data, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU providing for appropriate safeguards, or which is the subject of an adequacy decision by the Commission, finding that the third country in question ensures an adequate level of data protection.	the Union has concluded an international agreement pursuant to Article 218 TFEU providing for appropriate safeguards, or which is the subject of an adequacy decision by the Commission, finding that the third country in question ensures an adequate level of data protection <i>compared to the level of protection provided under Directive (EU) 2016/680.</i>	has a cooperation agreement allowing for the exchange of personal data, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU providing for appropriate safeguards, or which is the subject of an adequacy decision by the Commission, finding that the third country in question ensures an adequate level of data protection.	
54	(31) Member States, third countries, international organisation, including the International Criminal Police Organisation (Interpol), or private parties may share multi-jurisdictional data sets or data sets that cannot be attributed to one or several specific jurisdictions with Europol, where those data sets contain links to personal data held by private parties. Where	AM 33 (31) Member States, third countries, international <i>organisations</i> or private parties may share multi-jurisdictional data sets or data sets that cannot be attributed to one or several specific jurisdictions with Europol, where those data sets contain links to personal data held by private parties. Where it is necessary to obtain additional information from	(31) Member States, third countries, international organisations, including the International Criminal Police Organisation (Interpol), or private parties may share multi-jurisdictional data sets or data sets that cannot be attributed to one or several specific jurisdictions with Europol, where those data sets contain links to personal data held by private parties. Where it is necessary to obtain additional	

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	<p>it is necessary to obtain additional information from such private parties to identify all relevant Member States concerned, Europol should be able to ask Member States, via their national units, to request private parties which are established or have a legal representative in their territory to share personal data with Europol in accordance with those Member States' applicable laws. In many cases, these Member States may not be able to establish a link to their jurisdiction other than the fact that the private party holding the relevant data is established under their jurisdiction. Irrespective of their jurisdiction with regard to the specific criminal activity subject to the request, Member States should therefore ensure that their competent national authorities can obtain personal data from private parties for the purpose of supplying Europol with the information necessary for it to fulfil its objectives, in full compliance</p>	<p>such private parties to identify all relevant Member States concerned, Europol should be able to <i>send a reasoned request</i> to Member States, via their national units, to <i>provide it with the necessary personal data from</i> private parties which are established or have a legal representative in their territory to <i>identify the national units concerned. The request should be as targeted as possible and strictly limited to what is necessary and proportionate for Europol to identify the national units concerned. The relevant</i> personal data, <i>which should be the least sensitive possible, should be provided to</i> Europol in accordance with those Member States' applicable laws. <i>Under the case law of the Court of Justice, prior authorisation from a court or an independent administrative authority is generally required for private parties to disclose personal data to Member States' competent authorities, except in duly justified emergency situations.</i> In many</p>	<p>information from such private parties to identify all relevant Member States concerned, Europol should be able to ask Member States, via their national units, to request private parties which are established or have a legal representative in their territory to share personal data with Europol in accordance with those Member States' applicable laws. <u>Member States should assess Europol's request and decide in accordance with their national laws whether or not to accede to it. Data processing by private parties should remain subject to their obligations under the applicable rules, notably with regard to data protection, when processing such requests from competent law enforcement authorities. Private parties should provide the data to the competent law enforcement authorities which have issued the request for further transmission to Europol.</u> In many cases, these Member States may not be able to establish a link to their jurisdiction other than the fact that the private party holding the relevant data is established under their jurisdiction. Irrespective of their jurisdiction</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	with procedural guarantees under their national laws.	cases, these Member States may not be able to establish a link to their jurisdiction other than the fact that the private party holding the relevant data is established under <i>or legally represented in</i> their jurisdiction. Irrespective of their jurisdiction with regard <i>to</i> the specific criminal activity subject to the request, Member States should therefore ensure that their competent national authorities can obtain personal data from private parties for the purpose of supplying Europol with the information necessary for it to fulfil its objectives, in full compliance with procedural guarantees under their national laws.	with regard the specific criminal activity subject to the request, Member States should therefore ensure that their competent national authorities can obtain personal data from private parties for the purpose of supplying Europol with the information necessary for it to fulfil its objectives, in full compliance with procedural guarantees under their national laws.	
55	(32) To ensure that Europol does not keep the data longer than necessary to identify the Member States concerned, time limits for the storage of personal data by Europol should apply. Once Europol has exhausted all means at its disposal to identify all Member States concerned, and	AM 34 (32) To ensure that Europol does not keep the <i>personal</i> data longer than necessary to identify the Member States concerned, time limits for the storage of personal data by Europol should apply. Once Europol has exhausted all means at its disposal to identify	(32) To ensure that Europol does not keep the data <u>received directly from private parties</u> longer than necessary to identify the Member States concerned, time limits for the storage of personal data by Europol should apply. Once Europol has exhausted all means at its disposal to identify all Member States concerned, and cannot reasonably	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	cannot reasonably expect to identify further Member States concerned, the storage of this personal data is no longer necessary and proportionate for identifying the Member States concerned. Europol should erase the personal data within four months after the last transmission has taken place, unless a national unit, contact point or authority concerned resubmits the personal data as their data to Europol within this period. If the resubmitted personal data has been part of a larger set of personal data, Europol should only keep the personal data if and in so far as it has been resubmitted by a national unit, contact point or authority concerned.	all <i>national units</i> concerned, and cannot reasonably expect to identify further <i>national units</i> concerned, the storage of this personal data is no longer necessary and proportionate for identifying the Member States concerned. Europol should erase the personal data within four months after the last transmission <i>or transfer</i> has taken place, unless a national unit, contact point or authority concerned resubmits <i>on duly justified grounds and in compliance with Union and national law</i> , the personal data as their data to Europol within this period. If the resubmitted personal data has been part of a larger set of personal data, Europol should only keep <i>those</i> personal data <i>which have</i> been resubmitted by a national unit, contact point or authority concerned.	expect to identify further Member States concerned, the storage of this personal data is no longer necessary and proportionate for identifying the Member States concerned. Europol should erase the personal data within four months after the last transmission <u>to a national unit or transfer to a contact point of a third country or an authority of a third country</u> has taken place, unless a national unit, contact point or authority concerned resubmits the personal data as their data to Europol within this period. If the resubmitted personal data has been part of a larger set of personal data, Europol should only keep the personal data if and in so far as it has been resubmitted by a national unit, contact point or authority concerned. <u>Transmissions should relate to Europol disclosing personal data to national units, private parties or other recipients established in the Union, while transfers should relate to Europol disclosing personal data to private parties, public authorities or bodies established in third countries or to international organisations, in accordance with the applicable rules.</u>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
56	(33) Any cooperation of Europol with private parties should neither duplicate nor interfere with the activities of the Financial Intelligence Units ('FIUs'), and should only concern information that is not already to be provided to FIUs in accordance with Directive 2015/849 of the European Parliament and of the Council ⁸ . Europol should continue to cooperate with FIUs in particular via the national units.	AM 35 (33) Any cooperation of Europol with private parties should neither duplicate nor interfere with the activities of the Financial Intelligence Units (<i>FIUs</i>), and should only concern information that is not already to be provided to FIUs in accordance with Directive 2015/849 of the European Parliament and of the Council ⁵⁹ . Europol should continue to cooperate with FIUs in particular via the national units.	(33) Any cooperation of Europol with private parties should neither duplicate nor interfere with the activities of the Financial Intelligence Units ('FIUs'), and should only concern information that is not already to be provided to FIUs in accordance with Directive 2015/849 of the European Parliament and of the Council ⁸ . Europol should continue to cooperate with FIUs in particular via the national units.	
57	⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council	⁵⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L	⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).	141, 5.6.2015, p. 73).		
58	(34) Europol should be able to provide the necessary support for national law enforcement authorities to interact with private parties, in particular by providing the necessary infrastructure for such interaction, for example, when national authorities refer terrorist content online to online service providers or exchange information with private parties in the context of cyber attacks. Where Member States use the Europol infrastructure for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol should not have access to that data.	AM 36 (34) Europol should be able to provide the necessary support for national law enforcement authorities to interact with private parties, in particular by providing the necessary infrastructure for such interaction, for example, when national authorities refer terrorist content online <i>or send removal orders concerning such content on the basis of Regulation (EU) 2021/784 of the European Parliament and of the Council^{1a}</i> to online service providers or <i>when they</i> exchange information with private parties in the context of <i>cyberattacks</i> . Where Member States use the Europol infrastructure for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol should not have access to that data.	(34) Europol should be able to provide the necessary support for national law enforcement authorities to interact with private parties, in particular by providing the necessary infrastructure for such interaction, for example, when national authorities refer terrorist content online to online service providers or exchange information with private parties in the context of cyber attacks. <u>Europol should ensure by technical means that any such infrastructure is strictly limited to providing a channel for such interactions between the law enforcement authorities and a private party, and that it provides for all necessary safeguards against access by a private party to any other information in Europol's systems, which is not related to the exchange with that private party. Where Member States use the Europol infrastructure for exchanges of personal data with private parties on crimes falling within the scope of the objectives of Europol, they</u>	

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		<i>1^a Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ L 172, 17.5.2021, p. 79).</i>	<u>may grant Europol access to such exchanges. Member States may also use the Europol infrastructure for exchanges of personal data falling outside the scope of the objectives of Europol. In that case Europol should not have access to such exchanges.</u>	
59	(35) Terrorist attacks trigger the large scale dissemination of terrorist content via online platforms depicting harm to life or physical integrity, or calling for imminent harm to life or physical integrity. To ensure that Member States can effectively prevent the dissemination of such content in the context of such crisis situations stemming from ongoing or recent real-world events, Europol should be able to exchange personal data with private parties, including hashes, IP addresses or URLs related to such content, necessary in order to support Member States in preventing the dissemination of such content, in particular where this content aims at or has the effect of seriously intimidating	AM 37 (35) Terrorist attacks trigger the large-scale dissemination of terrorist content via online platforms depicting harm to life or physical integrity, or calling for imminent harm to life or physical integrity, thereby allowing for the glorification and provision of training for terrorism, and eventually the radicalisation and recruitment of others. Moreover, the increased use of the internet to record or share child sexual abuse material perpetuates the harm for the victims, as the material can easily be multiplied and circulated. To ensure that Member States can effectively prevent the dissemination of terrorist content in the context of crisis situations stemming from	(35) Terrorist attacks trigger the large scale dissemination of terrorist content via online platforms depicting harm to life or physical integrity, or calling for imminent harm to life or physical integrity. To ensure that Member States can effectively prevent the dissemination of such content in the context of such crisis situations stemming from ongoing or recent real-world events, Europol should be able to exchange personal data with private parties, including hashes, IP addresses or URLs related to such content, necessary in order to support Member States in preventing the dissemination of such content, in particular where this content aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across	

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	a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers.	ongoing or recent real-world events, <i>and of child sexual abuse material, and to support the actions of online service providers in line with their obligations under Union law as well as in their voluntary actions</i> , Europol should be able to exchange <i>relevant</i> personal data, including hashes, IP addresses or URLs related to such content, <i>with private parties established in the Union or in a third country that is subject to an adequacy decision, or, in the absence thereof, an international agreement pursuant to Article 218 TFEU, or an operational cooperation agreement concluded between Europol and the third country prior to the entry into force of Regulation (EU) 2016/794. Those exchanges should only take place when</i> necessary to support Member States in preventing the dissemination of such content <i>or to allow its removal</i> , in particular where there is an anticipated potential for exponential multiplication and virality across multiple	multiple online service providers. <u>Nothing in this Regulation should be understood as precluding the Member States from using removal orders as laid down in Regulation 2021/... on addressing the dissemination of terrorist content online as an instrument to address terrorist content online, or making use of the coordinative and cooperative role of Europol in accordance with Art. 14 of that Regulation when member states issue such a removal order.</u>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		online service providers.		
60			<u>(35a) In order to avoid duplication of effort and possible interferences with investigations and to minimise the burden to the hosting service providers affected, Europol should assist, exchange information and cooperate with the competent authorities with regard to transmissions and transfers of personal data to private parties to prevent the dissemination of online content related to terrorism or violent extremism.</u>	
61	(36) Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁹ ¹⁰ sets out rules on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies but it did not apply to Europol. To ensure uniform and consistent protection of natural persons with regard to the processing of personal data, Regulation (EU) 2018/1725 should be made	AM 38 (36) Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁶⁰ sets out rules on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies. <i>While Regulation (EU) 2018/1725 has been applicable to the processing of administrative personal data by Europol that are unrelated to criminal investigations,</i>	(36) Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁹¹⁰ sets out rules on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies but it did not apply to Europol. To ensure uniform and consistent protection of natural persons with regard to the processing of personal data, Regulation (EU) 2018/1725 should be made applicable to Europol in accordance with Article 2(2) of that Regulation, and should be	COM compromise proposal (6/12/2021): “(36) Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁶⁰ sets out rules on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies. While Regulation (EU) 2018/1725 has been applicable to the processing of administrative personal data by Europol that are unrelated to

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	applicable to Europol in accordance with Article 2(2) of that Regulation, and should be complemented by specific provisions for the specific processing operations that Europol should perform to accomplish its tasks.	<i>such as staff data, Article 3(2) and Chapter IX of that Regulation, which regulate the processing of operational personal data, have so far not applied</i> to Europol. To ensure uniform and consistent protection of natural persons with regard to the processing of personal data, Regulation(EU) 2018/1725 should be made applicable to Europol in accordance with Article2(2) of that Regulation, and should be complemented by specific provisions for the specific processing operations that Europol should perform to accomplish its tasks.	complemented by specific provisions for the specific processing operations that Europol should perform to accomplish its tasks.	criminal investigations, such as staff data, Article 3(2) and Chapter IX of that Regulation, which regulate the processing of operational personal data, have so far not applied to Europol. To ensure uniform and consistent protection of natural persons with regard to the processing of personal data, Regulation(EU) 2018/1725 should be made applicable to Europol in accordance with Article2(2) of that Regulation, and should be complemented by specific provisions for the specific processing operations that Europol should perform to accomplish its tasks. <u>The increased data processing by Europol should be combined with strong data protection supervision and safeguards. The same tasks and powers as provided to the EDPS under Regulation (EU) 2018/1725 should apply consistently to all processing of personal data by Europol. However, some of those powers are not relevant in the context of the processing of operational data by Europol.</u>
62	⁹ Regulation (EU) 2018/1725 of the European	⁶⁰ Regulation (EU) 2018/1725 of the European Parliament and	⁹ Regulation (EU) 2018/1725 of the European Parliament and of	

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	Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).	of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).	the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).	
63	¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).		¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).	
64			<u>(36a) The processing of photographs should not be systematically considered as processing of special categories of personal data, since photographs are covered by the definition of</u>	

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			<u>biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person.</u>	
65			<p><u>(36b) The prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities, such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto that would involve a high risk to the rights and freedoms of data subjects. The time-period for providing the written advice by the EDPS on such consultations should not be subject to suspensions. In case of processing activities of substantial significance for Europol's performance of tasks, which are particularly urgent, Europol may initiate processing already after the prior consultation has been launched, even if the time limit for providing written advice by the</u></p>	<p><u>COM compromise proposal (06/12/2021)</u></p> <p>“(36b) The prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities, such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto that would involve a high risk to the rights and freedoms of data subjects. The time-period for providing the written advice by the EDPS on such consultations should not be subject to suspensions. In case of processing activities of substantial significance for Europol's performance of tasks, which are particularly urgent, Europol may exceptionally initiate processing already after the prior consultation has been launched, even if the time limit for providing written advice by the EDPS has not yet</p>

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			<p><u>EDPS has not yet expired. Substantial significance for Europol's performance of tasks leading to such urgency may arise, among others, when processing is necessary to prevent an immediate and serious threat to the public security of a Member State or third country, to prevent an imminent danger of perpetration of a crime, including terrorism, or to protect vital interests of a person. The Data Protection officer of Europol should be involved in assessing the urgency and necessity of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question.</u></p>	<p>expired. Substantial significance for Europol's performance of tasks leading to such urgency may arise, among others, when processing is necessary to prevent an immediate and serious threat to the public security of a Member State or third country, to prevent, upon request by a Member State, an imminent danger of perpetration of a specific case of serious crime, including terrorism, or to protect vital interests of a person. The Data Protection Officer of Europol should be involved in assessing the urgency and necessity of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question. The EDPS may exercise all of its powers with respect to such processing."</p> <p><u>COM compromise proposal (26/11/2021):</u></p> <p><u>(36b) The prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities,</u></p>

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				<p>such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto that would involve a high risk to the rights and freedoms of data subjects. The time-period for providing the written advice by the EDPS on such consultations should not be subject to suspensions. In case of processing activities of substantial significance for Europol's performance of tasks, which are particularly urgent, Europol may initiate processing already after the prior consultation has been launched, even if the time limit for providing written advice by the EDPS has not yet expired. Substantial significance for Europol's performance of tasks leading to such urgency may arise, among others, when processing is necessary to prevent an immediate and serious threat to the public security of a Member State or third country, to prevent an imminent danger of perpetration of a crime, including terrorism, or to protect vital interests of a person. The Data</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				Protection officer of Europol should be involved in assessing the urgency and necessity of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question.
66	<p>(37) Given the challenges that the use of new technologies by criminals pose to the Union's security, law enforcement authorities are required to strengthen their technological capacities. To that end, Europol should support Member States in the use of emerging technologies in preventing and countering crimes falling within the scope of Europol's objectives. To explore new approaches and develop common technological solutions for Member States to prevent and counter crimes falling within the scope of Europol's objectives, Europol should be able to conduct research and innovation activities regarding matters covered by this Regulation, including with the</p>	<p>AM 39</p> <p>(37) Given the challenges <i>posed to the Union's security by the rapid technological development and the exploitation</i> of new technologies by criminals, law enforcement authorities are required to strengthen their technological capacities <i>to identify, secure and analyse the data needed to investigate crimes</i>. Europol should <i>be able to</i> support Member States in the use of emerging technologies <i>and in exploring</i> developing common technological solutions for Member States to <i>better</i> prevent and counter <i>terrorism and</i> crimes falling within the scope of Europol's objectives, <i>while ensuring that the</i></p>	<p>(37) Given the challenges that the use of new technologies by criminals pose to the Union's security, law enforcement authorities are required to strengthen their technological capacities. To that end, Europol should support Member States in the use of emerging technologies in preventing and countering crimes falling within the scope of Europol's objectives, <u>also in cooperation with relevant networks of Member States' practitioners. Europol should also work with other EU agencies in the area of justice and home affairs to drive innovation and foster synergies within their respective mandates, and support related forms of cooperation such as secretarial support to the 'EU Innovation Hub for Internal Security' as a collaborative</u></p>	

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	processing of personal data where necessary and whilst ensuring full respect for fundamental rights. The provisions on the development of new tools by Europol should not constitute a legal basis for their deployment at Union or national level.	<i>development, use and deployment of new technologies is guided by the principles of transparency, explainability, fairness, accountability and does not undermine fundamental rights and freedoms and is in compliance with Union law. To that end, Europol should be able to conduct research and innovation projects regarding matters covered by this Regulation within the binding general scope of research and innovation activities defined by the Management Board, which should be updated where appropriate and made available to the EDPS. Those projects are allowed to include the processing of personal data only where the processing of personal data is strictly required, where the objective of the relevant project cannot be attained through the use of non-personal or anonymous data, and whilst ensuring full respect for fundamental rights, notably non-discrimination. The processing of special categories of personal data for</i>	network of innovation labs. To explore new approaches and develop common technological solutions for Member States to prevent and counter crimes falling within the scope of Europol's objectives, Europol should be able to conduct research and innovation activities regarding matters covered by this Regulation, including with the processing of personal data where necessary and whilst ensuring full respect for fundamental rights. The provisions on the development of new tools by Europol should not constitute a legal basis for their deployment at Union or national level.	

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		<p><i>research purposes should only be allowed where it is strictly necessary. Given the sensitivity of such processing, appropriate additional safeguards, including pseudonymisation, should be applied. To prevent bias in algorithmic decision-making it is crucial to train the technology with representative datasets. In exceptional and duly justified cases and where strictly required to prevent bias, Europol should therefore be allowed to process personal data outside the categories of data subjects listed in Annex II of Regulation (EU) 2016/794. Europol should keep logs of all personal data processing in the context of its research projects to allow the EDPS to carry out audits and conduct supervision, with a view to ensure that technological solutions based on artificial intelligence do not undermine fundamental rights and freedoms and are not discriminatory. It should furthermore ensure that audits are carried out by independent</i></p>		

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		<p><i>experts before the deployment of any technological solution resulting from Europol's research and innovation projects involving the processing of personal data with a view to ensuring that the technological solution does not undermine the fundamental rights and freedoms enshrined in the Charter.</i> The provisions on the development of new tools by Europol should not constitute a legal basis for their deployment at Union or national level. <i>To reinforce synergies in research and innovation, Europol should step up its cooperation with other Union agencies within their respective competences in this area.</i></p>		
67	<p>(38) Europol should play a key role in assisting Member States to develop new technological solutions based on artificial intelligence, which would benefit national law enforcement authorities throughout the Union. Europol should play a key role in</p>	<p>AM 40</p> <p>(38) Europol should play a key role in assisting Member States to develop new technological solutions based on artificial intelligence <i>relevant to achieve Europol's objectives</i>, which benefit national law enforcement</p>	<p>(38) Europol should play a key role in assisting Member States to develop new technological solutions based on artificial intelligence, which would benefit national law enforcement authorities throughout the Union. Europol should play a key role in promoting ethical, trustworthy and</p>	

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	promoting ethical, trustworthy and human centric artificial intelligence subject to robust safeguards in terms of security, safety and fundamental rights.	authorities throughout the Union <i>in full respect for fundamental rights and freedoms, including non-discrimination.</i> Europol should play a key role in promoting <i>the development and deployment of</i> ethical, trustworthy and human centric artificial intelligence subject to robust safeguards in terms of security, safety, <i>transparency, explainability</i> and fundamental rights.	human centric artificial intelligence subject to robust safeguards in terms of security, safety and fundamental rights.	
68	(39) Europol should inform the European Data Protection Supervisor prior to the launch of its research and innovation projects that involve the processing of personal data. For each project, Europol should carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of personal data and all other fundamental rights, including of any bias in the outcome. This should include an assessment of the appropriateness of the personal	AM 41 (39) Europol should inform the European Data Protection Supervisor prior to the launch of its research and innovation projects that involve the processing of personal data. For each project, Europol should carry out, prior to the processing, <i>a data protection impact assessment to ensure full respect with data protection and all other fundamental rights and freedoms of the data subjects.</i> This should include an assessment of <i>any potential</i>	(39) Europol should inform the European Data Protection Supervisor prior to the launch of its research and innovation projects that involve the processing of personal data. <u>It should inform or consult its Management Board, depending on specific criteria that should be set out in relevant guidelines. Europol should not process data for research and innovation without the consent of the Member State, Union body, third country or international organisation that submitted the data to Europol, unless that Member State, Union body, third</u>	<u>TM 17/11/2021:</u> EP raised concerns regarding inconsistency between this recital and the operative part (Art. 33a(5) only obliges Europol to ‘seek’ consent but leaves open what happens if MS do not give consent) <u>COM compromise suggestion to complement Article 33a(5) (15/11/2021)</u> Europol should inform the European Data Protection Supervisor prior to the launch of its research and innovation projects that involve the processing of personal data. <u>It should inform or</u>

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	<p>data to be processed for the specific purpose of the project. Such an assessment would facilitate the supervisory role of the European Data Protection Supervisor, including the exercise of its corrective powers under this Regulation which might also lead to a ban on processing. The development of new tools by Europol should be without prejudice to the legal basis, including grounds for processing the personal data concerned, that would subsequently be required for their deployment at Union or national level.</p>	<p><i>bias in the outcome and in the personal data to be processed for the specific purpose of the project as well as the measures envisaged to address those risks.</i> Such an assessment would facilitate the supervisory role of the European Data Protection Supervisor, <i>which may include</i> the exercise of its corrective powers <i>and may</i> lead to a ban on processing <i>or the prohibition of the launch of a specific research and innovation project. Moreover, Europol should take the mandatory initial assessment of the Fundamental Rights Officer, including, where applicable, the recommendations included therein, into account before launching the project.</i> The development of new tools by Europol should be without prejudice to the legal basis, including grounds for processing the personal data concerned, that would subsequently be required for their deployment at Union or national level.</p>	<p><u>country or international organisation has granted its prior authorisation to such processing for the purpose of research and innovation.</u> For each project, Europol should carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of personal data and all other fundamental rights, including of any bias in the outcome. This should include an assessment of the appropriateness, <u>necessity and proportionality</u> of the personal data to be processed for the specific purpose of the project, <u>including the requirement of data minimisation.</u> Such an assessment would facilitate the supervisory role of the European Data Protection Supervisor, including the exercise of its corrective powers under this Regulation which might also lead to a ban on processing. <u>Preference should be given to using synthetic, pseudonymized and/or anonymized personal data.</u> The development of new tools by Europol should be without prejudice to the legal basis, including grounds for processing the personal data concerned, that</p>	<p><u>consult its Management Board, depending on specific criteria that should be set out in relevant guidelines. Europol should not process data for research and innovation without the consent of the Member State, Union body, third country or international organisation that submitted the data to Europol, unless that Member State, Union body, third country or international organisation has granted its prior authorisation to such processing for the purpose of research and innovation.</u> For each project, Europol should carry out, prior to the processing, <u>a data protection impact assessment to ensure full respect with data protection and all other fundamental rights and freedoms of data subjects.</u> This should include an assessment of the appropriateness, <u>necessity and proportionality</u> of the personal data to be processed for the specific purpose of the project, <u>including the requirement of data minimisation and an assessment of any potential bias in the outcome and in the personal data to be processed for the specific purpose of the project as well as the measures envisaged to address those</u></p>

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			would subsequently be required for their deployment at Union or national level.	<p>risks. Such an assessment would facilitate the supervisory role of the European Data Protection Supervisor, <u>which may include the exercise of its corrective powers and may lead to a ban on processing or the prohibition of the launch of a specific research and innovation project.</u> <u>/Moreover, Europol should take the mandatory initial assessment of the Fundamental Rights Officer, including, where applicable, the recommendations included therein, into account before launching the project/.</u></p> <p><u>Preference should be given to using synthetic, pseudonymized and/or anonymized personal data.</u> The development of new tools by Europol should be without prejudice to the legal basis, including grounds for processing the personal data concerned, that would subsequently be required for their deployment at Union or national level.</p>
69		<p>AM 42</p> <p>Recital 39 a (new) <i>(39a) Expanding the mandate of Europol and the scope of its data processing activities will require the EDPS to dedicate additional</i></p>		

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		<i>financial and human resources to exercise its supervisory role as regards Europol. The financial allocation to the EDPS as well as its provision with human resources at skill levels commensurate to the complexity of data processing undertaken by Europol should be adjusted in accordance with the increased responsibilities of the EDPS towards Europol so as to deliver its feedback to consultations more quickly and not impede the proper functioning of Europol.</i>		
70	(40) Providing Europol with additional tools and capabilities requires reinforcing the democratic oversight and accountability of Europol. Joint parliamentary scrutiny constitutes an important element of political monitoring of Europol's activities. To enable effective political monitoring of the way Europol applies additional tools and capabilities, Europol should provide the Joint Parliamentary Scrutiny Group	AM 43 (40) Providing Europol with additional tools and capabilities requires reinforcing the democratic oversight and accountability of Europol. Joint parliamentary scrutiny constitutes an important element of political monitoring of Europol's activities. To enable effective political monitoring of the way Europol applies additional tools and capabilities <i>provided to it by this Regulation</i> , Europol	(40) Providing Europol with additional tools and capabilities requires reinforcing the democratic oversight and accountability of Europol. Joint parliamentary scrutiny constitutes an important element of political monitoring of Europol's activities. To enable effective political monitoring of the way Europol applies additional tools and capabilities, Europol should provide the Joint Parliamentary Scrutiny Group and the Member States with annual information on the use of these	

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	with annual information on the use of these tools and capabilities and the result thereof.	should provide the Joint Parliamentary Scrutiny Group <i>(JPSG) with detailed</i> annual information on the <i>development, deployment, use and effectiveness</i> of these tools and capabilities and the result thereof, <i>in particular about research and innovation projects as well as new activities or the establishment of any new specialised centres within Europol. Moreover, two representatives of the JPSG, one for the European Parliament and one for the national parliaments to reflect the dual constituency of the JPSG, should be invited to the Management Board meetings to address the Board on behalf of the JPSG. In line with the oversight role of the JPSG, the two JPSG representatives should not have voting rights in the Management Board. Planned research and innovation activities should be set out in the single programming document containing Europol's multiannual programming and annual work programme</i>	tools and capabilities and the result thereof.	

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		<i>and transmitted to the Joint Parliamentary Scrutiny Group.</i>		
71		<p>AM 44</p> <p><i>(40a) The Management Board should appoint a Fundamental Rights Officer who should be responsible to monitor that Europol safeguards the respect for fundamental rights in all its activities and tasks, notably Europol's research and innovation projects and its exchanges of personal data with private parties. Europol should provide the Fundamental Rights Officer with the resources and staff necessary to enable him or her to effectively carry out all of his or her tasks in accordance with this Regulation and access to all information concerning respect for fundamental rights in the activities of Europol. The Fundamental Rights Officer should cooperate closely with the Data Protection Officer within the scope of their</i></p>		

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		<i>respective competences. To this end, the Fundamental Rights Officer and the Data Protection Officer should establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation. To the extent that data protection matters are concerned, full responsibility should lie with the Data Protection Officer. Europol should take into account the reports and advice of both bodies.</i>		
72	(41) Europol's services provide added value to Member States and third countries. This includes Member States that do not take part in measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. Member States and third countries may contribute to Europol's budget based on separate agreements. Europol should therefore be able to receive contributions from Member States and third		(41) Europol's services provide added value to Member States and third countries. This includes Member States that do not take part in measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. Member States and third countries may contribute to Europol's budget based on separate agreements. Europol should therefore be able to receive contributions from Member States and third countries on the basis of financial agreements within the scope of its objectives and tasks.	

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	countries on the basis of financial agreements within the scope of its objectives and tasks.			
73	(42) Since the objective of this Regulation, namely to support and strengthen action by the Member States' law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, cannot be sufficiently achieved by the Member States but can rather, due to the cross-border nature of serious crime and terrorism and the need for a coordinated response to related security threats, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in		(42) Since the objective of this Regulation, namely to support and strengthen action by the Member States' law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, cannot be sufficiently achieved by the Member States but can rather, due to the cross-border nature of serious crime and terrorism and the need for a coordinated response to related security threats, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.	

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	that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.			
74	<p>(43) [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.]</p> <p>OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not</p>		<p>(43) [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]</p>	

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	bound by it or subject to its application.]			
75	(44) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.		(44) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.	
76	(45) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council, and has delivered an opinion on [...].	AM 45 (45) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council, and has delivered an opinion on 8 March 2021^{1a} ^{1a} <i>OJ C 143, 23.4.2021, p. 6.</i>	(45) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council, and has delivered an opinion on [...].	
77	(46) This Regulation respects the fundamental rights and observes the principles recognised in particular by the	AM 46 (46) This Regulation fully respects the fundamental rights and safeguards , and observes	(46) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental	

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	<p>Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data and the right to privacy as protected by Articles 8 and 7 of the Charter, as well as by Article 16 TFEU. Given the importance of the processing of personal data for the work of law enforcement in general, and for the support provided by Europol in particular, this Regulation includes effective safeguards to ensure full compliance with fundamental rights as enshrined in the Charter of Fundamental Rights. Any processing of personal data under this Regulation is limited to what is strictly necessary and proportionate, and subject to clear conditions, strict requirements and effective supervision by the EDPS.</p>	<p>the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data and the right to privacy as protected by Articles 8 and 7 of the Charter, as well as by Article 16 TFEU. Given the importance of the processing of personal data for the work of law enforcement in general, and for the support provided by Europol in particular, this Regulation includes <i>enhanced</i> safeguards, <i>democratic oversight and accountability mechanisms</i>, to ensure <i>that the activities and tasks of Europol are carried out in</i> full compliance with fundamental rights as enshrined in the Charter, <i>notably the rights to equality before the law, to non-discrimination, and to an effective remedy before the competent national court against any of the measures taken pursuant to this Regulation</i>. Any processing of personal data under this Regulation is limited to what is strictly necessary and</p>	<p>Rights of the European Union, in particular the right to the protection of personal data and the right to privacy as protected by Articles 8 and 7 of the Charter, as well as by Article 16 TFEU. Given the importance of the processing of personal data for the work of law enforcement in general, and for the support provided by Europol in particular, this Regulation includes effective safeguards to ensure full compliance with fundamental rights as enshrined in the Charter of Fundamental Rights. Any processing of personal data under this Regulation is limited to what is strictly necessary and proportionate, and subject to clear conditions, strict requirements and effective supervision by the EDPS.</p>	

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		proportionate, and subject to clear conditions, strict requirements and effective supervision by the EDPS.		
78	(47) Regulation (EU) 2016/794 should therefore be amended accordingly,		(47) Regulation (EU) 2016/794 should therefore be amended accordingly,	
79	HAVE ADOPTED THIS REGULATION:		HAVE ADOPTED THIS REGULATION:	
80	<i>Article 1</i>		<i>Article 1</i>	
81	Regulation (EU) 2016/794 is amended as follows:		Regulation (EU) 2016/794 is amended as follows:	
82	(1) Article 2 is amended as follows:		(1) Article 2 is amended as follows:	
83	(a) points (h) to (k) and points (m), (n) and (o) are deleted;		(a) points (h) to (k) and points (m), (n) and (o) are deleted;	<p>TM on 12/11/2021: Provisionally agreed to also delete Art. 2(d) - definition of ‘Union body’ as the definition of ‘<i>Union bodies and institutions</i>’ under Regulation (EU) 2018/1725 applies</p> <p>Agreed text:</p> <p>(a) points <u>(d)</u>, (h) to (k) and points (m), (n) and (o) are deleted;</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<i>NB: references to 'Union body' are to be updated across the text.</i>
84	(b) point (p) is replaced by the following:		(b) point (p) is replaced by the following:	
85	“(p) ‘administrative personal data’ means all personal data processed by Europol apart from operational data;”;	AM 47 (p) administrative personal data’ means all personal data processed by Europol apart from operational personal data;	“(p) ‘administrative personal data’ means all personal data processed by Europol apart from operational personal data;”;	TM 28/10/2021: provisionally agreed - use CSL text: (p) administrative personal data’ means all personal data processed by Europol apart from operational personal data;
86	(c) the following point (q) is added:	AM 48 (c) the following points are added:	(c) the following point (q) is added:	
87	“(q) ‘investigative case file’ means a dataset or multiple datasets that a Member State, the EPPO or a third country acquired in the context of an on-going criminal investigation, in accordance with procedural requirements and safeguards under the applicable national criminal law, and submitted to Europol in support of that criminal investigation.”	AM 49 (q) ‘investigative case file’ means a dataset or multiple datasets that a Member State, the European Public Prosecutor’s Office (‘the EPPO’), Eurojust or a third country acquires in the context of an on-going criminal investigation, in accordance with procedural requirements and safeguards to respect fundamental rights , under the	“(q) ‘investigative data case file ’ means data a dataset or multiple datasets that a Member State, the EPPO or a third country acquired is authorised to process in the context of an on-going criminal investigation related to one or more Member States, in accordance with procedural requirements and safeguards under the applicable Union law or national criminal law, and that it submitted to Europol in support of	TM 26/11/2021: CSL explained that investigative case file could be misunderstood as judicial case file; MS use different terminology; might cover data from different cases; important for COM: link between data and authorisation to process data in national law; EP to check internally and propose a compromise

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		applicable <i>law and submits</i> to Europol in support of that criminal investigation	that criminal investigation <u>and that contains personal data outside the categories of data subjects listed in Annex II</u>	
88		<p>AM 51</p> <p><i>(qb) ‘terrorist content’ means terrorist content as defined in Article 2(7) of Regulation (EU) 2021/784 of the European Parliament and of the Council^{1a};</i></p> <hr/> <p><i>^{1a} Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ 172, 17.5.2021, p. 79).</i></p>		<p><u>Political trilogue (30/11/2021):</u> provisional agreement on the EP text:</p> <p><i>(qb) ‘terrorist content’ means terrorist content as defined in Article 2(7) of Regulation (EU) 2021/784 of the European Parliament and of the Council^{1a};</i></p> <hr/> <p><i>^{1a} Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ 172, 17.5.2021, p. 79).</i></p>
89		<p>AM 52</p> <p><i>(qc) ‘child sexual abuse material’ means material constituting child pornography as defined in point (c) of Article 2 of Directive 2011/93/EU of the European Parliament and of the Council^{1a} or pornographic performance as defined in point (e) of Article 2 of that</i></p>		<p><u>Political trilogue (30/11/2021):</u> provisional agreement on the following wording:</p> <p><i><u>‘online child sexual abuse material’</u> means material constituting child pornography as defined in point (c) of Article 2 of Directive 2011/93/EU of the European Parliament and of the Council¹ or pornographic</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<p><i>Directive</i></p> <hr/> <p><i>^{1a} Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).</i></p>		<i>performance as defined in point (e) of Article 2 of that Directive</i>
90			<u>(c bis) the following point (r) is added:</u>	
91		<p><i>AM 50</i></p> <p><i>(qa) 'crisis situation' means an ongoing or recent real-world event that is linked to a terrorist crime, where online material is created depicting harm to life or to physical integrity or calls for imminent harm to life or physical integrity and aims to, or has the effect of seriously intimidating a population and where there is an anticipated potential of exponential multiplication and virality across multiple online</i></p>	<p><u>"(r) 'online crisis situation' means the dissemination of online content that is linked to or suspected as being carried out in the context of terrorism or violent extremism stemming from an ongoing or recent real-world event, which depicts harm to life or physical integrity or calls for imminent harm to life or physical integrity, and where the online content aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and</u></p>	<p><u>Political trilogue (30/11/2021):</u> provisional agreement on the following compromise wording (to be read in conjunction with compromise proposals on Art. 4(u) in line 108 and on Art. 26a(1) in line):</p> <p><u>'online crisis situation' means the dissemination of online content stemming from an ongoing or recent real-world event which depicts harm to life or to physical integrity or calls for imminent harm to life or physical integrity and aims to, or has the effect of seriously intimidating a population, where there is a link or a reasonable</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>services.</i>	<u>virality across multiple online service providers."</u>	<i>suspicion of a link to terrorism or violent extremism and where there is an anticipated potential of exponential multiplication and virality across multiple online services;</i>
92			<u>(c ter) the following point (s) is added:</u>	
93		<p><i>AM 53</i></p> <p><i>(qd) category of transfers of personal data' means a group of transfers of personal data which relates to the same real-world event involving harm to life or to physical integrity and which consists of the same categories of personal data and data subjects.</i></p>	<p><u>"(s) 'category of transfers of personal data' means a group of transfers of personal data which all relate to the same specific situation, and which consist of the same categories of personal data and the same categories of data subjects."</u></p>	<p>TM 17/11/2021: provisionally agreed: CSL wording in combination with recital 24 for which EP will propose slight rewording</p> <p>COM compromise proposal (15/11/2021): accept CSL wording; explain situations in accompanying recital 24 (line 45)</p> <p><u>"(s) 'category of transfers of personal data' means a group of transfers of personal data which all relate to the same specific situation, and which consist of the same categories of personal data and the same categories of data subjects."</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				TM 28/10/2021: EP and CSL text seem to be compatible; COM to suggest compromise wording
94	(2) Article 4 is amended as follows:		(2) Article 4 is amended as follows:	
95	(a) paragraph 1 is amended as follows:		(a) paragraph 1 is amended as follows:	
96	(i) point (h) is replaced by the following:		(i) point (h) is replaced by the following:	
97	“(h) support Member States’ cross-border information exchange activities, operations and investigations, as well as joint investigation teams, and special intervention units, including by providing operational, technical and financial support;”;		“(h) support Member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams, and special intervention units, including by providing operational, technical and financial support;	TM (26/11/2021): provisionally agreed to use CSL text “(h) support Member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams, and special intervention units, including by providing operational, technical and financial support;”
98			<u>(h bis) support Member States’ special intervention units as referred to in Council Decision 2008/617/JHA by providing administrative and financial support.”;</u>	TM (26/11/2021): provisionally agreed to use CSL text accept CSL AMs on lines 97/98 as special intervention units by virtue of Art. 3(3) of Council Decision 2008/617/JHA do not hold

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				competence to conduct operations in the host MS, only assist authorities of that MS. <u>h bis) support Member States' special intervention units as referred to in Council Decision 2008/617/JHA by providing administrative and financial support."</u>
99	(ii) point (j) is replaced by the following:		(ii) point (j) is replaced by the following:	
100	“(j) cooperate with the Union bodies established on the basis of Title V of the TFEU and with OLAF and ENISA, in particular through exchanges of information and by providing them with analytical support in the areas that fall within their competence;”;	AM 54 (j) cooperate with the Union bodies established on the basis of Title V of the TFEU, <i>as well as</i> with OLAF and ENISA, in particular through exchanges of information and by providing them with analytical support in areas <i>falling</i> within their <i>competences</i> ;	“(j) cooperate with the Union bodies established on the basis of Title V of the TFEU and with OLAF and ENISA, in particular through exchanges of information and by providing them with analytical support in the areas that fall within their competence;”;	<u>TM (26/11/2021):</u> provisionally agreed to merge EP/CSL texts: “(j) cooperate with the Union bodies established on the basis of Title V of the TFEU and with OLAF and ENISA, in particular through exchanges of information and by providing them with analytical support in <i>the</i> areas <i>that fall falling</i> within their <i>competences</i> ”
101	(iii) point (m) is replaced by the following:		(iii) point (m) is replaced by the following:	
102	“(m) support Member States' actions in preventing and combating forms of crime	AM 55 (m) support Member States' actions in and combating forms	“(m) support Member States' actions in preventing and combating forms of crime listed in Annex I	<u>TM 03/12/2021:</u> CSL has positive scrutiny for EP proposal; to check internally

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	<p>listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States, the coordination of law enforcement authorities' response to cyberattacks, the taking down of terrorist content online, and the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions;";</p>	<p>of crime listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States, <i>support</i> the coordination of <i>Member States</i> law enforcement authorities' response to cyberattacks, the taking down of terrorist content online <i>and child sexual abuse material</i>, and the <i>referral of online</i> content to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions, <i>while respecting the right to privacy and the protection of personal data</i>;</p>	<p>which are facilitated, promoted or committed using the internet, including, in cooperation with Member States <u>and upon their request</u>, the coordination of <u>assistance to law enforcement competent</u> authorities' response to cyberattacks <u>of suspected criminal origin</u>, the taking down of <u>coordination of removal orders</u> for terrorist content online <u>by Member States authorities in accordance with Art. 14 of Regulation 2021/...</u> [the TCO-Regulation], and the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions;";</p>	<p>EP compromise proposal (29/11/2021):</p> <p>support Member States' actions, <i>while respecting the right to privacy and the protection of personal data</i>, in preventing and combating forms of crime listed in Annex I which are facilitated, promoted or committed using the internet, including by:</p> <ul style="list-style-type: none"> i. <u>assisting competent</u> authorities, <u>upon their request</u>, in responding to cyberattacks <u>of suspected criminal origin</u>, ii. cooperating in cooperation with Member States with regard to <u>coordinating removal orders</u> for terrorist content online <u>by Member States competent authorities in accordance with Art. 14 of Regulation (EU) 2021/784</u>, and iii. making referrals of <i>online</i> content to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet <u>that</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				content with their own terms and conditions; while respecting the right to privacy and the protection of personal data; ;
103	(iv) the following points (q) to (r) are added:	AM 56 (iv) the following points (q) to (ub) are added:	(iv) the following points (q) to (r) are added:	
104	“(q) support Member States in identifying persons whose involvement in crimes falling within the scope of Europol’s mandate, as listed in Annex I, constitute a high risk for security, and facilitate joint, coordinated and prioritised investigations;	AM 57 (q) support Member States in identifying persons suspected of crimes falling within the scope of Europol’s mandate, as listed in Annex I, and that constitute a high risk for security, and facilitate joint, coordinated and prioritised investigations;	“(q) support Member States in identifying persons whose involvement in serious crimes falling within the scope of Europol’s mandate, as listed in Annex I, constitute a high risk for security, and facilitate joint, coordinated and prioritised investigations regarding those persons ;	TM (03/11/2021): PRES suggestion to address remarks of Member States; EP will check internally “(q) support Member States in identifying persons whose linked to serious crimes falling within the scope of Europol’s mandate, as listed in Annex I, and constitutes a high risk for security, and facilitate joint, coordinated and prioritised investigations regarding those persons ;
105	(r) enter data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council*, following consultation with the Member States in accordance with	AM 58 (r) enter alerts into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council ^{1a} , following consultation with the Member	(r) enter data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council, following consultation with the Member States in accordance with Article 7 of this Regulation, and under authorisation	Political trilogue 30/11/2021: CSL and EP rejected COM proposal; EP: proposal does not address the legal gap as MS without interest in the case will not request Europol to enter alerts; question is not ‘whether’ but ‘how’ Europol should

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	Article 7 of this Regulation, and under authorisation by the Europol Executive Director, on the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries or international organisations within the meaning of Article 17(1)(b);	States in accordance with Article 7 of this Regulation, <i>which did not result in a reasoned objection by a Member State or in a Member State expressing its intention to enter an alert on its own behalf</i> and under authorisation by the Europol Executive Director, on the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries or international organisations <i>which fulfil one of the conditions listed in Article 25(1) of this Regulation or a third country which does not fulfil one of the conditions listed in Article 25(1) of this Regulation, provided that the information has been confirmed by a third country which fulfils those conditions or provided that the information relates to a terrorist offence or organised crime;</i> _____	by the Europol Executive Director, on the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries or international organisations within the meaning of Article 17(1)(b). <u>Support Member States in processing data transmitted by third countries or international organisations to Europol on persons involved in terrorism or in serious and organised crime and propose the possible entry by the Member States, at their discretion and subject to their verification and analysis, of information alerts in the interest of the Union into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and the Council. A periodic reporting mechanism shall be put in place in order to inform other Member States and Europol on the outcome of the verification and analysis and on whether or not the data has been inserted in the SIS, within a period of 12 months from the communication by Europol of its</u>	enter alerts in SIS; CSL opposes alerts by Europol <u>COM compromise proposal (26/11/2021):</u> (r) enter alerts data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council*, following <u>upon request by at least one Member State</u> , following consultation with the Member States in accordance with Article 7 of this Regulation, <u>which did not result in a reasoned objection by a Member State or in a Member State expressing its intention to enter an alert on its own behalf</u> , and under authorisation by the Europol Executive Director, on the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries <u>which fulfil one of the conditions listed in Article 25(1) of this Regulation or a third country which does not fulfil one of the conditions listed in Article 25(1) of this Regulation, provided that the information has been confirmed</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>1^a Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).;</i>	<u>information to the Member States; The Management Board shall further specify the criteria on the basis of which Europol issues proposals for possible entry of alerts into the Schengen Information System. Member States shall inform Europol of any information alert issued and of any hit on such information alerts, and may inform, through Europol, the third country or international organisation from which the information leading to the alert originates on hits on such alerts, in accordance with the procedure set out in Regulation (EU) 2018/1862 of the European Parliament and the Council.;</u>	<u>by a third country which fulfils those conditions</u> or international organisations within the meaning of Article 17(1)(b). <u>Europol shall inform all Member States on inserting such alerts in the SIS;</u> <i>1^a Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).;</i>
106	(s) support the implementation of the evaluation and monitoring mechanism under Regulation (EU) No 1053/2013 within the scope of Europol's objectives as set out in Article 3;	AM 59 (s) support the implementation of the evaluation and monitoring mechanism under Regulation (EU) No 1053/2013 within the scope of Europol's objectives as set out in Article 3 <i>through</i>	(s) support the implementation of the evaluation and monitoring mechanism under Regulation (EU) No 1053/2013 within the scope of Europol's objectives as set out in Article 3;	<u>TM 26/11/2021</u> : provisionally agreed to use EP text (s) support the implementation of the evaluation and monitoring mechanism under Regulation (EU) No 1053/2013 within the scope of Europol's objectives as set out in

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>the provision of expertise and analyses, where relevant;</i>		Article 3 <i>through the provision of expertise and analyses, where relevant;</i>
107	(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.	AM 60 (t) proactively monitor and contribute to research and innovation activities relevant to <i>achieving</i> the objectives set out in Article 3 <i>by supporting</i> related activities of Member States <i>and implementing</i> its research and innovation activities regarding matters covered by this Regulation, including <i>projects for</i> the development, training, testing and validation of algorithms for the development of <i>specific tools for the use of law enforcement.</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 <u>in</u> the development, training, testing and validation of algorithms for the development of tools, <u>and disseminate the results of these activities to the Member States in accordance with Article 67, and contribute to the coordination of activities of Union agencies established on the basis of Title V of the TFEU in the field of research and innovation within their mandates in close cooperation with Member States.</u>	<u>TM 03/12/2021:</u> reference to Art. 4(1)(t) should be added in line 117; <u>CSL to confirm that compromise proposal on line 107 is fine;</u> <u>TM 26/11/2021:</u> new COM proposal; Positive scrutiny by CSL and EP - COM to suggest wording to clarify link between lines 107+117 (t) proactively monitor and contribute to research and innovation activities relevant to <i>achieving</i> the objectives set out in Article 3 <i>by supporting</i> related activities of Member States and <i>implementing</i> its research and innovation activities regarding matters covered by this Regulation, including <i>projects for</i> the development, training, testing and validation of algorithms for the development of <i>specific tools for the use of law enforcement, and disseminate the results of these activities to the Member States in accordance with Article 67, and contribute to creating synergies</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p><u>between the research and innovation activities of Union bodies and agencies that are relevant for Europol's objectives as set out in Article 3 in close cooperation with Member States.</u></p> <p><u>TM 17/11/2021:</u></p> <p>EP proposal to delete last part of the compromise proposal (<u>'[...] and contribute to the coordination [...] in close cooperation with MS'</u> as this cooperation is already happening despite not being provided for in legislation; CSL to check</p> <p><u>TM 12/11/2021:</u></p> <p>EP: tbd together with line 117; against new task 'coordination of agency activities'</p> <p>COM: coordination task is not new but codification of existing Europol innovation hub</p>
108	(u) support Member States' actions in preventing the dissemination of online content related to terrorism or violent extremism in crisis	<i>AM 61 deleted</i>	(u) support, <u>upon their request</u> , Member States' actions in preventing the dissemination of online content <u>in an online crisis situation, in particular by</u>	<p><u>TM 03/12/2021: CSL to confirm that 'addressing' fine</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	<p>situations, which stems from an ongoing or recent real-world event, depicts harm to life or physical integrity or calls for imminent harm to life or physical integrity, and aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers.</p>		<p><u>providing private parties with the information necessary to identify relevant online content.</u> Related to terrorism or violent extremism in crisis situations, which stems from an ongoing or recent real-world event, depicts harm to life or physical integrity or calls for imminent harm to life or physical integrity, and aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers.</p>	<p>TM 26/11/2021: EP would like to replace ‘preventing’ by ‘addressing’; CSL to check and come back during the political trilogue; COM is fine</p> <p>Updated COM proposal (26/11/2021):</p> <p>(u) support, <i>upon their request</i>, Member States’ actions in addressing preventing the dissemination of online content online crisis situations, <i>in particular by providing private parties with the information necessary to identify relevant online content.</i></p> <p>Updated COM compromise proposal (22/11/2021): linked to updated proposals for ‘online crisis situation’ (line 91) and Art. 26a(1) to split the task into two points, namely (u) dealing with online crisis situations and (ua) dealing with CSAM</p> <p>(u) support, <i>upon their request</i>, Member States’ actions in preventing the dissemination of online content online crisis situations, as well as the dissemination of online child sexual abuse material in</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<i>particular by providing private parties with the information necessary to identify relevant online content.</i>
108a				<p>TM (03/12/2021): PRES suggestion tbc with CSL to align with EP suggestion to replace preventing by “addressing” (pending outcome on line 108); OK for EP, <u>CSL to confirm</u></p> <p><i>(ua) support Member States’ actions in preventing addressing the dissemination of online child sexual abuse material.</i></p> <p>TM (26/11/2021): CSL to confirm during pol. trilogue together with Art. 26b</p> <p><u>Updated COM compromise proposal (22/11/2021):</u> linked to updated proposals for ‘online crisis situation’ (line 93) and Art. 26a(1) to split the task into two points, namely (u) dealing with online crisis situations and (ua) dealing with CSAM</p>
109		<p>AM 62</p> <p><i>(ua) cooperate with Financial Intelligence Units (FIUs), through the Europol</i></p>		<p>TM (03/12/2021): PRES to address remarks of Member States - EP to confirm</p> <p><i>(ua) cooperate, in accordance</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>national unit or, if allowed by the relevant Member State, by means of direct contact between the FIUs and Europol, in particular through exchanges of information and the provision of analytical support to support cross-border investigations by Member States into the money laundering activities of transnational criminal organisations and terrorism financing;</i>		<p>with Article 12 of Directive 2019/1153, with Financial Intelligence Units (FIUs), through the Europol national unit or, if allowed by the relevant Member State, by means of direct contact between the FIUs and Europol, in particular through exchanges of information and the provision of analysis to Member States to support cross-border investigations into the money laundering activities of transnational criminal organisations and terrorism financing;</p> <p>TM 26/11/2021: provisionally agreed; CSL proposal to add reference to Directive 2019/1153;</p>
110		<p>AM 63</p> <p><i>(ub) monitor, analyse and appraise red alerts, published by Interpol at the request of third countries, and notify Member States, the European External Action Service, and the Commission in the case of reasonable suspicion that an alert was issued in violation of Article 3 of the Interpol constitution.”</i></p>		<p>TM 12/11/2021: to be revisited at a later stage</p> <p>EP insists on necessity to task Europol with the monitoring of red alerts; CSL/COM oppose addition</p> <p>TM 28/10/2021: CSL explained that MS are not in favour of including this new task; took note of EP explanations;</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				COM sees the necessity to prevent politically motivated alerts; Interpol has set up an internal ex ante control system which is more useful than ex post control; serious doubts regarding compliance of this task with Europol's role as defined in the Treaty; will provide an information note
111	* Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).”;		* Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).”;	
112	(b) in paragraph 2, the second sentence is replaced by the following:		(b) in paragraph 2, the second sentence is replaced by the following:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
113	“Europol shall also assist in the operational implementation of those priorities, notably in the European Multidisciplinary Platform Against Criminal Threats, including by facilitating and providing administrative, logistical, financial and operational support to Member States-led operational and strategic activities.”;		“Europol shall also assist in the operational implementation of those priorities, notably in the European Multidisciplinary Platform Against Criminal Threats, including by facilitating and providing administrative, logistical, financial and operational support to Member States-led operational and strategic activities.”;	
114	(c) in paragraph 3, the following sentence is added:		(c) in paragraph 3, the following sentence is added:	
115	“Europol shall also provide threats assessment analysis supporting the Commission and the Member States in carrying out risk assessments.”;		“Europol shall also provide threats assessment analysis <u>based on the information it holds on criminal phenomena and trends to</u> supporting the Commission and the Member States in carrying out risk assessments.”;	<p><u>Politica trilogue 30/11/2011:</u> provisional agreement on CSL wording:</p> <p>Europol shall also provide threats assessment analysis <u>based on the information it holds on criminal phenomena and trends to</u> supporting the Commission and the Member States in carrying out risk assessments.</p>
116	(d) the following paragraphs 4a and 4b are inserted:		(d) the following paragraphs 4a and 4b are inserted:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
117	<p>“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.</p>	<p>AM 64</p> <p>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. <i>Where Europol plays a role in the design or implementation of a Union framework programme, it shall not receive funding from that programme. Where appropriate, Europol may consult the Joint Research Centre when defining and conceptualising research and innovation activities regarding matters covered by this Regulation. Europol shall take all necessary measures to avoid conflicts of interest.</i></p>	<p>“4a. Europol shall assist <u>the Member States and</u> the Commission in identifying key research themes. <u>Europol shall assist the Commission in</u> 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. <u>Europol may engage with relevant projects of such Union framework programmes in accordance with Article 4(1)(t).</u></p>	<p>TM (03/12/2021): PRES suggestion to address remarks of Member States (‘may’ in second subpar. below); EP and CSL to check internally</p> <p>Updated COM compromise proposal (post TM 26/11/2021):</p> <p>“Europol shall assist the <u>Member States and</u> the Commission in identifying key research themes. <u>Europol shall assist the Commission in</u> 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.</p> <p><u>Where relevant, Europol may shall disseminate the results of these activities as part of its contribution to creating synergies between the research and innovation activities of Union bodies and agencies in accordance with Article 4(1)(t).</u></p> <p><i>Europol shall take all necessary measures to avoid conflicts of interest, and where it plays a role in the design and or implementation of a Union framework programme, it shall not receive funding from that</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>programme implementation of a Union framework programme, it shall not receive funding from that programme.</p> <p><i>Where appropriate, Europol may consult the Joint Research Centre when defining and conceptualising research and innovation activities regarding matters covered by this Regulation."</i></p> <p>TM 17/11/2021: CSL explained that this task - which corresponds to Europol's activity carried out by the Innovation Lab - has to be construed as being without prejudice to Europol's participation in projects pursuant to Article 4(1)(t), that is in the broader framework of the Innovation Hub; compromise wording to be slightly redrafted to make it clear that Art. 4(t) refers to the Innovation Hub and Art. 4(4a) to the innovation lab</p>
118	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	AM 65 4b. Europol shall support <i>the Commission and Member States in</i> the screening of specific cases of foreign direct investments into the Union under Regulation (EU)	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	<p>TM 06/12/2021: COM compromise proposal to be checked internally by EP/CSL:</p> <p>4b. Europol shall support the screening of specific cases of foreign direct investments into the Union</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	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.	2019/452 of the European Parliament and of the Council ^{1a} that concern undertakings providing technologies, <i>including software or critical technologies that could be used to facilitate terrorism,</i> used by Europol or by Member States for the prevention and investigation of crimes covered by Article 3 on the expected implications for security. <i>^{1a} Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).</i>	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.	under Regulation (EU) 2019/452 of the European Parliament and of the Council* that concern undertakings providing technologies used <u>or being developed</u> by Europol <u>or by Member States</u> for the prevention and investigation of crimes covered by Article 3 on the expected implications for security. <u>TM 03/12/2021</u> : COM: role for Europol in FDI screening is in line with the Treaty; COM to present compromise proposal <u>TM 26/11/2021</u> : CSL - not in line with the Treaty; EP would like to keep the text
119	* Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1)."		* Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1)."	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
120	(e) in paragraph 5, the following sentence is added:		(e) in paragraph 5 is amended as follows , the following sentence is added:	
121	“Europol staff may assist the competent authorities of the Member States, at their request and in accordance with their national law, in the taking of investigative measures.”		“Europol shall not apply coercive measures in carrying out its tasks. Europol staff may provide operational support to assist the competent authorities of the Member States during investigative measures , at their request and in accordance with their national law, in particular by facilitating cross-border information exchange, providing forensic and technical support and being present when investigative measures are taken the taking of investigative measures . Europol staff shall not have the power to execute investigative measures. ”	<p>TM 03/12/2021: COM confirmed that CSL text is fine as it meets the objective of the provision; EP to check internally</p> <p>TM 26/11/2021: CSL AM aims to ensure that Europol does not have any executive powers; EP to check internally</p> <p>Commission proposal to use CSL text.</p>
122		AM 66 <i>(e a) the following paragraph 5a is added:</i>		
123		<i>“5a. Europol shall respect the fundamental rights and freedoms enshrined in the Charter in the performance of its tasks.”</i>		<p>TM 26/11/2021: provisionally agreed to use EP wording</p> <p><i>Europol shall respect the fundamental rights and freedoms enshrined in the Charter in the performance of its tasks.”</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
124	(3) in Article 6, paragraph 1 is replaced by the following:	<i>AM 67</i> <i>deleted</i>	(3) in Article 6, paragraph 1 is replaced by the following:	Political TM 03/12/2021: COM underlines that provision seeks to provide legal certainty (reference to murders in SK/MT) - EP wording is more explicit and acceptable for COM; CSL maintains opposed but suggests to limit possibility to financial crimes affecting a the Union; EP: suggestion is not sufficient as other crimes which should be covered would not be addressed
125	“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>deleted</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.”	Political TM 03/12/2021: see comment on line 124 above
126		<i>AM 68</i> <i>(-3) In Article 6, the following paragraph 1a is inserted</i>		Political TM 03/12/2021: see comment on line 124 above
127		<i>“1 a. Without prejudice to paragraph 1, where Europol</i>		Political

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>considers that a criminal investigation should be initiated into a specific crime which affects a common interest covered by a Union policy but is not of a cross-border nature, it shall request the competent authorities of the Member State concerned via the national unit to initiate, conduct or coordinate such criminal investigation.”</i>		TM 03/12/2021: see comment on line 124 above
128		AM 69 <i>(3a) In Article 6, paragraph 2 is replaced by the following:</i>		Political TM 03/12/2021: see comment on line 124 above
129		2. The national units shall inform Europol without delay of the decision of the competent authorities of the Member States concerning any request made pursuant to <i>paragraphs 1 and 1a.</i>		Political TM 03/12/2021: see comment on line 124 above
130		AM 70 <i>(3 b) In Article 6(3), the introductory part is replaced by the following:</i>		Political TM 03/12/2021: see comment on line 124 above

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
131		"3. If the competent authorities of a Member State decide not to accede to a request made by Europol pursuant to <i>paragraphs 1 and 1a</i> , they shall inform Europol of the reasons for their decision without undue delay, preferably within one month of receipt of the request. However, the reasons may be withheld if providing them would:"		Political TM 03/12/2021: see comment on line 124 above
132		AM 71 <i>(3c) In Article 6, paragraph 4 is replaced by the following:</i>		Political TM 03/12/2021: see comment on line 124 above
133		"4. Europol shall immediately inform Eurojust <i>and, where relevant, the EPPO</i> , of any request made pursuant to <i>paragraphs 1 and 1a</i> and of any decision of a competent authority of a Member State pursuant to paragraph 2;"		Political TM 03/12/2021: see comment on line 124 above
134	(4) In Article 7, paragraph 8 is replaced by the following:		(4) In Article 7, paragraph 8 is replaced by the following:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
135	<p>“8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council* are allowed to cooperate with Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council**, in particular via their national unit regarding financial information and analyses, within the limits of their mandate and competence.</p>	<p>AM 72</p> <p>8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council*, are allowed to <i>reply to duly justified requests made by</i> Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council**, via their national unit <i>or, if allowed by that Member State, by direct contact with Europol</i> regarding financial information and analyses, within the limits of their mandate and competence.”</p>	<p>“8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849-2005/60/EC of the European Parliament and of the Council are <u>entitled to reply to duly justified requests made by</u> Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council, in particular via their national unit <u>or, if provided for by the national law of that Member State, by direct contacts between the financial intelligence unit and Europol</u>, regarding financial information and analyses, within the limits of their mandate and competence <u>and subject to national procedural safeguards</u>.</p>	<p>TM 12/11/2021: provisionally agreed to use CSL text:</p> <p>8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council are <i>entitled to reply to duly justified requests made by</i> Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council, in particular via their national unit <i>or, if provided for by the national law of that Member State, by direct contacts between the financial intelligence unit and Europol</i>, regarding financial information and analyses, within the limits of their mandate and competence <i>and subject to national procedural safeguards</i>.</p>
136	_____	_____	_____	
137	<p>* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the</p>	<p>* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the</p>	<p>* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).	purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).	money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).	
138	** Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122)."	** Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).	** Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122)."	
139		<u>AM 73</u> <i>(4a) In Article 11(1), point (a) is replaced by the following:</i>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
140		<p>"(a) adopt each year, by a majority of two-thirds of its members and in accordance with Article 12, a <i>single programming document in accordance with Article 32 of Commission Delegated Regulation (EU) 2019/715^{1a} and the related Commission guidelines for the single programming</i> document containing Europol's multiannual programming and its annual work programme for the following year.</p> <hr/> <p><i>^{1a} Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1)."</i></p>		<p><u>TM 06/12/2021:</u></p> <p>COM can support EP wording; <u>CSL to check internally</u></p>
141		<p>AM 74</p> <p>(4b) In Article 11(1) the following point (ua) is added:</p>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
142		<i>“(ua) appoint a Fundamental Rights Officer who shall be functionally independent in the performance of his or her duties”</i>		Political. pending outcome on the governance package
143		<i>AM 75 (4c) In Article 12, paragraph 1 is replaced by the following:</i>		
144		"1. The Management Board shall, by 30 November each year, adopt a single programming document containing Europol's multiannual programming and annual work programme, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission and, as regards the multiannual programming, after having consulted the JPSG. <i>If the Management Board decides not to take into account elements of the opinion of the Commission, it shall provide a thorough justification. The same</i>		<u>TM 06/12/2021:</u> CSL: concerns that this addition will bind Europol COM can support EP wording; <u>CSL to check internally</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>obligation shall apply to the elements raised by the JPSG in accordance with point (c) of Article 51(2). The Management Board shall forward the final single programming document to the Council, the Commission and the JPSG.</i>		
145		AM 76 <i>(4d) In Article 12(2), the first subparagraph is replaced by the following:</i>		
146		The multiannual programming shall set out the overall strategic programming, including the objectives, expected results and performance indicators. It shall also set out the resource planning, including the multiannual budget and staff. It shall include the strategy for relations with third countries and international organisations and its planned research and innovation activities.		<u>TM 06/12/2021:</u> CSL: concerns that this addition will bind Europol; <u>CSL to check internally</u> COM: acceptable

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
147		AM 77 <i>(4e) In Article 14, paragraph 4 is replaced by the following:</i>		
148		4. The Management Board may invite any person whose opinion may be relevant for the discussion to attend its meeting as a non-voting observer. <i>Two representatives of the JPSG shall be invited to all meetings of the Management Board as observers without voting rights.</i>		<p>TM 06/12/2021: <i>Part of the governance package;</i> EP has positive scrutiny - clarify in a recital that JPSG representatives can be invited to more meetings to the extent that relevant items will be discussed; <u>EP/CSL to check internally</u></p> <p>COM compromise proposal:</p> <p>4. The Management Board may invite any person whose opinion may be relevant for the discussion to attend its meeting as a non-voting observer. Two representatives of the JPSG shall be invited to <u>all two ordinary meetings per year</u> of the Management Board as observers without voting rights <u>to discuss matters of shared interest, including the consolidated annual activity report for the previous year, the single programming document for the following year and the annual budget.</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
149		AM 78 <i>(4f) In Article 16, paragraph 3 is replaced by the following:</i>		
150		3. The Council <i>and the JPSG</i> may invite the Executive Director to report on the performance of his or her duties.		<u>TM 06/12/2021:</u> COM: already covered by Art. 51(2); maybe not needed <u>CSL to check internally</u>
151		AM 79 <i>(4g) In Article 16(5), point (d) is replaced by the following</i>		
152		(d) preparing the draft <i>single programming document containing the</i> multiannual programming and annual work programmes and submitting <i>it</i> to the Management Board, after having consulted the Commission <i>and the JPSG</i> ;		<u>TM 06/12/2021:</u> COM: already foreseen in Art. 51(2) and the document contains no operational data; <u>CSL to check internally;</u>
153			<u>(4 bis) In Article 16(5), a new point (o bis) is added:</u>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
154			<u>"(o bis) informing the Management Board regarding the memoranda of understanding signed with private parties;"</u>	<u>TM 06/12/2021:</u> COM: in principle fine CSL: no actual access to specific documents but reporting <u>EP to check internally</u>
155	(5) Article 18 is amended as follows:		(5) Article 18 is amended as follows:	
156	(a) paragraph 2 is amended as follows:		(a) paragraph 2 is amended as follows:	
157	(i) point (d) is replaced by the following wording:		(i) point (d) is replaced by the following wording:	
158	“(d) facilitating the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties;”		“(d) facilitating the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties;”	
159	(ii), the following points (e) and (f) are added:		(ii), the following points (e) and (f) are added:	
160	“(e) research and innovation regarding matters covered by this Regulation for the development, training, testing and validation of	AM 80 (e) research and innovation <i>projects</i> regarding matters covered by this Regulation for the development, training, testing and validation of	“(e) research and innovation regarding matters covered by this Regulation for the development, training, testing and validation of algorithms for the development of tools <u>and for other research and innovation activities relevant to</u>	<u>TM (03/12/2021):</u> PRES proposal for changes to compromise wording to address remarks of Member States - EP to check internally (e) research and innovation <i>projects</i> regarding matters covered by this

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	algorithms for the development of tools;	algorithms for the development of <i>specific</i> tools <i>for the use of law enforcement</i> ;	<u>achieve the objectives set out in Article 3</u> ;	Regulation for the development, training, testing and validation of algorithms <i>for the development of specific tools and for other specific research and innovation projects activities</i> relevant to achieve the objectives set out in Article 3 in accordance with the conditions set out in Article 33a— for the development of tools ; <u>TM on 17/11/2021</u> : provisional agreement to use EP proposal below; to be confirmed by CSL
161	(f) supporting Member States in informing the public about suspects or convicted individuals who are wanted based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals.”	AM 81 (f) supporting Member States in informing the public about suspects or convicted individuals who are wanted, based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and <i>facilitating</i> the provision of information, <i>to the Member States and Europol</i> , by the public on these individuals.	(f) supporting Member States, <u>upon their request</u> , in informing the public about suspects or convicted individuals who are wanted based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals.”	<u>TM 17/11/2021</u> : provisional agreement to use EP’s proposal below to merge EP/CSL texts: (f) supporting Member States, <u>upon their request</u> , in informing the public about suspects or convicted individuals who are wanted, based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and <i>facilitating</i> the provision of information, <i>to the Member States and Europol</i> , by the public on these individuals.
162	(b) the following paragraph 3a is inserted:		(b) the following paragraph 3a is inserted:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
163	“3a. Processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed by means of Europol’s research and innovation projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply.”	AM 82 3a. Processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed by means of Europol’s research and innovation projects with clearly defined <i>purposes and objectives, and shall be subject to</i> the additional specific safeguards set out in Article 33a, <i>in respect of the duration and scope of the personal data processing.</i>	“3a. <u>If necessary to reach the objectives of Europol’s research and innovation projects,</u> P rocessing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed <u>only</u> by means of Europol’s research and innovation projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply.”	TM 17/11/2021: provisional agreement to use CSL compromise text of 10/11/2021 merging both texts <u>If necessary to reach the objectives of Europol’s research and innovation projects,</u> processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed <u>only</u> by means of Europol’s research and innovation projects with clearly defined <i>purposes and objectives, duration and scope of the personal data processing involved and shall be subject to the additional specific safeguards set out in Article 33a,</i> in respect of <i>which the additional specific safeguards set out in Article 33a shall apply the duration and scope of the personal data processing.</i>
164	(c) paragraph 5 is replaced by the following:		(c) paragraph 5 is replaced by the following:	
165	“5. Without prejudice to Article 8(4) and Article 18a, categories of personal data and categories of data subjects	AM 83 5. Without prejudice to Article 8(4), <i>Article 18(2)(e)</i> and Article 18a, categories of	“5. Without prejudice to Article 8(4) and Article 18a, categories of personal data and categories of data subjects whose data may be	TM 03/12/2021: COM: PRES proposal on par. 5bis addresses COM concern;

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	whose data may be collected and processed for each purpose referred to in paragraph 2 are listed in Annex II.”	personal data and categories of data subjects whose data may be collected and processed for each purpose referred to in paragraph 2 are listed in Annex II.	collected and processed for each purpose referred to in <u>points (a) to (d) and (f) of</u> paragraph 2 are listed in Annex II. <u>In accordance with Article 73 of Regulation (EU) 2018/1725, Europol shall, where applicable and as far as possible, make a clear distinction between the operational personal data of these different categories of data subjects.”</u>	<p><u>EP and CSL to check internally</u></p> <p><u>PRES compromise proposal (01/12/2021) for 5bis.</u></p> <p><u>New paragraph 5bis:</u></p> <p><u>In accordance with Article 73 of Regulation (EU) 2018/1725, Europol shall, where applicable and as far as possible, make a clear distinction between the operational personal data of these different categories of data subjects.”</u></p> <p><u>COM compromise proposal (22/11/2021):</u></p> <p>5. Without prejudice to Article 8(4), <i>Article 18(2)(e)</i> and Article 18a, <i>and without prejudice to data processing pursuant to Article 26(6b) where Europol’s infrastructure is used for bilateral exchanges and Europol has no access to the content of the data,</i> categories of personal data and categories of data subjects whose data may be collected and processed</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>for each purpose referred to in paragraph 2 are listed in Annex II.</p> <p><u>New paragraph 5bis:</u></p> <p>5'. Once Europol establishes that data it collects and processes falls under one of the categories of personal data and categories of data subjects listed in Annex II or when it processes data under <i>Article 18(2)(e)</i> and Article 18a, <i>Europol shall, in accordance with Article 73 of Regulation (EU) 2018/1725, where applicable and as far as possible, make a clear distinction between the operational personal data of these different categories of data subjects.</i></p> <p><u>TM 17/11/2021:</u> COM compromise proposal to amend par. 5 and add a new par. 5bis acceptable for EP; COM to propose wording to ensure that Art. 26(6b) is only covered when Europol acts as a processor and has no access to the data; CSL to check internally</p>
166	(d) the following paragraph 5a is inserted:	AM 84 <i>Deleted</i>	(d) the following paragraph 5a is inserted:	<u>TM 17/11/2021:</u> provisional agreement to move wording down to par. 6a(new) - merge CSL/EP text (line 173)

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
167	“5a. Prior to the processing of data under paragraph 2 of this Article, Europol may temporarily process personal data received pursuant to Article 17(1) and (2) for the purpose of determining whether such data comply with the requirements of paragraph 5 of this Article, including by checking the data against all data that Europol already processes in accordance with paragraph 5.	<i>Deleted</i>	“5a. Prior to the processing of data under paragraph 2 of this Article, <u>and where necessary for the purpose of determining whether personal data complies with the requirements of paragraph 5 of this Article,</u> Europol may temporarily process personal data received pursuant to Article 17(1) and (2) for the <u>that</u> purpose of determining whether such data comply with the requirements of paragraph 5 of this Article, including by checking the data against all data that Europol already processes in accordance with paragraph 5.	<u>TM 17/11/2021:</u> provisional agreement to move wording down to par. 6a(new) - merge CSL/EP text (line 173)
168	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data.	<i>deleted</i>	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the <u>provision and</u> processing of such data.	<u>TM 17/11/2021:</u> provisional agreement to move wording down to par. 6a(new) - merge CSL/EP text (line 173)
169	Europol may only process personal data pursuant to this paragraph for a maximum period of one year, or in justified cases for a longer period with the prior authorisation of the EDPS,	<i>Deleted</i>	Europol may only process personal data pursuant to this paragraph for a maximum period of one year <u>18 months</u> , or in justified cases for a longer period with the prior authorisation of the EDPS, where necessary for the purpose of this	<u>TM 17/11/2021:</u> provisional agreement to move wording down to par. 6a(new) - merge CSL/EP text (line 173)

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	where necessary for the purpose of this Article. Where the result of the processing indicates that personal data do not comply with the requirements of paragraph 5 of this Article, Europol shall delete that data and inform the provider of the data accordingly.”		Article. <u>Such personal data shall be functionally separated from other data.</u> Where the result of the processing indicates that personal data do not comply with the requirements of paragraph 5 of this Article, Europol shall delete that data and inform the provider of the data accordingly <u>where relevant.</u> ”	
170		AM 85 <i>(5 a) paragraph 6 is replaced by the following:</i>	<u>(e) Paragraph 6 is amended as follows:</u>	<u>TM 17/11/2021:</u> provisional agreement to use EP wording <i>(5 a) paragraph 6 is replaced by the following:</i>
171		6. Europol may temporarily process data for the purpose of determining whether such data are relevant to its tasks and, if so, for which of the purposes referred to in paragraph 2. The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data, in particular with respect to access to and use of the data, as well as time limits for the storage and deletion of the data, which	"6. Europol may temporarily process data for the purpose of determining whether such data are relevant to its tasks and, if so, for which of the purposes referred to in paragraph 2. The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data, in particular with respect to access to and use of the data, as well as time limits for the storage and deletion of the data, which may not exceed six months, having due regard to the	<u>TM 17/11/2021:</u> provisional agreement to use EP wording for the first sentence, second sentence covered in new paragraph 6b (line 175a) – <u>Wording in line 175a to be amended in order to clarify that the 6 months deadline doesn't apply to paragraph 6a</u> 6. Europol may temporarily process data for the purpose of determining whether such data are relevant to its tasks and, if so, for which of the purposes referred to in paragraph 2.

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		may not exceed six months, having due regard to the principles referred to in Article 71 of Regulation (EU) 2018/1725 .”	principles referred to in <u>Regulation (EU) 2018/1725 Article 28.</u>	
172		AM 86 <i>da. the following paragraph 6a is inserted:</i>		<u>TM 17/11/2021:</u> provisional agreement to create new par. 6a(new) (moved down from par. 5a) - use EP text
173		<i>“6a. Prior to the processing of data under paragraph 2 of this Article, Europol may exceptionally temporarily process personal data received pursuant to Article 17(1) and (2) for the sole purpose of determining whether such data comply with the requirements of paragraph 5 of this Article, including by checking the data against all data that Europol already processes in accordance with paragraph 5.</i>	Prior to the processing of data under paragraph 2 of this Article, <u>and where necessary for the purpose of determining whether personal data complies with the requirements of paragraph 5 of this Article,</u> Europol may temporarily process personal data received pursuant to Article 17(1) and (2) for the <u>that</u> purpose of determining whether such data comply with the requirements of paragraph 5 of this Article, including by checking the data against all data that Europol already processes in accordance with paragraph 5.	<u>COM compromise proposal 26/11/2021:</u> “Prior to the processing of data under paragraph 2 of this Article, <u>and where strictly necessary for the purpose of determining whether personal data complies with the requirements of paragraph 5 of this Article,</u> Europol may exceptionally temporarily process personal data received pursuant to Article 17(1) and (2) for that <u>sole</u> purpose, including by checking the data against all data that Europol already processes in accordance with paragraph 5.” <u>TM 17/11/2021:</u> EP proposal to merge CSL/EP texts, leave ‘exceptionally’ for later; Council suggestion to replace the word

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				[exceptionnally] by “ <u>where strictly necessary</u> ”; to be confirmed by the Council and EP
174		<i>The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the temporary processing of such data.</i>	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the <u>provision and</u> processing of such data.	<u>TM 17/11/2021:</u> provisional agreement Deleted and moved to paragraph 6b (line 175a)
175		<i>Europol may only process personal data pursuant to this paragraph for a maximum period of <u>one year, which may be extended once by up to six months in duly justified cases where proportionate and necessary for the purpose of this Article. Europol shall inform the EDPS of any extension of the maximum processing period. Where the temporary processing is no longer proportionate and necessary for the purpose of this Article, and in any case after the end of the maximum processing period, Europol shall permanently delete the personal data that does not comply with the requirements</u></i>	Europol may only process personal data pursuant to this paragraph for a maximum period of one year <u>18 months</u> , or in justified cases for a longer period with the prior authorisation of the EDPS, where necessary for the purpose of this Article. <u>Such personal data shall be functionally separated from other data.</u> Where the result of the processing indicates that personal data do not comply with the requirements of paragraph 5 of this Article, Europol shall delete that data and inform the provider of the data accordingly <u>where relevant.</u>	<u>TM 06/12/2021:</u> EP/CSL to check new wording but EP would like to add more safeguards (‘duly’ justified cases, where necessary ‘and proportionate’) <u>COM compromise proposal 06/12/2021:</u> 18(6a) Europol may only process personal data pursuant to this paragraph for a maximum period of one year <u>18 months</u> , or in justified cases for a longer period with the prior authorisation of the EDPS, where necessary for the purpose of this Article. <u>The total period of processing shall not exceed a maximum period of three years. Such personal data shall be</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>of paragraph 5 of this Article and the results of the <u>processing</u>, and inform the provider of the data accordingly.</i>		<p><u>functionally separated from other data.</u> Where the result of the processing indicates that personal data do not comply with the requirements of paragraph 5 of this Article, Europol shall delete that data and inform the provider of the data accordingly <u>where relevant.</u></p> <p><u>COM compromise proposal 26/11/2021:</u></p> <p>Europol may only process personal data pursuant to this paragraph for a maximum period of one year <u>18 months</u>, or in justified cases for a longer period with the prior authorisation of the EDPS, where necessary for the purpose of this Article. <u>Such personal data shall be functionally separated from other data.</u> Where the result of the processing indicates that personal data do not comply with the requirements of paragraph 5 of this Article, Europol shall delete that data and inform the provider of the data accordingly <u>where relevant.</u></p>
175a				<p>TM (03/12/2021): PRES suggestion to address remarks of Member States:</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>6b. The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data <i>pursuant to paragraphs 6 and 6a</i>, in particular with respect to <i>the provision</i>, access to and use of the data, as well as time limits for the storage and deletion of the data, which may not exceed six months <i>in the case of paragraph 6 and [insert agreed deadline] in the case of paragraph 6a</i>, having due regard to the principles referred to in Article 71 of Regulation (EU)2018/1725.</p> <p><u>TM 17/11/2021:</u> EP/CSL provisionally agree to insert new para 6b to cover similar provisions previously set out in lines 171 and 174; EP asked for clarification on addition of 'provision' by CSL; <u>wording to be confirmed by the Council;</u></p>
176	(6) The following Article 18a is inserted:		(6) The following Article 18a is inserted:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
177	"Article 18a		"Article 18a	
178	Information processing in support of a criminal investigation	AM 87 Processing <i>of personal data</i> in support of a criminal investigation	Information processing in support of a criminal investigation	TM 26/11/2021: provisionally agreed to use EP text Processing <i>of personal data</i> in support of a criminal investigation
179	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:	AM 88 1. Where necessary for the support of <i>an ongoing</i> specific criminal investigation, Europol may process personal data outside the categories of data subjects listed in Annex II where:	1. Where necessary for the support of a specific criminal investigation <u>within the scope of Europol's objectives as set out in Article 3</u> , Europol may process personal data outside the categories of data subjects listed in Annex II where:	TM 26/11/2021: provisionally agreed to merge EP/CSL texts 1. Where necessary for the support of a specific <i>ongoing</i> criminal investigation <u>within the scope of Europol's objectives as set out in Article 3</u> , Europol may process personal data outside the categories of data subjects listed in Annex II where:
180	(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	AM 89 (a) a Member State, the EPPO <i>or Eurojust</i> provides an investigative case file to Europol pursuant to <i>points (a) and (b)</i> of Article 17(1) <i>requesting Europol to</i> support that <i>ongoing</i> specific criminal investigation within the mandate of Europol pursuant to	(a) a Member State or the EPPO provides an investigative <u>data ease file</u> to Europol pursuant to point (a) <u>or point (b)</u> 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), <u>or in exceptional and duly justified cases, upon request by a that Member State,</u>	TM 26/11/2021: provisionally agreed to merge EP/CSL text (a) a Member State, the EPPO <i>or Eurojust</i> provides an investigative <u>data ease file</u> to Europol pursuant to points (a) <u>or (b)</u> of Article 17(1) <i>requesting Europol to</i> support that <i>ongoing</i> specific criminal investigation within the mandate of Europol

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	pursuant to point (c) of Article 18(2); and	point (c) of Article 18(2); and	<u>for cross-checking pursuant to point (a) of Article 18(2); and</u>	<u>(i) by way of operational analysis pursuant to point (c) of Article 18(2), or</u> <u>(ii) in exceptional and duly justified cases, by way of cross-checking pursuant to point (a) of Article 18(2);</u>
181	(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.	AM 90 (b) Europol <i>concludes</i> 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>and sent to the EDPS for information.</i>	(b) Europol assesses that it is not possible to carry out the operational analysis <u>or cross-checking of the investigative case file in support of the specific criminal investigation</u> without processing personal data that does not comply with the requirements of Article 18(5). This assessment shall be recorded.	<u>Political trilogue (30/11/2021): prov. agreed except the last phrase on EDPS information (part of the data protection package)</u> <u>TM 26/11/2021:</u> provisionally agreed to merge EP and CSL text (b) Europol assesses that it is not possible to carry out the operational analysis <u>or cross-checking of the investigative case file in support of the specific criminal investigation</u> without processing personal data that does not comply with the requirements of Article 18(5). This assessment shall be recorded <u>and the EDPS shall be informed.</u>
182		AM 91 (b a) <i>a Member State or a Union body requests a strategic analysis within the mandate of Europol pursuant</i>		<u>TM 26/11/2021:</u> provisionally agreed to delete EP text as strategic analysis does not justify processing of big data provided in the context

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>to point (b) of Article 18(2).</i>		of criminal investigations (rather the outcome of operational analysis);
183			<p><u>1a. The Member State providing the investigative data to Europol shall inform Europol when its authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under its applicable national law has ceased to exist. When the EPPO provides investigative data to Europol, the EPPO shall inform Europol when the authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable Union law and national law has ceased to exist.</u></p>	<p><u>TM 03/12/2021:</u> COM/CSL ask EP to drop information to EDPS as Europol needs to keep the data to verify the veracity, reliability and traceability of the data; EP to check internally</p> <p><u>TM 26/11/2021:</u> EP would like to make it explicit that Europol has to delete the data by adding the following sentence at the end.</p> <p><u>2. The Member State providing the investigative data to Europol shall inform Europol when its authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under its applicable national law has ceased to exist. When the EPPO or Eurojust provide investigative data to Europol, they the EPPO shall inform Europol when the authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<u>Union law and national law has ceased to exist.</u>
184	2. Europol may process personal data contained in an investigative case for as long as it supports the on-going specific criminal investigation for which the investigative case file was provided by a Member State or the EPPO in accordance with paragraph 1, and only for the purpose of supporting that investigation.	AM 92 2. Europol may process personal data contained in an investigative case <i>file</i> for as long as it supports the on-going specific criminal investigation for which the investigative case file was provided by a Member State, the EPPO <i>or Eurojust</i> in accordance with paragraph 1, and only for the purpose of supporting that investigation.	2. Europol may process personal data contained in an investigative data case file in <u>accordance with Article 18(2)</u> for as long as it supports the on-going specific criminal investigation for which the investigative data case file was provided by a Member State or the EPPO in accordance with paragraph 1, and only for the purpose of supporting that investigation.	<u>TM 26/11/2021</u> : provisionally agreed to merge EP/CSL text 3. Europol may process personal data contained in an investigative data case file in accordance with <u>Article 18(2)</u> for as long as it supports the on-going specific criminal investigation for which the investigative data case file was provided by a Member State, the EPPO <i>or Eurojust</i> in accordance with paragraph 1, and only for the purpose of supporting that investigation.
185	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data.	AM 93 <i>Deleted</i>	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the <u>provision and</u> processing of such data.	<u>TM 26/11/2021</u> : provisionally agreed - CSL text merged with lines 186, 190 and 191; see line 191 below
186	Without prejudice to the processing of personal data under Article 18(5a), personal data outside the categories of data subjects listed in Annex II shall be functionally separated from other data and may only	AM 94 <i>Deleted</i>	Without prejudice to the processing of personal data under Article 18(5a), personal data outside the categories of data subjects listed in Annex II shall be functionally separated from other data and may only be accessed <u>processed</u> where	<u>TM 26/11/2021</u> : provisionally agreed - CSL text to be merged with lines 185, 190 and 191; see line 191 below .

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	be accessed where necessary for the support of the specific criminal investigation for which they were provided.		necessary <u>and proportionate</u> for the support of the <u>ongoing</u> specific criminal investigation for which they were provided, <u>including for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process.</u>	
187		AM 95 <i>2a. Where Europol reaches the conclusion that there are preliminary indications that such data is disproportionate or collected in violation of fundamental rights, Europol shall permanently delete it without processing. When the processing period for the personal data ends, the personal data shall be permanently deleted.</i>		<u>TM 26/11/2021:</u> provisionally agreed - covered in line 192
188	3. Upon request of the Member State or the EPPO that provided an investigative case file to Europol pursuant to paragraph 1, Europol may store that investigative case file and the outcome of its operational analysis beyond the storage period set out in	AM 96 3. Upon request of the Member State that provided an investigative case file to Europol pursuant to paragraph 1, <i>or upon request of the EPPO or Eurojust, as appropriate,</i> Europol may store	3. Upon request of the Member State or the EPPO that provided an investigative <u>data case file</u> to Europol pursuant to paragraph 1, Europol may store that investigative <u>data case file</u> and the outcome of its <u>processing</u> operational analysis beyond the storage period set out in paragraph 2, for the sole purpose of	<u>TM 26/11/2021:</u> provisionally agreed to merge EP/CSL text 4. <i>Where a</i> Member State, the EPPO, <i>or Eurojust</i> that provided an investigative <u>data case file</u> to Europol pursuant to paragraph 1, Europol may store that investigative <u>data case file</u> and the outcome of

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	paragraph 2, for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as the judicial proceedings related to that criminal investigation are on-going in that Member State.	that investigative case file and the outcome of its operational analysis beyond the <i>processing</i> period set out in paragraph 2, for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as the judicial proceedings related to that criminal investigation are <i>ongoing</i> in that Member State <i>or within the EPPO or Eurojust.</i>	ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as the judicial proceedings related to <u>concerning</u> that criminal investigation are on-going in that Member State <u>or by the EPPO.</u>	its <u>processing-operational analysis</u> beyond the <u>storage processing</u> period set out in paragraph 2, <i>upon the request of the provider of that investigative data, and</i> for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as the judicial proceedings <u>concerning the</u> criminal investigation are on-going <u>for which that data was provided.</u>
189	That Member State may also request Europol to store the investigative case file and the outcome of its operational analysis beyond the storage period set out in paragraph 2 for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as judicial proceedings following a related criminal investigation are on-going in another Member State.	AM 97 That Member State, <i>the EPPO or Eurojust</i> may also request Europol to store the investigative case file and the outcome of its operational analysis beyond the storage period set out in paragraph 2 for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as judicial proceedings following a related criminal investigation are <i>ongoing</i> in another Member State.	That Member State <u>or the EPPO, or, with their agreement, another Member State in which judicial proceedings are ongoing with respect to a related criminal investigation,</u> may also request Europol to store the investigative case file <u>data</u> and the outcome of its operational analysis beyond the storage period set out in paragraph 2 for the <u>sole</u> purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as judicial proceedings following <u>concerning</u> a related criminal investigation are on-going in that an <u>that</u> another Member State.	<u>TM 26/11/2021:</u> provisionally agreed to merge EP/CSL text That Member State, the EPPO, <u>Eurojust, or, with their agreement, another Member State in which judicial proceedings are ongoing with respect to a related criminal investigation,</u> may also request Europol to store the investigative <u>data case file</u> and the outcome of its operational analysis beyond the <u>storage processing</u> period set out in paragraph 2 for the <u>sole</u> purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as judicial proceedings

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				<u>following concerning</u> a related criminal investigation are <i>ongoing</i> in <u>that other another</u> Member State.
190	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data. Such personal data shall be functionally separated from other data and may only be accessed where necessary for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process.	AM 98 <i>deleted</i>	The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data. Such personal data shall be functionally separated from other data and may only be accessed where necessary for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process.	<u>TM 26/11/2021</u> : provisionally agreed - merged with lines 185, 186 and 191; see line 191 below
191		AM 99 <i>3a. The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of personal data in accordance with paragraphs 2 and 3, in particular regarding the scale and complexity of the processing and the type and importance of the</i>		<u>TM 06/12/2021</u> : EP/CSL to check updated wording internally <u>Updated COM compromise proposal (06/12/2021)</u> 5. Without prejudice to the processing of personal data under Article 18(6a), personal data outside the categories of data subjects listed in Annex II shall be functionally separated from other data and may only be <u>accessed processed</u> where necessary <u>and proportionate</u> for

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<p><i>investigations. Such personal data shall be functionally separated from other data. Data processed in accordance with paragraph 2 shall be accessed only where necessary for the specific criminal investigation for which they were provided and for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process and shall be kept in accordance with paragraph 3.</i></p>		<p>the purposes of paragraphs 3 and 4 of this Article.</p> <p>6. The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the provision and processing of personal data in accordance with paragraphs 3 and 4, in particular regarding the scale and complexity of the processing and the type and importance of the investigations.</p> <p>To be complemented by changes to CSL wording on recital 18 (line 37):</p> <p>(18) To ensure that any data processing is necessary and proportionate, Member States should ensure compliance with national and Union law when they submit an investigative case file data to Europol. When submitting investigative data to Europol to request Europol's support for a specific criminal investigation, Member States should take account of the scale and complexity of the processing and the type and importance of the investigation. Member States should inform Europol when their</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p><u>authorisation to process data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable national law has ceased to exist.</u> Europol should verify whether, in order to support a specific criminal investigation, it is necessary and proportionate to process personal data that may not fall into the categories of data subjects whose data may generally be processed under Annex II of Regulation (EU) 2016/794. Europol should document that assessment. Europol should store such data with functional separation from other data and should only process it where necessary for its support to the specific criminal investigation, such as in case of a new lead.</p> <p><u>TM 03/12/2021:</u> COM: conditions for ‘scale and complexity’ defined by the Management Board will not constitute a legal basis for transfers; rules on ‘provision’ of data in CSL text address EP concerns; Europol has to assess if conditions for processing are met in each individual case; COM to present updated wording</p>

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				TM 26/11/2021: provisionally agreed to merge with CSL text in lines 185, 186 and 190 (par. 5+6)
192	<p>4. Paragraphs 1 to 3 shall also apply where Europol receives personal data from a third country with which there is an agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA in accordance with point (c) of Article 25(1) of this Regulation or on the basis of Article 218 TFEU in accordance with point (b) of Article 25(1) of this Regulation, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, and such third country provides an investigative case file to Europol for operational analysis that supports the specific criminal investigation in a Member State or in Member States that Europol supports. Where a third country provides an investigative case file to</p>	<p>AM 100</p> <p>4. Paragraphs 1 to 3a shall also apply to personal data contained in an investigative case file provided to Europol by a third country as referred to in points (a), (b) and (c) of Article 25(1) for operational analysis that supports a specific criminal investigation in one or more Member States that Europol supports, provided that the third country acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law. Where a third country provides an investigative case file to Europol, the EDPS shall be informed. Europol shall verify that the amount of personal data is not manifestly disproportionate in relation to the specific investigation in a Member State that Europol</p>	<p>4. Paragraphs 1 to 3 shall also apply where Europol receives personal data from a third country with which there is an agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA in accordance with point (c) of Article 25(1) of this Regulation or on the basis of Article 218 TFEU in accordance with point (b) of Article 25(1) of this Regulation, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation,</u> and such third country provides an investigative <u>data case file</u> to Europol for operational analysis that supports <u>contributes to</u> the specific criminal investigation <u>in one or several</u> a Member States or in Member States</p>	<p>TM 26/11/2021: provisionally agreed apart from info to EDPS (part of data protection package) and deletion of data (CSL to check)</p> <p>7. Paragraphs 1 to 5 shall also apply where Europol receives personal data from a third country with which there is an agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA in accordance with point (c) of Article 25(1) of this Regulation or on the basis of Article 218 TFEU in accordance with point (b) of Article 25(1) of this Regulation, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation,</u> and such third country</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	<p>Europol, the EDPS shall be informed. Europol shall verify that the amount of personal data is not manifestly disproportionate in relation to the specific investigation in a Member State that Europol supports, and that there are no objective elements indicating that the case file has been obtained by the third country in manifest violation of fundamental rights. Where Europol, or the EDPS, reaches the conclusion that there are preliminary indications that such data is disproportionate or collected in violation of fundamental rights, Europol shall not process it. Data processed pursuant to this paragraph may only be accessed by Europol where necessary for the support of the specific criminal investigation in a Member State or in Member States. It shall be shared only within the Union.”;</p>	<p>supports, and that there are no objective elements indicating that the case file has been obtained by the third country in manifest violation of fundamental rights. Where Europol reaches the conclusion that there are preliminary indications that such data is disproportionate or collected in violation of fundamental rights, Europol shall not process it <i>and delete the data</i>. <i>Personal</i> data processed pursuant to this paragraph may only be accessed by Europol where necessary for the support of the specific criminal investigation in <i>one or more</i> Member States <i>for which it was provided</i>. It shall be shared only within the Union <i>or, where necessary, with international organisations as referred to in points (b) and (c) of Article 25(1)</i>.</p>	<p>that Europol supports. Where a third country provides an investigative case file to Europol, the EDPS shall be informed. Europol shall verify that the amount of personal data is not manifestly disproportionate in relation to the specific investigation in a Member State that Europol supports, and that there are no objective elements indicating that the case file has been obtained by the third country in manifest violation of fundamental rights <u>Any transfer of data shall take place in accordance with paragraphs 5, 8 and 9 of Article 23</u>. Where Europol, or the EDPS, reaches the conclusion that there are <u>preliminary</u> is any indications that such data is disproportionate or collected in <u>obvious</u> violation of fundamental rights, Europol shall not process it. Data processed pursuant to this paragraph may only be accessed by Europol where necessary for the support of the specific criminal investigation in a Member State or in Member States. It shall be shared only within the Union.”;</p>	<p>provides an investigative <u>data case file</u> to Europol for operational analysis that <u>supports contributes to</u> the specific criminal investigation <i>in one or more several a Member States or in</i> Member States that Europol supports, <i>provided that the third country acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law</i>. Where a third country provides an investigative <u>data case file</u> to Europol, the EDPS shall be informed. Europol shall verify that the amount of personal data is not manifestly disproportionate in relation to the specific investigation in a Member State that Europol supports. Where Europol, or the EDPS, reaches the conclusion that there are preliminary <u>is an indications</u> that such data is manifestly disproportionate or was collected in <u>obvious</u> violation of fundamental rights, Europol shall not process it <i>and delete the data</i>. <i>Personal</i> data processed pursuant to this paragraph may only be accessed by Europol where necessary for the support of the</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				specific criminal investigation in <i>one or more a Member State or in Member States for which it was provided.</i> It shall be shared only within the Union.
193			<u>(6 bis) In Article 19, paragraphs 1 and 2 are amended as follows:</u>	<u>TM 26/11/2021:</u> provisionally agreed to use CSL text <u>(6 bis) In Article 19, paragraphs 1 and 2 are amended as follows:</u>
194			"1. A Member State, a Union body, a third country or an international organisation providing information to Europol shall determine the purpose or purposes for which it is to be processed, as referred to in Article 18. If it has not done so, Europol, in agreement with the provider of the information concerned, shall process the information in order to determine the relevance of such information as well as the purpose or purposes for which it is to be further processed. Europol may process information for a purpose different from that for which information has been provided only if authorised so to do by the provider of the information. <u>Information provided for the purposes referred to in points (a) to (d) of Article 18(2) may also be</u>	<u>TM 26/11/2021:</u> provisional agreement to use CSL text A Member State, a Union body, a third country or an international organisation providing information to Europol shall determine the purpose or purposes for which it is to be processed, as referred to in Article 18. If it has not done so, Europol, in agreement with the provider of the information concerned, shall process the information in order to determine the relevance of such information as well as the purpose or purposes for which it is to be further processed. Europol may process information for a purpose different from that for which information has been provided only if authorised so to do

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			<u>processed by Europol for the purpose of Article 18(2)(e) in accordance with the procedures laid down in Article 33a.</u>	by the provider of the information. <u>Information provided for the purposes referred to in points (a) to (d) of Article 18(2) may also be processed by Europol for the purpose of Article 18(2)(e) in accordance with the procedures laid down in Article 33a.</u>
195			2. Member States, Union bodies, third countries and international organisations may indicate, at the moment of providing information to Europol, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its transfer, <u>transmission</u> , erasure or destruction. Where the need for such restrictions becomes apparent after the information has been provided, they shall inform Europol accordingly. Europol shall comply with such restrictions."	<u>Written procedure (25/11/2021):</u> provisional agreement to accept CSL text 2. Member States, Union bodies, third countries and international organisations may indicate, at the moment of providing information to Europol, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its transfer, <u>transmission</u> , erasure or destruction. Where the need for such restrictions becomes apparent after the information has been provided, they shall inform Europol accordingly. Europol shall comply with such restrictions."
196	(7) Article 20 is amended as follows:		(7) Article 20 is amended as follows:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
197	(a) the following paragraph 2a is inserted:		(a) the following paragraph 2a is inserted:	
198	“2a. In the framework of conducting dedicated operational analysis projects as referred to in Article 18(3), Member States may determine information to be made directly accessible by Europol to selected other Member States for the purpose of enhanced collaboration in specific investigations, without prejudice to any restrictions of Article 19(2).”;	AM 101 2a. In the framework of conducting dedicated operational analysis projects as referred to in Article 18(3) and subject to the rules and safeguards for personal data processing set out in this Regulation , Member States may determine information to be made directly accessible by Europol to selected other Member States for the purpose of enhanced collaboration in specific investigations, without prejudice to any restrictions of Article 19(2).	“2a. In the framework of conducting dedicated operational analysis projects as referred to in Article 18(3), Member States may determine information to be made directly accessible by Europol to selected other Member States for the purpose of enhanced collaboration joint operational analysis in specific investigations, without prejudice to any restrictions of Article 19(2) and following procedures to be set out in the guidelines referred to in Article 18(7). ”;	Written procedure (25/11/2021): provisional agreement to merge EP/CSL wording In the framework of conducting dedicated operational analysis projects as referred to in Article 18(3) and subject to the rules and safeguards for personal data processing set out in this Regulation , Member States may determine information to be made directly accessible by Europol to selected other Member States for the purpose of enhanced collaboration joint operational analysis in specific investigations, without prejudice to any restrictions of Article 19(2) and following procedures to be set out in the guidelines referred to in Article 18(7). ”;
199	(b) in paragraph 3, the introductory phrase is replaced by the following:		(b) in paragraph 3, the introductory phrase is replaced by the following:	
200	“3. In accordance with national law, the information referred to in paragraphs 1, 2 and 2a shall be accessed and		“3. In accordance with national law, the information referred to in paragraphs 1, and 2 and 2a shall be accessed and further processed by	Written procedure (25/11/2021): provisional agreement to use CSL text

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	further processed by Member States only for the purpose of preventing and combating, and for judicial proceedings related to:";		Member States only for the purpose of preventing, <u>detecting, investigating and prosecuting</u> and combating, and for judicial proceedings related to:";	"3. In accordance with national law, the information referred to in paragraphs 1, and-2 and 2a shall be accessed and further processed by Member States only for the purpose of preventing, <u>detecting, investigating and prosecuting</u> and combating, and for judicial proceedings related to:";
201	(c) the following paragraph 5 is added:		(c) the following paragraph 5 is added:	
202	"5. When national law allows for Europol staff to provide evidence which came to their knowledge in the performance of their duties or the exercise of their activities, only Europol staff authorised by the Executive Director to do so shall be able to give such evidence in judicial proceedings in the Member States.";	AM 102 5. When national <i>procedural</i> law allows for Europol staff to provide evidence <i>that has come</i> to their knowledge in the performance of their duties or the exercise of their activities, only Europol staff authorised by the Executive Director to do so shall be able to give such evidence in <i>criminal</i> proceedings in the Member States.;	"5. When national law allows for Europol staff to provide evidence which came to their knowledge in the performance of their duties or the exercise of their activities, only Europol staff authorised by the Executive Director to do so shall be able to give such evidence in judicial proceedings in the Member States.";	<u>TM: 06/12/2021</u> CSL: deletion is needed to avoid confusion as the issue is regulated in Article 19 of the Staff Regulation; with this provision, Europol staff could be prevented from giving evidence while this can hardly be denied to other EU officials under the staff regulation; COM confirmed that CSL explanation is correct <u>EP to check internally</u>
203	(8) The following Article 20a is inserted:		(8) The following Article 20a is inserted:	
204	"Article 20a		"Article 20a	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
205	Relations with the European Public Prosecutor's Office		Relations with the European Public Prosecutor's Office	
206	1. Europol shall establish and maintain a close relationship with the European Public Prosecutor's Office (EPPO). In the framework of that relationship, Europol and the EPPO shall act within their respective mandate and competences. To that end, they shall conclude a working arrangement setting out the modalities of their cooperation.		1. Europol shall establish and maintain a close relationship with the European Public Prosecutor's Office (EPPO). In the framework of that relationship, Europol and the EPPO shall act within their respective mandate and competences. To that end, they shall conclude a working arrangement setting out the modalities of their cooperation.	
207	2. Europol shall actively support the investigations and prosecutions of the EPPO and cooperate with it, in particular through exchanges of information and by providing analytical support.	AM 103 2. <i>Proceeding a request by the EPPO</i> , Europol shall actively support the investigations of the EPPO and cooperate with it, in particular through exchanges of information and by providing analytical support, <i>until the moment it determines whether to prosecute or otherwise dispose of the case.</i>	2. <u>Upon request by the EPPO in accordance with Article 102 of Regulation (EU) 2017/1939,</u> Europol shall actively support the investigations and prosecutions of the EPPO and cooperate with it, in particular through exchanges of <u>by providing</u> information and by providing analytical support.	TM 17/11/2021: provisionally agreed: 2. <u>Upon request by the EPPO in accordance with Article 102 of Regulation (EU) 2017/1939,</u> Europol shall actively support the investigations and prosecutions of the EPPO and cooperate with it, in particular through exchanges of <u>by providing</u> information and by providing analytical support, <i>until the moment the EPPO determines whether to prosecute or otherwise dispose of the case.</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
208	<p>3. Europol shall take all appropriate measures to enable the EPPO to have indirect access to information provided for the purposes of points (a), (b) and (c) of Article 18(2) on the basis of a hit/no hit system. Article 21 shall apply mutatis mutandis with the exception of its paragraph 2.</p>	<p>AM 104</p> <p>3. Europol shall take all appropriate measures to enable the EPPO to have indirect access to information provided for the purposes of points (a), (b) and (c) of Article 18(2) on the basis of a hit/no hit system. Article 21 shall apply mutatis mutandis with the exception of its <i>paragraphs 2 and 8</i>.</p>	<p>3. <u>In order to provide information to the EPPO under paragraph 2,</u> Europol shall take all appropriate measures to enable the EPPO to have indirect access <u>to data related to offences within its the EPPO's mandate, to information</u> provided for the purposes of points (a), (b) and (c) of Article 18(2) on the basis of a hit/no hit system, <u>without prejudice to any restrictions indicated in accordance with Article 19(2) by the Member State, Union body, third country or international organisation which provided the information in question.</u> Article 21 shall apply mutatis mutandis with the exception of its paragraph 2.</p>	<p>TM 26/11/2021: CSL cannot accept deletion of reference to third countries and international organisations</p> <p>TM 17/11/2021: EP requests deletion of third countries and international organisations given that they have no legal obligation to provide relevant information to EPPO, otherwise OK with COMP; CSL to check internally</p> <p><u>In order to provide information to the EPPO under paragraph 2,</u> Europol shall take all appropriate measures to enable the EPPO to have indirect access <u>to data related to offences within its the EPPO's mandate, to information</u> provided for the purposes of points (a), (b) and (c) of Article 18(2) <u>on the basis of a hit/no hit system, without prejudice to any restrictions indicated in accordance with Article 19(2) by the Member State, or Union body, third country or international organisation which provided the information in question.</u> Article 21 shall apply mutatis mutandis with the exception of its paragraph 2.</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
209	4. Europol shall without undue delay report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence.”		4. Europol shall without undue delay report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence <u>in accordance with Article 22, Article 25(2) and (3) of Regulation (EU) 2017/1939 and without prejudice to any restrictions indicated in accordance with Article 19(2) of this Regulation by the Member State, Union body, third country or international organisation providing the information in question. Europol shall notify the Member States concerned without delay.</u> ”	<p>TM 26/11/2021: CSL cannot accept deletion of reference to third countries and international organisations</p> <p>TM 17/11/2021: EP requests deletion of third countries and international organisations given that they have no legal obligation to provide relevant information to EPPO, otherwise OK with COMP; CSL to check internally</p> <p>4. Europol shall without undue delay report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence <u>in accordance with Article 22, Article 25(2) and (3) of Regulation (EU) 2017/1939 and without prejudice to any restrictions indicated in accordance with Article 19(2) of this Regulation by the Member State, or Union body, third country or international organisation providing the information in question. Europol</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p><u>shall notify the Member States concerned without delay.”</u></p> <p><i>Where the information concerning criminal conduct in respect of which the EPPO could exercise its competence has been provided to Europol by a Member State that indicated restrictions on the use of such information in accordance with Article 19(2), Europol shall notify the EPPO of the existence of that restriction and refer the matter to the Member State concerned which shall engage directly with the EPPO in order to comply with its obligations pursuant to <u>Article 24(1) and (4) of Council Regulation (EU) 2017/1939.</u></i></p>
210	(9) In Article 21, the following paragraph 8 is added:		(9) In Article 21, the following paragraph 8 is added:	
211	“8. If during information-processing activities in respect of an individual investigation or specific project Europol identifies information relevant to possible illegal activity affecting the financial interest of the Union, Europol shall on its own initiative without	<p>AM 105</p> <p>8. If during information-processing activities in respect of <i>a specific</i> investigation or project Europol identifies information relevant to possible illegal activity affecting the financial interest of the Union,</p>	“8. If during information-processing activities in respect of an individual investigation or specific project Europol identifies information relevant to possible illegal activity affecting the financial interest of the Union, Europol shall on its own initiative without undue delay provide OLAF	<p><u>Written procedure (25/11/2021):</u> provisional agreement to combine EP/CSL text</p> <p>If during information-processing activities in respect of <i>a specific</i> investigation or project Europol identifies information relevant to</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	undue delay provide OLAF with that information.”	Europol shall without undue delay provide OLAF with that information	with that information <u>without prejudice to any restrictions indicated by the Member States in accordance with Article 19(2). Europol shall notify the Member States concerned without delay.</u> ”	possible illegal activity affecting the financial interest of the Union, Europol shall without undue delay provide OLAF with that information <i>without prejudice to any restrictions indicated by the Member States in accordance with Article 19(2). Europol shall notify the Member States concerned without delay.</i>
212		AM 106 <i>(9a) In Article 23, paragraph 7 is replaced by the following:</i>	<u>(9 bis) In Article 23, paragraph 7 is replaced by the following:</u>	
213		7. Onward transfers of personal data held by Europol by Member States, Union bodies, third countries, international organisations <i>and private parties</i> shall be prohibited, unless Europol has given its prior explicit authorisation.	"7. Onward transfers of personal data held by Europol by Member States, Union bodies, third countries, and international organisations <u>and private parties</u> shall be prohibited, unless Europol has given its prior explicit authorisation."	<u>Written procedure (25/11/2021):</u> provisional agreement (EP/CSL texts are identical) "7. Onward transfers of personal data held by Europol by Member States, Union bodies, third countries, and international organisations <u>and private parties</u> shall be prohibited, unless Europol has given its prior explicit authorisation."

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
214			<u>(9 bis) The title of Section 2 is amended as follows:</u>	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text <u>The title of Section 2 is replaced by the following:</u>
215			<u>TRANSMISSION, TRANSFER AND EXCHANGE OF PERSONAL DATA</u>	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text <i>Transmission, transfer and exchange of personal data</i>
216	(10) Article 24 is replaced by the following:		(10) Article 24 is replaced by the following:	
217	<i>“Article 24</i>		<i>“Article 24</i>	
218	Transmission of operational personal data to Union institutions, bodies, offices and agencies	AM 107 Transmission of personal data to Union institutions, bodies, offices and agencies	Transmission of operational personal data to Union institutions, bodies, offices and agencies	<u>TM 12/11/2021:</u> provisionally agreed to use EP text Transmission of personal data to Union institutions and bodies, offices and agencies
219	1. Subject to any further restrictions pursuant to this Regulation, in particular pursuant to Article 19(2) and (3) and without prejudice to Article 67, Europol shall only transmit operational personal data to another Union institution, body, office or	AM 108 1. <i>In accordance with Article 71(2) of Regulation (EU) 2018/1725 and</i> subject to any further restrictions pursuant to this Regulation, in particular pursuant to Article 19(2) and (3) and without prejudice to Article 67, Europol shall only	1. Subject to any further restrictions pursuant to this Regulation, in particular pursuant to Article 19(2) and (3) and without prejudice to Article 67, Europol shall only transmit operational personal data to another Union institution, body, office or agency if the data are necessary for the legitimate	<u>TM 12/11/2021:</u> provisionally agreed 1. <i>In accordance with Article 71(2) of Regulation (EU) 2018/1725 and</i> subject to any further restrictions pursuant to this Regulation, in particular pursuant to Article 19(2) and (3) and without prejudice to Article 67, Europol

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	agency if the data are necessary for the legitimate performance of tasks of the other Union institution, body, office or agency	transmit personal data to another Union institution, body, office or agency if the <i>personal</i> data are necessary <i>and proportionate</i> for the legitimate performance of tasks of the other Union institution, body, office or agency.	performance of tasks of the other Union institution, body, office or agency	shall only transmit personal data to another Union institution <i>or</i> body, office or agency if the <i>personal</i> data are necessary <i>and proportionate</i> for the legitimate performance of tasks of the other Union institution <i>or</i> body, office or agency . NB: 'Union institution, body, office or agency' was replaced by ' <i>Union institution or body</i> ' in line with agreement to drop definition of 'Union body' in Art. 2 and apply the definition of Union institutions or bodies' from EUDPR.
220	2. Where the operational personal data are transmitted following a request from another Union institution, body, office or agency, both the controller and the recipient shall bear the responsibility for the lawfulness of that transmission.	AM 109 2. Following a request <i>for the transmission of personal data</i> from another Union institution, body, office or agency, <i>Europol shall verify the competence of the other Union institution, body, office or agency. If doubts arise as to this necessity of the transmission of the personal data, Europol shall seek further information from the recipient.</i>	2. Where the operational personal data are transmitted following a request from another Union institution, body, office or agency, both the controller and the recipient shall bear the responsibility for the lawfulness of that transmission.	TM 12/11/2021: provisionally agreed 2. Following a request <i>for the transmission of personal data</i> from another Union institution, body, office or agency, <i>Europol shall verify the competence of the other Union institution or body, office or agency. If doubts arise as to this necessity of the transmission of the personal data, Europol shall seek further information from the recipient.</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				NB: 'Union institution, body, office or agency' was replaced by ' <i>Union institution or body</i> ' in line with agreement to drop definition of 'Union body' in Art. 2 and apply the definition of Union institutions or bodies' from EUDPR.
221	Europol shall verify the competence of the other Union institution, body, office or agency . If doubts arise as to this necessity of the transmission of the personal data, Europol shall seek further information from the recipient.		Europol shall verify the competence of the other Union institution, body, office or agency . If doubts arise as to this necessity of the transmission of the personal data, Europol shall seek further information from the recipient.	TM 12/11/2021: provisionally agreed - <i>delete text as covered by line 220</i>
222	The recipient Union institution, body, office or agency shall ensure that the necessity of the transmission of the operational personal data can be subsequently verified.	AM 110 The recipient Union institution, body, office or agency shall ensure that the necessity of the transmission of the personal data can be subsequently verified.	The recipient Union institution, body, office or agency shall ensure that the necessity of the transmission of the operational personal data can be subsequently verified.	TM 12/11/2021: provisionally agreed The recipient Union institution <i>or</i> body shall ensure that the necessity of the transmission of the personal data can be subsequently verified. (NB: 'Union institution, body, office or agency' was replaced by ' <i>Union institution or body</i> ' in line with agreement to drop definition of 'Union body' in Art. 2 and apply the definition of Union institutions or bodies' from EUDPR.)

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
223	3. The recipient Union institution, body, office or agency shall process the operational personal data only for the purposes for which they were transmitted.”	AM 111 3. The recipient Union institution, body, office or agency shall process the personal data only for the purposes for which they were transmitted.	3. The recipient Union institution, body, office or agency shall process the operational personal data only for the purposes for which they were transmitted.”	<u>TM 12/11/2021</u> : provisionally agreed 3. The recipient Union institution <i>or body</i> shall process the personal data only for the purposes for which they were transmitted. (NB: ‘Union institution, body, office or agency’ was replaced by ‘Union institution or body’ in line with agreement to drop definition of ‘Union body’ in Art. 2 and apply the definition of Union institutions or bodies’ from EUDPR.)
224	(11) Article 25 is amended as follows:		(11) Article 25 is amended as follows:	
225			<u>(-a) In paragraph 1, the introductory phrase and point (a) are replaced by the following:</u>	<u>TM 12/11/2021</u> : provisionally agreed - use CSL wording <u>(-a) In paragraph 1, the introductory phrase and point (a) are replaced by the following:</u>
226			"1. Subject to any possible restrictions pursuant to Article 19(2) or (3) and without prejudice to Article 67, Europol may transfer personal data to a an <u>competent</u> authority of a third country or to an international organisation, insofar as such transfer is necessary for the	<u>TM 12/11/2021</u> : provisionally agreed - use CSL wording 1. Subject to any possible restrictions pursuant to Article 19(2) or (3) and without prejudice to Article 67, Europol may transfer personal data to a an <u>competent</u> authority of a third country or to an

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			performance of Europol's tasks, on the basis of one of the following:	international organisation, insofar as such transfer is necessary for the performance of Europol's tasks, on the basis of one of the following:
227			(a) a decision of the Commission adopted in accordance with Article 36 of Directive (EU) 2016/680, finding that the third country or a territory or a processing sector within that third country or the international organisation in question ensures an adequate level of protection('adequacy decision') <u>or in the absence of such a decision, appropriate safeguards have been provided for or exist in accordance with paragraph 4a of this Article, or in the absence of both an adequacy decision and of such appropriate safeguards, a derogation applies pursuant to paragraph 5 or 6 of this Article;</u> "	<u>TM 17/11/2021:</u> provisionally agreed - no AM to the Europol regulation (a) a decision of the Commission adopted in accordance with Article 36 of Directive (EU) 2016/680, finding that the third country or a territory or a processing sector within that third country or the international organisation in question ensures an adequate level of protection('adequacy decision')
228		AM 112 <i>(-a) paragraph 3 is deleted</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to accept EP wording (deletion or par. 3) <i>(-a) paragraph 3 is deleted</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
229		AM 113 <i>(-aa) the following paragraph 4a is inserted:</i>	<u>(-a bis) A new paragraph 4a. is inserted</u>	<u>Political trilogue (30/11/2021):</u> provisional agreement <i>(-aa) the following paragraph 4a is inserted:</i>
230		<i>"4a. In the absence of an adequacy decision, Europol may transfer personal data to a third country or an international organisation where:</i>	<u>"4a. In the absence of an adequacy decision, the Management Board may authorise Europol to transfer operational personal data to a competent authority of a third country or to an international organisation where:</u>	<u>Political trilogue (30/11/2021):</u> provisionally agreed <u>4a. In the absence of an adequacy decision, the Management Board may authorise Europol to transfer operational personal data to a competent authority of a third country or to an international organisation where:</u>
231		<i>(a) appropriate safeguards with regard to the protection of personal data are provided for in a legally binding instrument; or</i>	<u>(a) appropriate safeguards with regard to the protection of operational personal data are provided for in a legally binding instrument; or</u>	<u>TM 17/11/2021:</u> provisionally agreed <u>(a) appropriate safeguards with regard to the protection of operational personal data are provided for in a legally binding instrument; or</u>
232		<i>(b) Europol has assessed all the circumstances surrounding the transfer of personal data and has concluded that appropriate safeguards exist with regard to the protection of personal data. Europol shall inform the EDPS about categories of</i>	<u>(b) Europol has assessed all the circumstances surrounding the transfer of operational personal data and has concluded that appropriate safeguards exist with regard to the protection of operational personal data."</u>	<u>TM 17/11/2021:</u> provisionally agreed <u>(b) Europol has assessed all the circumstances surrounding the transfer of operational personal data and has concluded that appropriate safeguards exist</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>transfers under point (b) of paragraph 1. When a transfer is based on point (b) of this paragraph, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer and information about the receiving competent authority, the justification for the transfer and the personal data transferred."</i>		<u>with regard to the protection of operational personal data."</u>
233	(a) In paragraph 5, the introductory phrase is replaced by the following:		(a) In paragraph 5, the introductory phrase is replaced by the following:	
234	"By way of derogation from paragraph 1, the Executive Director may authorise the transfer or categories of transfers of personal data to third countries or international organisations on a case-by-case basis if the transfer is, or the related transfers are:";	AM 114 By way of derogation from paragraph 1, the Executive Director may <i>exceptionally</i> authorise the transfer or <i>a category</i> of transfers of personal data to third countries or international organisations on a case-by-case basis if the transfer is, or the related transfers are:	"By way of derogation from paragraph 1, the Executive Director may authorise the transfer <u>or a category</u> ies of transfers of personal data to <u>a competent authority of</u> a third country ies or <u>to an</u> international organisations on a case-by-case basis if the transfer is:";	<u>TM 17/11/2021:</u> provisionally agreed By way of derogation from paragraph 1, the Executive Director may, <u>in duly justified cases,</u> authorise the transfer or <i>a category</i> of transfers of personal data to <u>a competent authority of</u> a third country or to an international organisation on a case-by-case basis if the transfer is, or the related transfers are:

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235			<u>(a bis) In paragraph 5, point (b) is amended as follows:</u>	TM 17/11/2021: provisionally agreed to use CSL text <u>(a bis) In paragraph 5, point (b) is amended as follows:</u>
236			"(b) necessary to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; "	TM 17/11/2021: provisional agreement to use CSL text "(b) necessary to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; "
237				TM 17/11/2021: <i>provisional agreement not to change par. 6</i> since CSL insists on keeping par. 4a, and therefore no amendments to par. 6 as per the Commission's suggestion should be considered. <u>COM compromise proposal (08/11/2021):</u> (a bis) Paragraph 6 is replaced by the following: By way of derogation from paragraph 1, the Management Board may, in agreement with the EDPS, <i>authorise for a period not exceeding one year, which shall be</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				renewable, a set of transfers, in accordance a set of transfers of personal data to third countries or international organisations for one of the objectives listed in with points (a) to (e) of paragraph 5, taking into account the existence of adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals. Such authorisation shall be for a fixed period, which shall normally not exceed one year but can be longer if necessary. This period can be renewed/further extended in agreement with the EDPS. Such authorisation shall be duly justified and documented.
238	(b) In paragraph 8, the following sentence is deleted:	AM 115 (b) paragraph 8 is replaced by the following	(b) <u>Paragraph 8 is replaced by the following:</u>	
239	“Where a transfer is based on paragraph 5, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer, and information about the	Where a transfer is based on paragraph 4a or 5, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer, and information about the	“8. <u>Europol shall inform the EDPS about categories of transfers under point (b) of paragraph 4a.</u> Where a transfer is based on paragraph 4a or 5, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a	<u>TM 17/11/2021:</u> provisional agreement - use CSL text 8. <u>Europol shall inform the EDPS about categories of transfers under point (b) of paragraph 4a.</u> Where a transfer is based on paragraph 4a or 5, such a

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	receiving competent authority, about the justification for the transfer and about the operational personal data transferred.”	receiving competent authority, about the justification for the transfer and about the operational personal data transferred.”	record of the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred.”	transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred.
240	(12) Article 26 is amended as follows:		(12) Article 26 is amended as follows:	
241			<u>(-a) In paragraph 1, point (c) is amended as follows:</u>	<u>(-a) In paragraph 1, point (c) is amended as follows:</u>
242			"(c) an authority of a third country or an international organisation which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation.</u> "	<u>TM 17/11/2021:</u> provisional agreement to use CSL text; <u>consequential alignment with 25(4a):</u> "(c) an authority of a third country or an international organisation which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU <u>or in the case of which appropriate safeguards with regard to the protection of</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<u>operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation."</u>
243	(a) paragraph 2 is replaced by the following:		(a) paragraph 2 is replaced by the following:	
244	<p>"2. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 in order to identify all national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the processing of that data necessary for the purpose of establishing jurisdiction immediately to the national units concerned. Europol may forward the personal data and relevant results from the processing of that data necessary for the purpose of establishing jurisdiction in accordance with Article 25 to contact points and authorities concerned as referred to in points (b) and (c) of paragraph 1. Once Europol</p>	<p>AM 117</p> <p>2. <i>Where</i> Europol <i>receives</i> personal data directly from private parties, <i>it may</i> process those personal data in accordance with Article 18 in order to identify <i>the</i> national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the <i>necessary</i> processing of that data for the purpose of establishing jurisdiction immediately to the national units concerned. Europol may forward the personal data and relevant results from the <i>necessary</i> processing of that data for the purpose of establishing jurisdiction, in accordance with Article 25 to contact points and authorities concerned, as referred to in points (b) and (c)</p>	<p>"2. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 in order to identify all national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the processing of that data necessary for the purpose of establishing jurisdiction immediately to the national units concerned. Europol may forward the personal data and relevant results from the processing of that data necessary for the purpose of establishing jurisdiction in accordance with Article 25 to contact points and authorities concerned as referred to in points (b) and (c) of paragraph 1. <u>Once If Europol cannot identify any national units concerned, or has already Europol has identified and forwarded the relevant personal</u></p>	<p><u>TM 17/11/2021:</u> provisional agreement to merge EP/CSL text:</p> <p>Europol may receive<i>Where Europol receives</i> personal data directly from private parties, <i>it may</i> and process those personal data in accordance with Article 18 in order to identify all<i>the</i> national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the <i>necessary</i> processing of that data necessary <i>data</i> for the purpose of establishing jurisdiction immediately to the national units concerned. Europol may forward the personal data and relevant results from the <i>necessary</i> processing of that data necessary for the purpose of establishing jurisdiction, in accordance with Article 25 to contact points and authorities concerned, as referred to in points (b) and (c) of paragraph 1.</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	has identified and forwarded the relevant personal data to all the respective national units concerned, or it is not possible to identify further national units concerned, it shall erase the data, unless a national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the transfer takes place.”	of paragraph 1. Once Europol has identified and forwarded the relevant personal data to all the respective national units concerned, or it is not possible to identify further national units concerned, it shall erase the data, unless a national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the <i>transmission or</i> transfer takes place.	data to all the identified respective national units concerned, or and it is not possible to identify further national units concerned, it shall erase the data, unless the national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the transfer takes place. <u>Criteria as to whether the national unit of the Member State of establishment of the relevant private party constitutes a national unit concerned shall be set out in the guidelines referred to in Article 18(7)."</u>	If Europol cannot identify any national units concerned, or has already Once Europol has identified and forwarded the relevant personal data to all the identified respective national units concerned, or and it is not possible to identify further national units concerned, it shall erase the data, unless a the national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the <i>transmission or</i> transfer takes place. Criteria as to whether the national unit of the Member State of establishment of the relevant private party constitutes a national unit concerned shall be set out in the guidelines referred to in Article 18(7)."
245			<u>(a bis) the following paragraph 2a is added:</u>	TM 12/11/2021: provisional agreement to use CSL text <u>(a bis) the following paragraph 2a is added:</u>
246			<u>"2a. Any cooperation of Europol with private parties shall neither duplicate nor interfere with the activities of Member States' financial intelligence units established pursuant to Directive</u>	TM 12/11/2021: provisional agreement to use CSL text <u>2a. Any cooperation of Europol with private parties shall neither duplicate nor interfere with the activities of Member</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<u>(EU) 2015/849 of the European Parliament and of the Council, and shall not concern information that is to be provided to financial intelligence units for the purposes of that Directive."</u>	<u>States' financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council, and shall not concern information that is to be provided to financial intelligence units for the purposes of that Directive.</u>
247	(b) paragraph 4 is replaced by the following:		(b) paragraph 4 is replaced by the following:	
248	“4. If Europol receives personal data from a private party in a third country, Europol may forward those data only to a Member State, or to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis and verification of such data with the third country concerned.”	AM 118 4. If Europol receives personal data from a private party in a third country, Europol may forward those data <i>and the result of its analysis and verification</i> only to a Member State <i>or</i> to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis	“4. If Europol receives personal data from a private party in a third country, Europol may forward those data only to a Member State, or to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation.</u> Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of	<u>TM 17/11/2021:</u> provisionally agreed If Europol receives personal data from a private party in a third country, Europol may forward those data <i>and the result of its analysis and verification</i> only to a Member State, or to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this</u>

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		and verification of such data <i>to</i> the third country concerned.	its analysis and verification of such data with <i>to</i> the third country concerned.”	Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis and verification of such data with <i>to</i> the third country concerned. <i>N.B.: consequential amendments would be needed under point 186 for Article 26a(2) and under point 191m for article 26b(2)</i>
249	(c) paragraphs 5 and 6 are replaced by the following:		(c) paragraphs 5 and 6 are replaced by the following:	
250	“5. Europol may transmit or transfer personal data to private parties on a case-by-case basis, where it is strictly necessary, and subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, in the following cases:	AM 119 5. Europol <i>shall not</i> transmit or transfer personal data to private parties, <i>except where</i> , on a case-by-case basis, it is strictly necessary <i>and proportionate</i> , and subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, in the following cases:	“5. Europol may transmit or transfer personal data to private parties on a case-by-case basis, where it is strictly necessary, and subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, in the following cases:	TM 12/11/2021: provisionally agreement to use EP wording 5. Europol <i>shall not</i> transmit or transfer personal data to private parties, <i>except where</i> , on a case-by-case basis, it is strictly necessary <i>and proportionate</i> , and subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, in the following cases:
251	(a) the transmission or transfer is undoubtedly in the interests of the data subject, and either the data subject has given his or her consent; or		(a) the transmission or transfer is undoubtedly in the interests of the data subject, and either the data subject has given his or her consent ; or	TM 17/11/2021: provisional agreement to use CSL wording

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				(a) the transmission or transfer is undoubtedly in the interests of the data subject, and either the data subject has given his or her consent ; or
252	(b) the transmission or transfer is absolutely necessary in the interests of preventing the imminent perpetration of a crime, including terrorism, for which Europol is competent; or		(b) the transmission or transfer is absolutely necessary in the interests of preventing the imminent perpetration of a crime, including terrorism, for which Europol is competent; or	
253	(c) the transmission or transfer of personal data which are publicly available is strictly necessary for the performance of the task set out in point (m) of Article 4(1) and the following conditions are met:	AM 120 (c) the transmission or transfer of personal data <i>that</i> are publicly available is strictly necessary for the performance of the task set out in point (m) of Article 4(1) and the following conditions are met:	(c) the transmission or transfer of personal data which are publicly available is strictly necessary for the performance of the task set out in point (m) of Article 4(1) and the following conditions are met:	TM 12/11/2021: provisional agreement to use EP text (c) the transmission or transfer of personal data <i>that</i> are publicly available is strictly necessary for the performance of the task set out in point (m) of Article 4(1) and the following conditions are met:
254	(i) the transmission or transfer concerns an individual and specific case;		(i) the transmission or transfer concerns an individual and specific case;	
255	(ii) no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission		(ii) no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand; or	

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	or transfer in the case at hand; or			
256	(d) the transmission or transfer of personal data is strictly necessary for Europol to inform that private party that the information received is insufficient to enable Europol to identify the national units concerned, and the following conditions are met:		(d) the transmission or transfer of personal data is strictly necessary for Europol to inform that private party that the information received is insufficient to enable Europol to identify the national units concerned, and the following conditions are met:	
257	(i) the transmission or transfer follows a receipt of personal data directly from a private party in accordance with paragraph 2 of this Article;		(i) the transmission or transfer follows a receipt of personal data directly from a private party in accordance with paragraph 2 of this Article;	
258	(ii) the missing information, which Europol may refer to in these notifications, has a clear link with the information previously shared by that private party;		(ii) the missing information, which Europol may refer to in these notifications, has a clear link with the information previously shared by that private party;	
259	(iii) the missing information, which Europol may refer to in		(iii) the missing information, which Europol may refer to in these notifications, is strictly limited to	

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	these notifications, is strictly limited to what is necessary for Europol to identify the national units concerned.		what is necessary for Europol to identify the national units concerned.	
260	6. With regard to points (a), (b) and (d) of paragraph 5 of this Article, if the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, the transfer shall only be authorised by the Executive Director if the transfer is:		6. With regard to points (a), (b) and (d) of paragraph 5 of this Article, if the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation</u> , the transfer shall only be authorised by the Executive Director if the transfer is:	<p>TM 17/11/2021: provisional agreement to use CSL wording <u>(consequential alignment with 25(4a)):</u></p> <p>6. With regard to points (a), (b) and (d) of paragraph 5 of this Article, if the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation</u>, the transfer shall</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				only be authorised by the Executive Director if the transfer is:
261	(a) necessary in order to protect the vital interests of the data subject or another person; or		(a) necessary in order to protect the vital interests of the data subject or another person; or	
262	(b) necessary in order to safeguard legitimate interests of the data subject; or		(b) necessary in order to safeguard legitimate interests of the data subject; or	
263	(c) essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or		(c) essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or	
264	(d) necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences for which Europol is competent; or	AM 121 (d) necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of <i>a specific criminal offence</i> for which Europol is competent; or	(d) necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences for which Europol is competent; or	TM 12/11/2021: provisionally agreed - use EP text (d) necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of <i>a specific criminal offence</i> for which Europol is competent; or
265	(e) necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation,		(e) necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	detection or prosecution of a specific criminal offence for which Europol is competent.		specific criminal offence for which Europol is competent.	
266	Personal data shall not be transferred if the Executive Director determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer referred to in points (d) and (e).	AM 122 <i>The EDPS shall be informed about the transfer without undue delay.</i> Personal data shall not be transferred if the Executive Director determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer referred to in points (d) and (e).	Personal data shall not be transferred if the Executive Director determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer referred to in points (d) and (e).	<p>COM compromise proposal 26/11/2021: use CSL wording</p> <p>“Personal data shall not be transferred if the Executive Director determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer referred to in points (d) and (e).”</p> <p>TM 26/11/2021: not acceptable for CSL; make it part of EDPS package; COM: informing EDPS about each transfer goes too far;</p> <p>TM 12/11/2021: EP insists to inform EDPS about individual transfers - annual report concerning transfers is not sufficient; COM questions whether this addition is needed as EDPS has access to all information in any case and par. 6 is an additional safeguard to par. 5;</p> <p><u>Council to check internally whether EP text can be accepted.</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
267	Transfers shall not be systematic, massive or structural.”	AM 123 <i>deleted</i>	Transfers shall not be systematic, massive or structural.”	TM 17/11/2021: provisionally agreed - delete and replace by broader prohibition in line 269, to be confirmed by CSL
268	(d) the following paragraphs 6a and 6b are inserted:	AM 124 (d) the following paragraphs -6a , 6a and 6b are inserted:	(d) the following paragraphs 6a and 6b are inserted:	Written procedure (25/11/2021): provisional agreement to use EP text (d) the following paragraphs - 6a , 6a and 6b are inserted:
269		“-6a. Without prejudice to other Union legal acts, transfers or transmissions of personal data under paragraphs 5 and 6 of this Article shall not be systematic, massive or structural.”		TM 17/11/2021: provisionally agreed - <u>delete 267 and replace by broader prohibition</u> 6a. Without prejudice to points (a), (c) and (d) of paragraph 5 and other Union legal acts, transfers or transmissions of personal data under paragraphs 5 and 6 of this Article shall not be systematic, massive or structural.
270	“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	AM 125 6a. Europol may <i>send a request to</i> Member States <i>to provide it with</i> personal data from private parties, <i>that</i> are established or have a legal representative in their territory. <i>Such a request shall be reasoned and as targeted as possible. Europol shall make such requests via Member</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 <u>subject to their national laws</u> , for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary	TM 03/12/2021: COM would be fine with EP proposal; CSL would prefer its own wording - neither EP nor CSL have changed COM proposal in line 284; EP/CSL to check ; agreement to align lines 270/284 EP compromise proposal (29/11/2021)

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	strictly limited to what is necessary for Europol with a view to identifying the national units concerned.	<i>States' national units. Such personal data shall be the least sensitive possible and strictly limited to what is necessary and proportionate for Europol for the sole purpose of identifying the national units concerned.</i>	for Europol with a view to identifying the national units concerned.	<p>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 <u>national</u> laws, for the purpose of sharing it with Europol. <i>Such a request shall be reasoned and as targeted as possible and such</i> personal data <i>shall be the least sensitive possible and</i> strictly limited to what is necessary <i>and proportionate</i> for Europol <i>for the sole purpose of</i> identifying the national units concerned.</p> <p>TM 26/11/2021: EP suggestion - wording in line 284 should be aligned;</p> <p>6a. Europol may request Member States, via their national units, to obtain, <u>under their national laws</u>, personal data from private parties, <i>that</i> are established or have a legal representative in their territory, <u>under their subject to their applicable national laws</u>, 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 <i>with</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				a view to identifying the national units concerned
271	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.	AM 126 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.	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.	TM 12/11/2021: provisionally agreed to use EP text 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.
272	6b. Europol's infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States' national laws. 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."	AM 127 6b. Europol's infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States' national laws. 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 <i>and shall be</i>	6b. Europol's infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States' national laws, <u>and those exchanges may also cover crimes falling outside the scope of the objectives of Europol. In cases where Member States use this infrastructure for exchanges of personal data on crimes falling within the scope of Europol's objectives, they may grant Europol access to such data.</u> In	TM 17/11/2021: provisional agreement to merge EP and CSL texts 6b. Europol's infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States' national laws, <u>and those exchanges may also cover crimes falling outside the scope of the objectives of Europol. In cases where Member States use this infrastructure for exchanges of</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>considered to be a ‘processor’ within the meaning of Article 87 of Regulation (EU) 2018/1725. Europol shall carry out an assessment of the possible security risks posed by the opening of its infrastructure for use by private parties and, where necessary, implement appropriate preventive and mitigating measures.</i>	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.”	<p>personal data on crimes falling within the scope of Europol’s objectives, they may grant Europol access to such data. 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 <i>and shall be considered to be a ‘processor’ within the meaning of Article 87 of Regulation (EU) 2018/1725. Europol shall carry out an assessment of the possible security risks posed by the opening of its infrastructure for use by private parties and, where necessary, implement appropriate preventive and mitigating measures.</i></p> <p>p.m. COM to provide proposal for a recital to ensure that the exemption from the Annex II obligation under Art. 18(5) only applies in case Europol is a processor - Merge EP and CSL text</p>
273	(e) paragraphs 9 and 10 are deleted;		(e) paragraphs 9 and 10 are deleted;	
274			(d) a new paragraph 11 is inserted:	TM 17/11/2021: provisionally agreed - use CSL text

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				(d) a new paragraph 11 is inserted:
275			<p><u>"11. Europol shall draw up an annual report to the Management Board on the personal data exchanged with private parties pursuant Articles 26 and 26a on the basis of quantitative and qualitative evaluation criteria defined by the Management Board, including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks. The report shall take into account the obligations of discretion and confidentiality and the examples shall be anonymized insofar as personal data is concerned. The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments."</u></p>	<p>TM 17/11/2021: provisionally agreed - use CSL text</p> <p>p.m.: add reference to Article 26b</p> <p><u>"11. Europol shall draw up an annual report to the Management Board on the personal data exchanged with private parties pursuant Articles 26 and 26a on the basis of quantitative and qualitative evaluation criteria defined by the Management Board, including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks. The report shall take into account the obligations of discretion and confidentiality and the examples shall be anonymized insofar as personal data is concerned. The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments."</u></p>
276	(13) the following Article 26a is inserted:		(13) the following Article 26a is inserted:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
277	"Article 26a		"Article 26a	
278	Exchanges of personal data with private parties in crisis situations		Exchanges of personal data with private parties in <u>online</u> crisis situations	Written procedure (25/11/2021): provisional agreement to use CSL text: Exchanges of personal data with private parties in <u>online</u> crisis situations
279	1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent the dissemination of online content related to terrorism or violent extremism in crisis situations as set out in point (u) of Article 4(1).	AM 128 1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent the <i>online</i> dissemination of <i>terrorist</i> content in crisis situations as set out in point (u) of Article 4(1).	1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent the dissemination of online content related to terrorism or violent extremism in <u>online</u> crisis situations as set out in point (u) of Article 4(1).	<u>Political trilogue (30/11/2021):</u> provisional agreement (to be read in conjunction with compromise proposals on lines 91 and 108) 1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent the dissemination of online content related to terrorism or violent extremism in <u>online</u> crisis situations as set out in point (u) of Article 4(1).
280	2. If Europol receives personal data from a private party in a third country, Europol may forward those data only to a Member State, or to a third country concerned	AM 129 2. If Europol receives personal data from a private party in a third country, Europol may forward those data only to <i>the</i> Member State,	2. If Europol receives personal data from a private party in a third country, Europol may forward those data only to a Member State, or to a third country concerned with which an agreement on the basis of Article	<u>TM 17/11/2021:</u> provisionally agreed to use CSL text and merge with EP addition: 2. If Europol receives personal data from a private party in a third

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis and verification of such data with the third country concerned.	or to <i>the</i> third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 <i>of this Regulation</i> are fulfilled, Europol may transfer the result of its analysis and verification of such data <i>to</i> the third country concerned.	23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation.</u> Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis and verification of such data with <u>to</u> the third country concerned.	country, Europol may forward those data only to a Member State, or to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation.</u> Where the conditions set out under paragraphs 5 and 6 of Article 25 <i>of this Regulation</i> are fulfilled, Europol may transfer the result of its analysis and verification of such data with <u>to</u> the third country concerned.
281	3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or transfer of	AM 130 3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or	3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or transfer of such data is strictly necessary for preventing the dissemination of	<u>TM 26/11/2021:</u> EP: replace ‘preventing’ by ‘addressing’; <u>CSL to check;</u> <u>COM compromise proposal (22/11/2021):</u> to be read in conjunction with compromise proposals on lines 91 and 108

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	such data is strictly necessary for preventing the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.	transfer of such data is strictly necessary for preventing the online dissemination of terrorist content as set out in point (u) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.	online content related to terrorism or violent extremism as set out in point (u) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.	3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or transfer of such data is strictly necessary for preventing addressing online crisis situations the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.
282	4. If the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, the transfer		4. If the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of</u>	TM 17/11/2021: provisionally agreed to use CSL text (consequential alignment with 25(4a)) 4. If the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU, or which is the subject of an adequacy decision as

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	shall be authorised by the Executive Director.		<u>operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation</u> , the transfer shall be authorised by the Executive Director.	referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation</u> , the transfer shall be authorised by the Executive Director.
283			<u>4a. Europol shall assist, exchange information and cooperate with the competent authorities with regard to the transmission or transfer of personal data to private parties under paragraphs 3 or 4 of this Article, in particular to avoid duplication of effort, enhance coordination and avoid interference with investigations in different Member States.</u>	<u>COM proposal (29/11/2021)</u> <u>4a. Europol shall assist, exchange information and cooperate with the competent authorities with regard to the transmission or transfer of personal data to private parties under paragraphs 3 or 4 of this Article, in particular to avoid duplication of effort, enhance coordination and avoid interference with investigations in different Member States.</u>
284	5. 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	AM 131 5. 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	5. 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 <u>national</u> laws, for the purpose of sharing it with Europol, on the	<u>TM 26/11/2021:</u> EP: replace 'preventing' by 'addressing'; CSL to check internally 5. Europol may request Member States, via their national units, to obtain personal data from private

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol for preventing the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1). Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the 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.	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 for preventing the online dissemination of terrorist content as set out in point (u) of Article 4(1). Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the 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.	condition that the requested personal data is strictly limited to what is necessary for Europol for preventing the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1). Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the 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.	parties, which are established or have a legal representative in their territory, under their applicable national 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 for preventing addressing online crisis situations the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1). Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the 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
285	6. Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance with this Regulation and communicated upon request to	AM 132 6. Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance with this Regulation and	6. Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance with this Regulation and communicated upon request to the EDPS pursuant to Article 40.	TM 12/11/2021: provisionally agreed - use EP wording Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	the EDPS pursuant to Article 40.	communicated upon request to the EDPS pursuant to Article 39a.		with this Regulation and communicated upon request to the EDPS pursuant to Article 39a.
286	7. If the personal data received or to be transferred affect the interests of a Member State, Europol shall immediately inform the national unit of the Member State concerned.”		7. If the personal data received or to be transferred affect the interests of a Member State, Europol shall immediately inform the national unit of the Member State concerned.”	
287		AM 133 <i>(13 a) the following Article 26b is inserted:</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text <i>(13 a) the following Article 26b is inserted:</i>
288		<i>“Article 26b -</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text
289		<i>Exchanges of personal data with private parties to prevent the online dissemination of child sexual abuse material</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use slightly modified EP text <i>Exchanges of personal data with private parties to prevent address the online dissemination of child sexual abuse material</i>
290		<i>1. Europol may receive personal data directly from</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>private parties and process those personal data in accordance with Article 18 to prevent the online dissemination of child sexual abuse material, as set out in point (ua) of Article 4(1).</i>		slightly modified EP text <i>1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent address the online dissemination of child sexual abuse material, as set out in point (ua) of Article 4(1).</i>
291		<i>2. If Europol receives personal data from a private party in a third country, Europol may forward those data only to the Member State, or to the third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 of this Regulation are fulfilled, Europol may transfer the result of its analysis and verification of such data to the</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use slightly modified EP text <i>2. If Europol receives personal data from a private party in a third country, Europol may forward those data only to the Member State, or to the third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation. Where the conditions set out under paragraphs 5 and 6 of Article 25 of this Regulation are fulfilled, Europol may transfer the result of its analysis and verification of such</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>third country concerned.</i>		<i>data to the third country concerned.</i>
292		<i>3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or transfer of such data is strictly necessary for preventing the online dissemination of child sexual abuse material as set out in point (ua) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.</i>		<p><u>Political trilogue (30/11/2021):</u> provisional agreement to use slightly modified EP text</p> <p><i>3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or transfer of such data is strictly necessary for preventing addressing the online dissemination of child sexual abuse material as set out in point (ua) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.</i></p>
293		<i>4. If the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an</i>		<p><u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text</p> <p><i>4. If the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>international agreement pursuant to Article 218 TFEU or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, the transfer shall be authorised by the Executive Director.</i>		<i>allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, the transfer shall be authorised by the Executive Director</i>
293a				<u>TBC: include provision mirroring Art. 26a(4) (pending its agreement)</u>
294		<i>5. 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 to prevent the online dissemination of child sexual abuse material, as set out in point (ua) of Article 4(1).</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use slightly EP text <i>5. 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 to prevent address the online dissemination of child sexual abuse material, as set out in point (ua) of Article 4(1).</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the competent national authorities can process such requests in accordance with national law for the purpose of supplying Europol with the information necessary for it to fulfil its objectives.</i>		<i>Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the competent national authorities can process such requests in accordance with national law for the purpose of supplying Europol with the information necessary for it to fulfil its objectives.</i>
295		<i>6. Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance with this Regulation and communicated upon request to the EDPS pursuant to Article 39a.</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text <i>6. Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance with this Regulation and communicated upon request to the EDPS pursuant to Article 39a.</i>
296		<i>7. If the personal data received or to be transferred affect the interests of a Member State, Europol shall immediately inform the national unit of the Member State concerned.”</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text <i>7. If the personal data received or to be transferred affect the interests of a Member State, Europol shall immediately inform the national unit of the Member</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<i>State concerned."</i>
297			<u>(13 bis) In Article 27, paragraphs 1 and 2 are amended as follows:</u>	<u>TM 17/11/2021</u> - provisionally agreed to use CSL text
298			"1. Insofar as is necessary in order for Europol to perform its tasks, Europol may receive and process information originating from private persons. Personal data originating from private persons may only be processed by Europol on condition that they are received via:	
299			(a) a national unit in accordance with national law;	
300			(b) the contact point of a third country or an international organisation with which Europol has concluded, before 1 May 2017, a cooperation agreement allowing for the exchange of personal data in accordance with Article 23 of Decision 2009/371/JHA; or	
301			(c) an authority of a third country or an international organisation which is the subject of	<u>TM 17/11/2021</u> - provisionally agreed to use CSL text

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			an adequacy decision as referred to in point (a) of Article 25(1), or with which the Union has concluded an international agreement pursuant to Article 218 TFEU <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation.</u>	(consequential alignment with 25(4a)) (c) an authority of a third country or an international organisation which is the subject of an adequacy decision as referred to in point (a) of Article 25(1), or with which the Union has concluded an international agreement pursuant to Article 218 TFEU <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation.</u>
302			2. If Europol receives information, including personal data, from a private person residing in a third country with which there is no international agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU, or which is not the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with</u>	<u>TM 17/11/2021</u> - provisionally agreed to use CSL text (consequential alignment with 25(4a)) 2. If Europol receives information, including personal data, from a private person residing in a third country with which there is no international agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU, or which

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation</u>, Europol may only forward that information to a Member State or to a third country concerned with which such an international agreement has been concluded."</p>	<p>is not the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation <u>or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation</u>, Europol may only forward that information to a Member State or to a third country concerned with which such an international agreement has been concluded."</p>
303			<p>(13 ter) The title of Chapter VI is amended as follows:</p>	<p><u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text</p> <p>(13 ter) The title of Chapter VI is amended as follows:</p>
304			<p><i>DATA PROTECTION</i> <i>SAFEGUARDS</i></p>	<p><u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text</p> <p><i>DATA PROTECTION</i></p>
305	(14) the following Article 27a is inserted:		(14) the following Article 27a is inserted:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
306	“Article 27a		“Article 27a	
307	Processing of personal data by Europol		Processing of personal data by Europol	
308	1. This Regulation, Article 3 and Chapter IX of Regulation (EU) 2018/1725 of the European Parliament and of the Council* shall apply to the processing of operational personal data by Europol.		1. This Regulation, Article 3 and Chapter IX of Regulation (EU) 2018/1725 of the European Parliament and of the Council* shall apply to the processing of operational personal data by Europol.	
309	Regulation (EU) 2018/1725, with the exception of its Chapter IX, shall apply to the processing of administrative personal data by Europol.		Regulation (EU) 2018/1725, with the exception of its Chapter IX, shall apply to the processing of administrative personal data by Europol.	
310	2. References to ‘applicable data protection rules’ in this Regulation shall be understood as references to the provisions on data protection set out in this Regulation and in Regulation (EU) 2018/1725.	AM 134 <i>Deleted</i>	2. References to ‘applicable data protection rules’ in this Regulation shall be understood as references to the provisions on data protection set out in this Regulation and in Regulation (EU) 2018/1725.	TM 12/11/2021: provisionally agreed - <i>deletion</i>
311	3. References to ‘personal data’ in this Regulation shall be understood as references to	AM 135 3. References to ‘personal data’ in this Regulation shall be understood as references to	3. References to ‘personal data’ in this Regulation shall be understood as references to ‘operational	TM 12/11/2021: provisionally agreed : use EP text 3. References to ‘personal data’ in this Regulation shall be understood as references to

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	‘operational personal data’, unless indicated otherwise.	‘operational personal data’ <i>as defined in Article 3 of Regulation (EU) 2018/1725</i> , unless otherwise <i>provided for in this Regulation</i> .	personal data’, unless indicated otherwise.	‘operational personal data’ <i>as defined in Article 3 of Regulation (EU) 2018/1725</i> , unless otherwise <i>provided for in this Regulation</i> .
312	4. Europol shall determine the time limits for the storage of administrative personal data in its rules of procedure.		4. <u>The Management Board shall adopt rules to</u> Europol shall determine the time limits for the storage of administrative personal data in its rules of procedure .	TM 12/11/2021: provisionally agreed - use CSL text 4. <u>The Management Board shall adopt rules to</u> Europol shall determine the time limits for the storage of administrative personal data in its rules of procedure .
313	* Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).”		* Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).”	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
314	(15) Article 28 is deleted;		(15) Article 28 is deleted;	
315	(16) Article 30 is amended as follows:		(16) Article 30 is amended as follows:	
316	(a) in paragraph 2, the first sentence is replaced by the following:	AM 136 (a) paragraph 2 is replaced by the following	(a) in paragraph 2, the first sentence is replaced by the following:	
317	“2. Processing of personal data, by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership and processing of genetic data and biometric data for the purpose of uniquely identifying a natural person or data concerning a person’s health or sex life or sexual orientation shall be allowed only where strictly necessary and proportionate for preventing or combating crime that falls within Europol’s objectives and if those data supplement other personal data processed by Europol.”;	AM 137 2. Processing of personal data, by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, or data concerning health or concerning natural persons’ sex life or sexual orientation shall be allowed only where strictly necessary and proportionate for research and innovation projects pursuant to Article 33a and for operational purposes, within the mandate of Europol, and only for preventing or	“2. Processing of personal data, by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership and processing of genetic data and biometric data for the purpose of uniquely identifying a natural person or data concerning a person’s health or sex life or sexual orientation shall be allowed only where strictly necessary and proportionate for preventing or combating crime that falls within Europol’s objectives and if those data, except biometric data, supplement other personal data processed by Europol.”;	TM 06/12/2021: COM suggestion to use EP wording; CSL has positive scrutiny; <u>to check internally</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		combating crime that falls within Europol's objectives <i>as set out in Article 3. Such processing shall also be subject to appropriate safeguards with regard to the rights and freedoms of the data subject, and, with the exception of biometric data processed for the purpose of uniquely identifying a natural person, shall be allowed only</i> if those data supplement other personal data processed by Europol. <i>Discrimination against natural persons on the basis of such personal data shall be prohibited;</i>		
318		AM 138 <i>(aa) the following paragraph 2a is inserted:</i>		
319		<i>"2a. The Data Protection Officer shall be informed without undue delay in the case of processing of personal data pursuant to this Article."</i>		<u>TM 06/12/2021:</u> CSL: to check internally whether this is acceptable

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
320	(b) in paragraph 3, the first sentence is replaced by the following:		(b) in paragraph 3, the first sentence is replaced by the following:	Written procedure (25/11/2021): provisional agreement to use CSL text (b) in paragraph 3, the first sentence is replaced by the following:
321	“Only Europol shall have direct access to personal data as referred to in paragraphs 1 and 2, except for the cases outlined in Article 20 (2a).”		“Only Europol shall have direct access to personal data as referred to in paragraphs 1 and 2, except <u>where necessary</u> for the cases outlined in Article 20(1) and 20(2a), or for a research and innovation project involving specifically authorised staff of Member States' competent authorities and Union agencies established on the basis of Title V of the TFEU in accordance with Article 33a(1)(c). The Executive Director shall duly authorise a limited number of Europol officials, <u>and where relevant also Member State officials,</u> to have such access if it is necessary for the performance of their tasks”	Written procedure (25/11/2021): provisional agreement to use CSL text “Only Europol shall have direct access to personal data as referred to in paragraphs 1 and 2, except <u>where necessary</u> for the cases outlined in Article 20(1) and 20(2a), or for a research and innovation project involving specifically authorised staff of Member States' competent authorities and Union agencies established on the basis of Title V of the TFEU in accordance with Article 33a(1)(c). The Executive Director shall duly authorise a limited number of Europol officials, <u>and where relevant also Member State officials,</u> to have such access if it is necessary for the performance of their tasks”
322	(c) paragraph 4 is deleted;		(c) paragraph 4 is deleted;	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
323	(d) paragraph 5 is replaced by the following:		(d) paragraph 5 is replaced by the following:	
324	“5. Personal data as referred to in paragraphs 1 and 2 shall not be transmitted to Member States, Union bodies, or transferred to third countries and international organisations unless such transmission or transfer is strictly necessary and proportionate in individual cases concerning crimes that falls within Europol’s objectives and in accordance with Chapter V.”;	AM 139 5. Personal data as referred to in paragraphs 1 and 2 shall not be transmitted to Member States, Union bodies, or transferred to third countries and international organisations unless such transmission or transfer is strictly necessary and proportionate in individual cases concerning crimes that <i>fall</i> within Europol’s objectives and in accordance with Chapter V.”;	“5. Personal data as referred to in paragraphs 1 and 2 shall not be transmitted to Member States, Union bodies, or transferred to third countries and international organisations unless such transmission or transfer is strictly necessary and proportionate in individual cases concerning crimes that falls within Europol’s objectives and in accordance with Chapter V.”;	TM 17/11/2021: provisionally agreed to use EP text - tbc: change requested by COM (06/12/2021) 5. Personal data as referred to in paragraphs 1 and 2 shall not be transmitted to Member States, Union bodies, or transferred to third countries and international organisations unless such transmission or transfer is required under Union law or strictly necessary and proportionate in individual cases concerning crimes that <i>fall</i> within Europol’s objectives and in accordance with Chapter V.”;
325	(17) Article 32 is replaced by the following:		(17) Article 32 is replaced by the following:	
326	“Article 32		“Article 32	
327	Security of processing		Security of processing	
328	Europol and Member States shall establish mechanisms to ensure that security measures referred to in Article 91 of Regulation (EU) 2018/1725 are addressed across		Europol and Member States shall establish mechanisms to ensure that security measures referred to in Article 91 of Regulation (EU) 2018/1725 <u>regarding Europol and in Article 29 of Directive (EU) 2016/680 regarding the Member</u>	Written procedure (25/11/2021): provisional agreement to use CSL text Europol and Member States shall establish mechanisms to ensure that security measures referred to in

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	information system boundaries.”;		<u>States</u> are addressed across information system boundaries.”;	Article 91 of Regulation (EU) 2018/1725 <u>regarding Europol and in Article 29 of Directive (EU) 2016/680 regarding the Member States</u> are addressed across information system boundaries.”;
329	(18) Article 33 is deleted;		(18) Article 33 is deleted;	
330	(19) the following Article 33a is inserted:		(19) the following Article 33a is inserted:	
331	“Article 33a		“Article 33a	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
332	Processing of personal data for research and innovation		Processing of personal data for research and innovation	
333		<p>AM 140</p> <p><i>-1. Europol may process personal data for the purpose of its research and innovation projects as referred to in point (e) of Article 18(2), but only where the following conditions are met:</i></p>		<p><u>Political trilogue (30/11/2021): provisionally agreed</u></p> <p>1. Europol may process personal data for the purpose of its research and innovation projects as referred to in point (e) of Article 18(2), but only where the following conditions are met:</p> <p>(a) the processing of personal data is strictly required and duly justified to achieve the objectives of the project;</p> <p>(b) as regards special categories of personal data, processing shall be only allowed where it is strictly necessary and accompanied by appropriate additional safeguards, <i>which may include</i> pseudonymisation.</p> <p>The processing of personal data by Europol in the context of research and innovation projects shall be guided by the principles of transparency, explainability, fairness, and accountability.</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
334		<i>(a) the processing of personal data is strictly required and duly justified to achieve the objectives of the project;</i>		Covered in line 333
335		<i>(b) as regards special categories of personal data, processing shall be only allowed where it is strictly necessary and accompanied by appropriate additional safeguards, including pseudonymisation.</i>		Covered in line 333
336		<i>The processing of personal data by Europol in the context of research and innovation projects shall be guided by the principles of transparency, explainability, fairness, and accountability.</i>		Covered in line 333
337	1. For the processing of personal data performed by means of Europol's research and innovation projects as referred to in point (e) of Article 18(2), the following additional safeguards shall apply:		1. For the processing of personal data performed by means of Europol's research and innovation projects as referred to in point (e) of Article 18(2), the following additional safeguards shall apply:	TM 17/11/2021: provisionally agreed (identical) 2. For the processing of personal data performed by means of Europol's research and innovation projects as referred to in point (e) of

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				Article 18(2), the following additional safeguards shall apply:
338	<p>(a) any project shall be subject to prior authorisation by the Executive Director, based on a description of the envisaged processing activity setting out the necessity to process personal data, such as for exploring and testing innovative solutions and ensuring accuracy of the project results, a description of the personal data to be processed, a description of the retention period and conditions for access to the personal data, a data protection impact assessment of the risks to all rights and freedoms of data subjects, including of any bias in the outcome, and the measures envisaged to address those risks;</p>	<p>AM 141</p> <p>(a) any research and innovation project shall be subject to prior authorisation by the Executive Director, in consultation with the Data Protection Officer and the Fundamental Rights Officer, based on a description of the specific objectives of the project and the way in which the project assists Europol or national law enforcement authorities in its tasks, a description of the envisaged processing activity, setting out the objectives, scope and duration of the processing and the necessity and proportionality to process the personal data, a description of the categories of personal data to be processed, a description of compliance with the data protection principles laid down in Article 71 of Regulation (EU) 2018/1725, of the retention period and conditions for access to the personal data,</p>	<p>(a) any project shall be subject to prior authorisation by the Executive Director, based on a description of the envisaged processing activity setting out the necessity to process personal data, such as for exploring and testing innovative new technological solutions and ensuring accuracy of the project results, a description of the personal data to be processed, a description of the retention period and conditions for access to the personal data, a data protection impact assessment of the risks to all rights and freedoms of data subjects, including of any bias in the outcome, and the measures envisaged to address those risks;</p>	<p>Written procedure (25/11/2021) provisionally agreed to use COM COMP proposal (tbc: FRO)</p> <p>(a) any research and innovation project shall be subject to prior authorisation by the Executive Director, in consultation with the Data Protection Officer [and the Fundamental Rights Officer], based on</p> <ol style="list-style-type: none"> a description of the specific objectives of the project and the way in which the project assists Europol or national law enforcement authorities in its tasks, a description of the envisaged processing activity, setting out the objectives, scope and duration of the processing and the necessity and proportionality to process the personal data, such as for exploring and testing innovative new

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		a data protection impact assessment of the risks to all rights and freedoms of data subjects, including <i>the risk</i> of any bias in the <i>personal data to be used for the training of algorithms and in the outcome of the processing</i> , and the measures envisaged to address those risks <i>as well as to avoid violations of fundamental rights</i> .		<p>technological solutions and ensuring accuracy of the project results,</p> <p>iii. a description of the <i>categories of</i> personal data to be processed,</p> <p>iv. a description <i>of compliance with the data protection principles laid down in Article 71 of Regulation (EU) 2018/1725</i>, of the retention period and conditions for access to the personal data, and</p> <p>v. a data protection impact assessment, including the risks to all rights and freedoms of data subjects, <i>the risk</i> of any bias in the <i>personal data to be used for the training of algorithms and in the outcome of the processing</i>, and the measures envisaged to address those risks <i>as well as to avoid violations of fundamental rights</i>.</p>
339		AM 142 <i>(aa) any research and innovation project shall be subject to an initial assessment</i>		Political. Depends on the outcome of discussions on the FRO

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>by the Fundamental Rights Officer based on the information in point(a). Europol shall take this assessment and, where applicable, recommendations included therein, into account before launching the project.</i>		
340	(b) (b) the Management Board and the EDPS shall be informed prior to the launch of the project; (c) any personal data to be processed in the context of the project shall be temporarily copied to a separate, isolated and protected data processing environment within Europol for the sole purpose of carrying out that project and only authorised staff of Europol shall have access to that data;		<p>(b) (b) the Management Board and the EDPS shall be informed prior to the launch of the project; <u>the Management Board shall be either consulted or informed prior to the launch of the project, in accordance with criteria laid down in the guidelines referred to in article 18(7);</u></p> <p>(c) any personal data to be processed in the context of the project shall be temporarily copied to a separate, isolated and protected data processing environment within Europol for the sole purpose of carrying out that project and only <u>specifically</u> authorised staff of Europol <u>and, subject to technical security measures, specifically authorised staff of Member States' competent authorities and</u></p>	<p>TM 17/11/2021: Provisional agreement to use CSL text:</p> <p>b) the Management Board and the EDPS shall be informed prior to the launch of the project; <u>the Management Board shall be either consulted or informed prior to the launch of the project, in accordance with criteria laid down in the guidelines referred to in article 18(7)</u></p> <p>(c) any personal data to be processed in the context of the project shall be temporarily copied to a separate, isolated and protected data processing environment within Europol for the sole purpose of carrying out that project and only <u>specifically</u> authorised staff of</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<u>Union agencies established on the basis of Title V of the TFEU</u> , shall have access to that data;	Europol <u>and, subject to technical security measures, specifically authorised staff of Member States' competent authorities and Union agencies established on the basis of Title V of the TFEU</u> , shall have access to that data;
341	(c) (d) any personal data processed in the context of the project shall not be transmitted, transferred or otherwise accessed by other parties;		(c) (d) any personal data processed in the context of the project shall not be transmitted, transferred or otherwise accessed by other parties;	
342	(d) (e) any processing of personal data in the context of the project shall not lead to measures or decisions affecting the data subjects;		(d) (e) any processing of personal data in the context of the project shall not lead to measures or decisions affecting the data subjects;	
343	(e) (f) any personal data processed in the context of the project shall be deleted once the project is concluded or the personal data has reached the end of its retention period in accordance with Article 31;		(e) (f) any personal data processed in the context of the project shall be deleted erased once the project is concluded or the personal data has reached the end of its retention period in accordance with Article 31;	TM 17/11/2021: provisionally agreed to use CSL text (e) (f) any personal data processed in the context of the project shall be deleted erased once the project is concluded or the personal data has reached the end of its retention period in accordance with Article 31;

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
344	(f) (g) the logs of the processing of personal data in the context of the project shall be kept for the duration of the project and 1 year after the project is concluded, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing.	AM 143 (f) the logs of the processing of personal data in the context of the project shall be kept for the duration of the project and 1 year after the project is concluded, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing, <i>accuracy of the outcome of the data processing, and to allow the EDPS to conduct supervision and audits to ensure that all the conditions and safeguards provided for in this Article have been met.</i>	(f) (g) the logs of the processing of personal data in the context of the project shall be kept for the duration of the project and 12 years after the project is concluded, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing.	TM 26/11/2021: provisionally agreed to use COM compromise wording (f) (g) the logs of the processing of personal data in the context of the project shall be kept for the duration of the project and 12 years after the project is concluded, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing.
345		AM 144 <i>1a. The Management Board shall establish a binding general scope for the research and innovation projects of Europol. The document shall be updated where appropriate. The document shall be made available to the EDPS for the purpose of its supervisory role.</i>		TM 17/11/2021: provisionally agreed. 3. The Management Board shall establish a binding general scope for the research and innovation projects of Europol. The document shall be updated where appropriate. The document shall be made available to the EDPS for the purpose of its supervisory role.

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
346			2. Preference should be given to using synthetic, pseudonymized and/or anonymized personal data.	TM 17/11/2021: provisionally agreed to delete as partly covered by recital 39 and Art. 33a(1)
347	3. Europol shall keep a complete and detailed description of the process and rationale behind the training, testing and validation of algorithms to ensure transparency and for verification of the accuracy of the results.”;	AM 145 2. Europol shall keep a detailed description of the process and rationale behind the training, testing and validation of algorithms to ensure transparency <i>of the procedure and the algorithms, including their explainability, compliance with the safeguards provided for in this Article, and to allow</i> for verification of the accuracy of the results. <i>Europol shall make the description available to the JPSG upon request.</i>	3. Europol shall keep a complete and detailed description of the process and rationale behind the training, testing and validation of algorithms to ensure transparency and for verification of the accuracy of the results.”;	TM 26/11/2021: CSL: info to JPSG should be part of the governance package Updated COM compromise proposal post TM 26/11/2021: 4. Europol shall keep a detailed description of the process and rationale behind the training, testing and validation of algorithms to ensure transparency <i>of the procedure and the algorithms, including their explainability, compliance with the safeguards provided for in this Article, and to allow</i> for verification of the accuracy of the results. Europol shall make the description available to the JPSG upon request. Upon request, Europol shall make the description available to interested parties, including Member States and the JPSG. TM 26/11/2021: CSL against allowing JPSG access to the report; very technical; part of the

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				governance package; COM had the intention that the report will be made available to those concerned; COM to propose wording that those concerned, incl. MS and JPSG, should receive this report; TM 17/11/2021: CSL to consider COM suggestion to use EP text without 'explainability' as explainability is one of the 'safeguards provided for in this Article'
348		AM 146 <i>2 a. Europol shall ensure that independent experts carry out an audit before the deployment of any technological solution resulting from its research and innovation projects involving the processing of personal data.</i>		TM 17/11/2021: provisional agreement to delete this text as proposed by COM since these audits could undermine the role of the EDPS
349			4. If the data to be processed for a research and innovation project have been provided by a Member State, a Union body, a third country or an international organisation, Europol shall seek consent from that Member State,	<u>Political trilogue (30/11/2021): provisional agreement</u> <u>5. If the data to be processed for a research and innovation project have been provided by a Member State, a Union body, a third country or an</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<u>Union body, third country or international organisation, unless the Member State, Union body, third country or international organisation has granted its prior authorisation to such processing for the purpose of Article 18(2)(e), either in general terms or subject to specific conditions. Such consent may be withdrawn at any time.</u>	<u>international organisation, Europol shall seek consent from that Member State, Union body, third country or international organisation in accordance with Article 19(2), unless the Member State, Union body, third country or international organisation has granted its prior authorisation to such processing for the purpose of Article 18(2)(e), either in general terms or subject to specific conditions. Europol shall not process data for research and innovation without the consent of the Member State, Union body, third country or international organisation. Such consent may be withdrawn at any time.”</u>
350	(20) Article 34 is amended as follows:		(20) Article 34 is amended as follows:	
351	(a) paragraph 1 is replaced by the following:		(a) paragraph 1 is replaced by the following:	
352	“1. In the event of a personal data breach, Europol shall without undue delay notify the competent authorities of the Member States concerned, of that breach, in accordance with the conditions laid down in Article 7(5), as well as the provider of the data concerned	AM 147 1. <i>Without prejudice to Article 92 of Regulation (EU) 2018/1725</i> , in the event of a personal data breach, Europol shall without undue delay notify the competent authorities of the Member States	“1. In the event of a personal data breach, Europol shall without undue delay notify the competent authorities of the Member States concerned, of that breach, in accordance with the conditions laid down in Article 7(5), as well as the provider of the data concerned unless the personal data breach is	<u>Written procedure (25/11/2021):</u> provisional agreement to use EP text <i>Without prejudice to Article 92 of Regulation (EU) 2018/1725</i> , in the event of a personal data breach, Europol shall without undue delay

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.”;	concerned, of that breach, in accordance with the conditions laid down in Article 7(5), as well as the provider of the data concerned unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons;	unlikely to result in a risk to the rights and freedoms of natural persons.”;	notify the competent authorities of the Member States concerned, of that breach, in accordance with the conditions laid down in Article 7(5), as well as the provider of the data concerned unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons;
353	(b) paragraph 3 is deleted;		(b) paragraph 3 is deleted;	
354	(21) Article 35 is amended as follows:		(21) Article 35 is amended as follows:	
355	(a) paragraphs 1 and 2 are deleted;		(a) paragraphs 1 and 2 are deleted;	
356	(b) in paragraph 3, the first sentence is replaced by the following:		(b) in paragraph 3, the first sentence is replaced by the following:	
357	“Without prejudice to Article 93 of Regulation 2018/1725, if Europol does not have the contact details of the data subject concerned, it shall request the provider of the data to communicate the personal data breach to the data subject concerned and to inform Europol about the decision taken.”;	AM 148 Without prejudice to Article 93 of Regulation (EU) 2018/1725 , if Europol does not have the contact details of the data subject concerned, it shall request the provider of the data to communicate the personal data breach to the data subject concerned and to inform Europol about the decision	“Without prejudice to Article 93 of Regulation 2018/1725, if Europol does not have the contact details of the data subject concerned, it shall request the provider of the data to communicate the personal data breach to the data subject concerned and to inform Europol about the decision taken.”;	TM 12/11/2021 : provisionally agreed - use EP text Without prejudice to Article 93 of Regulation (EU) 2018/1725 , if Europol does not have the contact details of the data subject concerned, it shall request the provider of the data to communicate the personal data breach to the data subject concerned and to inform Europol about the decision taken.

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		taken. <i>Member States providing the data shall communicate the breach to the data subject concerned in accordance with national law.</i>		<i>Member States providing the data shall communicate the breach to the data subject concerned in accordance with national law.</i>
358	(b) paragraphs 4 and 5 are deleted.”;		(b) paragraphs 4 and 5 are deleted.”;	
359	(22) Article 36 is amended as follows:		(22) Article 36 is amended as follows:	
360	(a) paragraphs 1 and 2 are deleted;		(a) paragraphs 1 and 2 are deleted;	
361	(b) paragraph 3 is replaced by the following:		(b) paragraph 3 is replaced by the following:	
362	“3. Any data subject wishing to exercise the right of access referred to in Article 80 of Regulation (EU) 2018/1725 to personal data that relate to the data subject may make a request to that effect, without incurring excessive costs, to the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall	AM 149 3. Any data subject wishing to exercise the right of access referred to in Article 80 of Regulation (EU) 2018/1725 to personal data that relate to the data subject may make a request to that effect to the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer the	“3. Any data subject wishing to exercise the right of access referred to in Article 80 of Regulation (EU) 2018/1725 to personal data that relate to the data subject may make a request to that effect, without incurring excessive costs, to the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer the request to Europol without	TM 12/11/2021: provisionally agreed - use EP/CSLtext (identical) 3. Any data subject wishing to exercise the right of access referred to in Article 80 of Regulation (EU) 2018/1725 to personal data that relate to the data subject may make a request to that effect, without incurring excessive costs, to the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	refer the request to Europol without delay, and in any case within one month of receipt.”;	request to Europol without delay, and in any case within one month of receipt.;	delay, and in any case within one month of receipt.”;	the request to Europol without delay, and in any case within one month of receipt.
363	(c) paragraphs 6 and 7 are deleted(1)		(c) paragraphs 6 and 7 are deleted(1)	
364	(23) Article 37 is amended as follows:		(23) Article 37 is amended as follows:	
365	(a) paragraph 1 is replaced by the following:		(a) paragraph 1 is replaced by the following:	
366	“1. Any data subject wishing to exercise the right to rectification or erasure of personal data or of restriction of processing referred to in Article 82 of Regulation (EU) 2018/1725 of personal data that relate to him or her may make a request to that effect, through the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer the request to Europol without delay and in any case within one month of receipt.”;		“1. Any data subject wishing to exercise the right to rectification or erasure of personal data or of restriction of processing referred to in Article 82 of Regulation (EU) 2018/1725 of personal data that relate to him or her may make a request to that effect, through the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer the request to Europol without delay and in any case within one month of receipt.”;	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
367	(b) paragraph 2 is deleted;		(b) paragraph 2 is deleted;	
368	(c) in paragraph 3, the first sentence is replaced by the following:		(c) in paragraph 3, the first sentence is replaced by the following:	
369	“Without prejudice to Article 82(3) of Regulation 2018/1725, Europol shall restrict rather than erase personal data as referred to in paragraph 2 if there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject.”;	AM 150 Without prejudice to Article 82(3) of Regulation (EU) 2018/1725 , Europol shall restrict rather than erase personal data if there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject. <i>Restricted data shall be processed only for the purpose of protecting the rights of the data subject or another natural or legal person or for the purposes laid down in Article 82(3) of that Regulation.</i>	“Without prejudice to Article 82(3) of Regulation 2018/1725, Europol shall restrict rather than erase personal data as referred to in paragraph 2 if there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject.”;	<u>Written procedure (25/11/2021):</u> provisional agreement to combine EP/CSL texts and merge Art. 37 and Art. 37a Without prejudice to Article 82(3) of Regulation (EU) 2018/1725 , Europol shall restrict rather than erase personal data as referred to in paragraph 2 if there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject. <i>Restricted data shall be processed only for the purpose of protecting the rights of the data subject, when it is necessary to protect the vital interest of another natural or legal person, or for the purposes laid down in Article 82(3) of that Regulation.</i>
370			<u>(c bis) paragraphs 4 and 5 are amended as follows:</u>	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<u>(c bis) paragraphs 4 and 5 are amended as follows:</u>
371			"4. If personal data as referred to in paragraphs 1, 2 and 3 held by Europol have been provided to it by third countries, international organisations or Union bodies, have been directly provided by private parties or have been retrieved by Europol from publicly available sources or result from Europol's own analyses, Europol shall rectify, erase or restrict such data and, where appropriate, inform the providers of the data.	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text 4. If personal data as referred to in paragraphs 1, 2 and 3 held by Europol have been provided to it by third countries, international organisations or Union bodies, have been directly provided by private parties or have been retrieved by Europol from publicly available sources or result from Europol's own analyses, Europol shall rectify, erase or restrict such data and, where appropriate, inform the providers of the data.
372			5. If personal data as referred to in paragraphs 1, 2 and 3 held by Europol have been provided to Europol by Member States, the Member States concerned shall rectify, erase or restrict such data in collaboration with Europol, within their respective competences."	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text 5. If personal data as referred to in paragraphs 1, 2 and 3 held by Europol have been provided to Europol by Member States, the Member States concerned shall rectify, erase or restrict such data in collaboration with Europol, within their respective competences."

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
373	(d) paragraphs 8 and 9 are deleted.”;		(d) paragraphs 8 and 9 are deleted.”;	
374	(24) the following Article 37a is inserted:	AM 151 <i>deleted</i>	(24) the following Article 37a is inserted:	Written procedure (25/11/2021): provisional agreement to delete Art. as included in Art. 37
375	“Article 37a	<i>deleted</i>	“Article 37a	Written procedure (25/11/2021): provisional agreement to delete Art. as included in Art. 37
376	Right to restriction of processing	<i>deleted</i>	Right to restriction of processing	Written procedure (25/11/2021): provisional agreement to delete Art. as included in Art. 37
377	Where the processing of personal data has been restricted under Article 82(3) of Regulation (EU) 2018/1725, such personal data shall only be processed for the protection of the rights of the data subject or another natural or legal person or for the purposes laid down in Article 82(3) of that Regulation.”;	<i>deleted</i>	Where the processing of personal data has been restricted under Article 82(3) of Regulation (EU) 2018/1725, such personal data shall only be processed for the protection of the rights of the data subject or <u>when it is necessary to protect the vital interest of another natural or legal person or for the purposes laid down in Article 82(3) of that Regulation.</u> ”;	Written procedure (25/11/2021): provisional agreement to delete Art. as included in Art. 37
378	(25) Article 38 is amended as follows:	AM 152 (25) Article 38 is amended as follows:	(25) Article 38 is amended as follows:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
379		<i>(-a) paragraph 1 is replaced by the following:</i>		TM 12/11/2021: provisionally agreed - use EP text <i>(-a) paragraph 1 is replaced by the following:</i>
380		<i>"1. Europol shall process personal data in a way that ensures that their source, in accordance with Article 17, can be established."</i>		TM 12/11/2021: provisionally agreed - use EP text
381		<i>(-aa) introductory part of paragraph 2 is replaced by the following:</i>	<u><i>(-a) the first phrase in paragraph 2 is amended as follows:</i></u>	TM 12/11/2021: provisionally agreed - use EP text <i>(-aa) introductory part of paragraph 2 is replaced by the following:</i>
382		<i>"2. The responsibility for the quality of personal data as referred to in point (d) of Article 71(1) of Regulation (EU) 2018/1725 shall lie with:"</i>	"2. The responsibility for the quality of personal data as referred to in point (d) of Article 28(1) shall lie with:"	TM 12/11/2021: provisionally agreed - use EP text <i>2. The responsibility for the quality of personal data as referred to in point (d) of Article 71(1) of Regulation (EU) 2018/1725 shall lie with:"</i>
383		<i>(-ab) point (a) of paragraph 2 is replaced by the following:</i>		TM 12/11/2021: provisionally agreed - use EP text <i>-ab) point (a) of paragraph 2 is replaced by the following:</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
384	(a) the Member State or the Union body which provided the personal data to Europol;	<i>“(a) the Member State or the Union body which provided the personal data;”</i>	(a) the Member State or the Union body which provided the personal data to Europol;	<p>TM 12/11/2021: provisionally agreed</p> <p>(a) the Member State or the Union <i>institution or</i> body which provided the personal data to Europol</p> <p>NB: ‘or institution’ was added in line with agreement to drop definition of ‘Union body’ in Art. 2 and apply the definition of Union institutions or bodies’ from EUDPR.</p>
385	(a) paragraph 4 is replaced by the following:	<i>(a) paragraph 4 is replaced by the following:</i>	(a) paragraph 4 is replaced by the following:	
386	“4. Responsibility for compliance with Regulation (EU) 2018/1725 in relation to administrative personal data and for compliance with this Regulation and with Article 3 and Chapter IX of Regulation (EU) 2018/1725 in relation to operational personal data shall lie with Europol.”;	<i>“4. Responsibility for compliance with Regulation (EU) 2018/1725 in relation to administrative personal data and for compliance with this Regulation and with Article 3 and Chapter IX of Regulation (EU) 2018/1725 in relation to operational personal data shall lie with Europol.”</i>	“4. Responsibility for compliance with Regulation (EU) 2018/1725 in relation to administrative personal data and for compliance with this Regulation and with Article 3 and Chapter IX of Regulation (EU) 2018/1725 in relation to operational personal data shall lie with Europol.”;	
387		<i>(aa) in paragraph 6, the first subparagraph is replaced by the following:</i>		<p>TM 12/11/2021: provisionally agreed - use EP text</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<i>(aa) in paragraph 6, the first subparagraph is replaced by the following:</i>
388		<i>“6. In the case of a transfer between Europol and a Union body, the responsibility for the legality of the transfer shall lie with Europol.”</i>		<p>TM 12/11/2021: provisionally agreed - use EP text</p> <p>6. In the case of a transfer between Europol and a Union institution or body, the responsibility for the legality of the transfer shall lie with Europol.</p> <p>NB: ‘or institution’ was added in line with agreement to drop definition of ‘Union body’ in Art. 2 and apply the definition of Union institutions or bodies’ from EUDPR.</p>
389	(b) in paragraph 7 the third sentence is replaced by the following:		(b) in paragraph 7 the third sentence is replaced by the following:	
390	“The security of such exchanges shall be ensured in accordance with Article 91 of Regulation (EU) 2018/1725”;		“The security of such exchanges shall be ensured in accordance with Article 91 of Regulation (EU) 2018/1725”;	
391	(26) Article 39 is amended as follows:		(26) Article 39 is amended as follows:	
392	(a) paragraph 1 is replaced by the following:		(a) paragraph 1 is replaced by the following:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
393	“1. Without prejudice to Article 90 of Regulation (EU) 2018/1725, any new type of processing operations to be carried out shall be subject to prior consultation of the EDPS where special categories of data as referred to in Article 30(2) of this Regulation are to be processed.”;		“1. Without prejudice to Article 90 of Regulation (EU) 2018/1725, <u>prior consultation shall not apply to specific individual operational activities.</u> any new type of processing operations to be carried out shall be subject to prior consultation of the EDPS where special categories of data as referred to in Article 30(2) of this Regulation are to be processed.”;	<p>TM 03/12/2021: CSL is fine with the compromise; EP has some concerns regarding limitation of prior consultation to ‘high risk’; COM: limitation is provided for in EUDPR; EP to check</p> <p>COM compromise proposal 26/11/2021:</p> <p>“1. Without prejudice to Article 90 of Regulation (EU) 2018/1725, <u>prior consultation shall not apply to specific individual operational activities that do not include any new type of processing that would involve a high risk to the rights and freedoms of the data subjects.</u></p> <p>TM 12/11/2021: EP/COM cannot accept CSL wording; COM acknowledges that issues might occasionally arise where a specific case merits use of new processing activity for the first time. justified as rights and freedoms</p>
394	(b) paragraphs 2 and 3 are deleted;		(b) paragraphs 2 and 3 are <u>replaced by the following</u> deleted;	
395			<u>"2. Europol may initiate processing operations which are</u>	TM 03/12/2021: EP is concerned that this might send a bad signal;

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>subject to prior consultation pursuant to Article 90(1) of Regulation (EU) 2018/1725 unless the EDPS has provided reasoned written advice pursuant to Article 90(4) of Regulation (EU) 2018/1725 within the time periods stipulated therein.</u></p>	<p>COM explained that this provision only clarifies that prior consultation does not mean prior authorisation - if EDPS does not reply within the deadlines, Europol may proceed with the processing;</p> <p><u>EP to check</u></p> <p><u>COM compromise proposal 26/11/2021:</u></p> <p><u>"2. Europol may initiate processing operations which are subject to prior consultation pursuant to Article 90(1) of Regulation (EU) 2018/1725 unless the EDPS has provided reasoned written advice pursuant to Article 90(4) of Regulation (EU) 2018/1725 within the time periods stipulated therein."</u></p> <p>TM 12/11/2021: COM considers this provision acceptable but not essential</p>
396			<p><u>3. If the envisaged processing has substantial significance for Europol's performance of tasks and is particularly urgent, Europol may initiate processing after the consultation has started</u></p>	<p><u>TM 06/12/2021:</u> essential for CSL to keep this provision; EP and COM remain opposed; CSL and EP to further discuss internally</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			<p><u>but before the time period stipulated in Article 90(4) of Regulation (EU) 2018/1725 has expired. In this case, Europol shall inform the EDPS prior to the start of processing activities. Written advice of the EDPS pursuant to Article 90(4) of Regulation (EU) 2018/1725 shall be taken into account in retrospect, and the way the processing is carried out shall be adjusted where applicable. The Data Protection officer of Europol shall be involved in assessing the urgency of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question."</u></p>	<p>COM compromise proposal (06/12/2021):</p> <p>3. If the envisaged processing has substantial significance for Europol's performance of tasks and is particularly urgent and necessary to prevent an immediate and serious threat to the for the protection of public security of a Member State, to protect or vital interests of a person or to prevent, upon request by a Member State, an imminent danger of perpetration of a specific case of serious crime for which Europol is competent, Europol may exceptionally initiate processing after the consultation has started but before the time period stipulated in Article 90(4) of Regulation (EU) 2018/1725 has expired. In this case, Europol shall inform the EDPS prior to the start of processing activities. Written advice of the EDPS pursuant to Article 90(4) of Regulation (EU) 2018/1725 shall be taken into account in retrospect, and the way the processing is carried out shall be adjusted accordingly where possible applicable. The Data Protection Officer of Europol shall be involved in assessing the urgency of such processing before the time</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>limit for the EDPS to respond to prior consultation expires. The Data Protection Officer shall should oversee the processing in question.”</p> <p><u>COM proposal for accompanying recital 36b/line 65 (based on CSL text):</u></p> <p>“(36b) The prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities, such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto that would involve a high risk to the rights and freedoms of data subjects. The time-period for providing the written advice by the EDPS on such consultations should not be subject to suspensions. In case of processing activities of substantial significance for Europol’s performance of tasks, which are particularly urgent, Europol may <u>exceptionally</u> initiate processing already after the prior consultation has been launched, even if the time limit for providing written advice by the EDPS has not yet</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>expired. Substantial significance for Europol's performance of tasks leading to such urgency may arise, among others, when processing is necessary to prevent an immediate and serious threat to the public security of a Member State or third country, to prevent, upon request by a Member State, an imminent danger of perpetration of a specific case of serious crime, including terrorism, or to protect vital interests of a person. The Data Protection Officer of Europol should be involved in assessing the urgency and necessity of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question. The EDPS may exercise all of its powers with respect to such processing.</p> <p>TM (03/12/2021): Presidency compromise suggestion to supplement the provision with further safeguards:</p> <p>3. If the envisaged processing has substantial significance for Europol's performance of tasks and is particularly urgent for the protection of public security or</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p><u>vital interests of a person or to prevent a serious crime for which Europol is competent</u>, Europol may initiate processing after the consultation has started but before the time period stipulated in Article 90(4) of Regulation (EU) 2018/1725 has expired. In this case, Europol shall inform the EDPS prior to the start of processing activities. Written advice of the EDPS pursuant to Article 90(4) of Regulation (EU) 2018/1725 shall be taken into account in retrospect, and the way the processing is carried out shall be adjusted <u>accordingly</u> where <u>possible</u> applicable. The Data Protection officer of Europol shall be involved in assessing the urgency of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question.</p> <p><u>COM compromise proposal</u> <u>26/11/2021: delete CSL wording</u></p> <p>TM 12/11/2021: COM: this provision is problematic as Europol would be allowed to process data</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				prior to receiving feedback from EDPS although feedback is needed to ensure sustainability and lawfulness of processing
397	(27) The following Article 39a in inserted:		(27) The following Article 39a in inserted:	
398	“Article 39a		“Article 39a	
399	Records of categories of processing activities		Records of categories of processing activities	
400	1. Europol shall maintain a record of all categories of processing activities under its responsibility. That record shall contain the following information:		1. Europol shall maintain a record of all categories of processing activities under its responsibility. That record shall contain the following information:	
401	(a) Europol’s contact details and the name and the contact details of its Data Protection Officer;		(a) Europol’s contact details and the name and the contact details of its Data Protection Officer;	
402	(b) the purposes of the processing;		(b) the purposes of the processing;	
403	(c) the description of the categories of data subjects and of the categories of operational personal data;		(c) the description of the categories of data subjects and of the categories of operational personal data;	
404	(d) the categories of recipients to whom the operational		(d) the categories of recipients to whom the operational personal data	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	personal data have been or will be disclosed including recipients in third countries or international organisations;		have been or will be disclosed including recipients in third countries or international organisations;	
405	(e) where applicable, transfers of operational personal data to a third country, an international organisation, or private party including the identification of that third country, international organisation or private party;		(e) where applicable, transfers of operational personal data to a third country, an international organisation, or private party including the identification of that third country, international organisation or private party;	
406	(f) where possible, the envisaged time limits for erasure of the different categories of data;		(f) where possible, the envisaged time limits for erasure of the different categories of data;	
407	(g) where possible, a general description of the technical and organisational security measures referred to in Article 91 of Regulation (EU) 2018/1725.		(g) where possible, a general description of the technical and organisational security measures referred to in Article 91 of Regulation (EU) 2018/1725;	
408			<u>(h) where applicable, the use of profiling.</u>	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL wording <u>(h) where applicable, the use of profiling.</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
409	2. The records referred to in paragraph 1 shall be in writing, including in electronic form.		2. The records referred to in paragraph 1 shall be in writing, including in electronic form.	
410	3. Europol shall make the records referred to in paragraph 1 available to the EDPS on request.”;		3. Europol shall make the records referred to in paragraph 1 available to the EDPS on request.”;	
411	(28) Article 40 is amended as follows:		(28) Article 40 is amended as follows:	
412	(a) the title is replaced by the following:		(a) the title is replaced by the following:	
413	“Logging”		“Logging”	
414	(b) paragraph 1 is replaced by the following:		(b) paragraph 1 is replaced by the following:	
415	“1. In line with Article 88 of Regulation (EU) 2018/1725, Europol shall keep logs of its processing operations. There shall be no possibility of modifying the logs.”;		“1. In line with Article 88 of Regulation (EU) 2018/1725, Europol shall keep logs of its processing operations. There shall be no possibility of modifying the logs.”;	
416	(c) in paragraph 2, the first sentence is replaced by the following:		(c) in paragraph 2, the first sentence is replaced by the following:	
417	“Without prejudice to Article 88 of Regulation (EU)		“Without prejudice to Article 88 of Regulation (EU) 2018/1725, the	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	2018/1725, the logs prepared pursuant to paragraph 1, if required for a specific investigation related to compliance with data protection rules, shall be communicated to the national unit concerned.”;		logs prepared pursuant to paragraph 1, if required for a specific investigation related to compliance with data protection rules, shall be communicated to the national unit concerned.”;	
418	(29) Article 41 is replaced by the following:		(29) Article 41 is replaced by the following:	
419	<i>“Article 41</i>		<i>“Article 41</i>	
420	Designation of the Data Protection Officer		Designation of the Data Protection Officer	
421	1. The Management Board shall appoint a Data Protection Officer, who shall be a member of the staff specifically appointed for this purpose. In the performance of his or her duties, he or she shall act independently and may not receive any instructions.	AM 153 1. The Management Board shall appoint a Data Protection Officer, who shall be a member of the staff specifically appointed for this purpose.	1. The Management Board shall appoint a Data Protection Officer, who shall be a member of the staff specifically appointed for this purpose. In the performance of his or her duties, he or she shall act independently and may not receive any instructions.	TM 12/11/2021: provisionally agreed - use EP text (deleted second sentence is covered in 41a(3): The Management Board shall appoint a Data Protection Officer, who shall be a member of the staff specifically appointed for this purpose.
422	2. The Data Protection Officer shall be selected on the basis of his or her personal and professional qualities and, in particular, the expert knowledge of data protection	AM 154 2. The Data Protection Officer shall be selected on the basis of professional qualities and, in particular, the expert	2. The Data Protection Officer shall be selected on the basis of his or her personal and professional qualities and, in particular, the expert knowledge of data protection <u>law</u> and practices and the ability to	TM 12/11/2021: provisionally agreed - combine EP/CSL texts: 2. The Data Protection Officer shall be selected on the basis of professional qualities and, in

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	and practices and the ability to fulfil his or her tasks under this Regulation.	knowledge of data protection <i>law</i> and practices and the ability to fulfil <i>the</i> tasks <i>referred to in Article 41b of</i> this Regulation.	fulfil his or her tasks under this Regulation <u>and Regulation (EU) 2018/1725.</u>	particular, the expert knowledge of data protection <i>law</i> and practices and the ability to fulfil <i>the</i> tasks <i>referred to in Article 41b of</i> this Regulation <u>and in Regulation (EU) 2018/1725.</u>
423	3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between his or her duty as Data Protection Officer and any other official duties he or she may have, in particular in relation to the application of this Regulation.		3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between his or her duty as Data Protection Officer and any other official duties he or she may have, in particular in relation to the application of this Regulation.	
424	4. The Data Protection Officer shall be designated for a term of four years and shall be eligible for reappointment. The Data Protection Officer may be dismissed from his or her post by the Executive Board only with the agreement of the EDPS, if he or she no longer fulfils the conditions required for the performance of his or her duties	AM 155 <i>deleted</i>	4. The Data Protection Officer shall be designated for a term of four years and shall be eligible for reappointment. The Data Protection Officer may be dismissed from his or her post by the Executive <u>Management</u> Board only with the agreement of the EDPS, if he or she no longer fulfils the conditions required for the performance of his or her duties	TM 12/11/2021: provisionally agreed <i>- text is moved down to Art. 41a</i>
425	5. After his or her designation, the Data Protection Officer shall be	AM 155 <i>deleted</i>	5. After his or her designation, the Data Protection Officer shall be registered with the European Data	TM 12/11/2021: provisionally agreed

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	registered with the European Data Protection Supervisor by the Management Board		Protection Supervisor by the Management Board	- <i>paragraph is moved down to Art. 41a</i>
426	6. Europol shall publish the contact details of the Data Protection Officer and communicate them to the EDPS.”;		6. Europol shall publish the contact details of the Data Protection Officer and communicate them to the EDPS.”;	
427	(30) the following Articles 41a and 41b are inserted:		(30) the following Articles 41a and 41b are inserted:	
428	“Article 41a		“Article 41a	
429	Position of the Data Protection Officer		Position of the Data Protection Officer	
430	1. Europol shall ensure that the Data Protection Officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.		1. Europol shall ensure that the Data Protection Officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.	
431	2. Europol shall support the Data Protection Officer in performing the tasks referred to in Article 41c by providing the resources and staff necessary to carry out those tasks and by providing access to personal data and	AM 157 2. Europol shall support the Data Protection Officer in performing the tasks referred to in Article 41b by providing the resources and staff necessary to carry out those tasks and access to personal data and processing	2. Europol shall support the Data Protection Officer in performing the tasks referred to in Article 41c by providing the resources and staff necessary to carry out those tasks and by providing access to personal data and processing operations, and to maintain his or her expert	Political trilogue (30/11/2021)/TM 03/12/2021: EP cannot accept this proposal as data protection and fundamental rights should be kept separately; insists to keep FRO

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	processing operations, and to maintain his or her expert knowledge. The related staff may be supplemented by an assistant DPO in the area of operational and administrative processing of personal data.	operations, and to maintain his or her expert knowledge. The staff <i>provided to assist the Data Protection Officer and to support Europol in complying with this Regulation and with Regulation (EU) 2018/1725</i> may be supplemented by <i>two</i> assistant <i>Data Protection Officers, one responsible for operational processing of personal data and the other responsible for administrative processing of personal data. The provisions applicable to the Data Protection Officer shall apply mutatis mutandis to the assistant Data Protection Officers.</i>	knowledge. The related staff may be supplemented by an assistant DPO in the area of operational and administrative processing of personal data.	<p>COM compromise proposal 29/11/2021:</p> <p>2. Europol shall support the Data Protection Officer in performing the tasks referred to in Article 41b by providing the resources and staff necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge. The staff <i>provided to assist the Data Protection Officer and to support Europol in complying with this Regulation and with Regulation (EU) 2018/1725</i> shall may be supplemented by <i>two</i> assistant <i>Data Protection Officers</i>. One assistant Data Protection Officer shall be responsible for operational processing of personal data and the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data, and the other assistant Data Protection Officer shall be responsible for administrative processing of personal data. The provisions applicable to the Data Protection Officer shall apply mutatis mutandis to the assistant</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p>Data Protection Officers.</p> <p>TM 12/11/2021: CSL/COM expressed reservations; COM: DPO function is to be guaranteed and it should be left to Europol's discretion to ensure fulfilment of tasks;</p> <p>Agreement to pool this provision with other governance issues in EP's mandate.</p>
432	3. Europol shall ensure that the Data Protection Officer does not receive any instructions regarding the exercise of those tasks. The Data Protection Officer shall report directly to the Management Board. The Data Protection Officer shall not be dismissed or penalised by the Management Board for performing his or her tasks.	<p>AM 158</p> <p>3. Europol shall ensure that the Data Protection Officer acts independently and does not receive any instructions regarding the exercise of those tasks. The Data Protection Officer shall report directly to the Management Board. The Data Protection Officer shall not be dismissed or penalised by the Management Board for performing his or her tasks.</p>	3. Europol shall ensure that the Data Protection Officer does not receive any instructions regarding the exercise of those tasks. The Data Protection Officer shall report directly to the Management Board. The Data Protection Officer shall not be dismissed or penalised by the Management Board for performing his or her tasks.	<p>TM 12/11/2021: provisionally agreed - EP text</p> <p>3. . Europol shall ensure that the Data Protection Officer acts independently and does not receive any instructions regarding the exercise of those tasks. The Data Protection Officer shall report directly to the Management Board. The Data Protection Officer shall not be dismissed or penalised by the Management Board for performing his or her tasks.</p>
433	4. Data subjects may contact the Data Protection Officer with regard to all issues related to processing of their personal		4. Data subjects may contact the Data Protection Officer with regard to all issues related to processing of their personal data and to the	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	data and to the exercise of their rights under this Regulation and under Regulation (EU) 2018/1725. No one shall suffer prejudice on account of a matter brought to the attention of the Data Protection Officer alleging that a breach of this Regulation or Regulation (EU) 2018/1725 has taken place.		exercise of their rights under this Regulation and under Regulation (EU) 2018/1725. No one shall suffer prejudice on account of a matter brought to the attention of the Data Protection Officer alleging that a breach of this Regulation or Regulation (EU) 2018/1725 has taken place.	
434	5. The Management Board shall adopt further implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer, his or her dismissal, tasks, duties and powers, and safeguards for the independence of the Data Protection Officer.		5. The Management Board shall adopt further implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer, his or her dismissal, tasks, duties and powers, and safeguards for the independence of the Data Protection Officer.	
435	6. The Data Protection Officer and his or her staff shall be bound by the obligation of confidentiality in accordance with Article 67(1).		6. The Data Protection Officer and his or her staff shall be bound by the obligation of confidentiality in accordance with Article 67(1).	
436		AM 159		TM 12/11/2021: provisionally agreed - use EP text <i>(moved down</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		6a. <i>The Data Protection Officer shall be appointed for a term of four years and shall be eligible for reappointment. The Data Protection Officer may be dismissed from his or her post by the Management Board only with the agreement of the EDPS, if he or she no longer fulfils the conditions required for the performance of his or her duties</i>		from 41(4)) 6a. <i>The Data Protection Officer shall be appointed for a term of four years and shall be eligible for reappointment. The Data Protection Officer may be dismissed from his or her post by the Management Board only with the agreement of the EDPS, if he or she no longer fulfils the conditions required for the performance of his or her duties</i>
437		AM 160 6b. <i>After their designation, the Data Protection Officer and the assistant Data Protection Officers shall be registered with the EDPS by the Management Board.</i>		TM 12/11/2021: provisionally agreed - use EP text (moved down from 41(5)) 6b. <i>After their designation, the Data Protection Officer and the assistant Data Protection Officers shall be registered with the EDPS by the Management Board.</i>
438	Article 41b		Article 41b	
439	Tasks of the Data Protection Officer		Tasks of the Data Protection Officer	
440	1. The Data Protection Officer shall, in particular, have the following tasks with		1. The Data Protection Officer shall, in particular, have the	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	regard to processing of personal data:		following tasks with regard to processing of personal data:	
441	(a) ensuring in an independent manner the compliance of Europol with the data protection provisions of this Regulation and Regulation (EU) 2018/1725 and with the relevant data protection provisions in Europol's rules of procedure; this includes monitoring compliance with this Regulation, with Regulation (EU) 2018/1725, with other Union or national data protection provisions and with the policies of Europol in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and related audits.;		(a) ensuring in an independent manner the compliance of Europol with the data protection provisions of this Regulation and Regulation (EU) 2018/1725 and with the relevant data protection provisions in Europol's internal rules of procedure ; this includes monitoring compliance with this Regulation, with Regulation (EU) 2018/1725, with other Union or national data protection provisions and with the policies of Europol in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and related audits.;	<p>Written procedure (25/11/2021): provisional agreement to use CSL text</p> <p>a) ensuring in an independent manner the compliance of Europol with the data protection provisions of this Regulation and Regulation (EU) 2018/1725 and with the relevant data protection provisions in Europol's internal rules of procedure; this includes monitoring compliance with this Regulation, with Regulation (EU) 2018/1725, with other Union or national data protection provisions and with the policies of Europol in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and related audits.;</p>
442	b) informing and advising Europol and staff who process personal data of their obligations pursuant to this Regulation, to Regulation (EU) 2018/1725 and to other		b) informing and advising Europol and staff who process personal data of their obligations pursuant to this Regulation, to Regulation (EU) 2018/1725 and to other Union or national data protection provisions;	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	Union or national data protection provisions;			
443	c) providing advice where requested as regards the data protection impact assessment and monitoring its performance pursuant to Article 89 of Regulation (EU) 2018/1725;		c) providing advice where requested as regards the data protection impact assessment and monitoring its performance pursuant to Article 89 of Regulation (EU) 2018/1725;	
444	d) keeping a register of personal data breaches and providing advice where requested as regards the necessity of a notification or communication of a personal data breach pursuant to Articles 92 and 93 of Regulation (EU) 2018/1725;		d) keeping a register of personal data breaches and providing advice where requested as regards the necessity of a notification or communication of a personal data breach pursuant to Articles 92 and 93 of Regulation (EU) 2018/1725;	
445	(e) ensuring that a record of the transfer and receipt of personal data is kept in accordance with this Regulation;	AM 161 (e) ensuring that a record of the transmission , transfer and receipt of personal data is kept in accordance with this Regulation;	(e) ensuring that a record of the transfer and receipt of personal data is kept in accordance with this Regulation;	Political trilogue (30/11/2021): provisional agreement to use EP text (e) ensuring that a record of the transmission , transfer and receipt of personal data is kept in accordance with this Regulation;
446	(f) ensuring that data subjects are informed of their rights under this Regulation and		(f) ensuring that data subjects are informed of their rights under this	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	Regulation (EU) 2018/1725 at their request;		Regulation and Regulation (EU) 2018/1725 at their request;	
447	(g) cooperating with Europol staff responsible for procedures, training and advice on data processing;		(g) cooperating with Europol staff responsible for procedures, training and advice on data processing;	
448	(h) cooperating with the EDPS;	AM 162 <i>(h) responding to requests from the EDPS; within the sphere of his or her competence, cooperating and consulting with the EDPS, at the latter's request or on his or her own initiative;</i>	(h) cooperating with the EDPS;	Political trilogue (30/11/2021): provisional agreement to use EP text <i>(h) responding to requests from the EDPS; within the sphere of his or her competence, cooperating and consulting with the EDPS, at the latter's request or on his or her own initiative;</i>
449	(i) cooperating with the national competent authorities, in particular with the appointed Data Protection Officers of the competent authorities of the Members States and national supervisory authorities regarding data protection matters in the law enforcement area;		(i) cooperating with the national competent authorities, in particular with the appointed Data Protection Officers of the competent authorities of the Members States and national supervisory authorities regarding data protection matters in the law enforcement area;	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
450	(j) acting as the contact point for the European Data Protection Supervisor on issues relating to processing, including the prior consultation under Articles 39 and 90 of Regulation (EU) 2018/1725, and consulting, where appropriate, with regard to any other matter;	AM 163 (j) acting as the contact point for the European Data Protection Supervisor on issues relating to processing, including the prior consultation under Articles 39 and 90 of Regulation (EU) 2018/1725, and consulting, where appropriate, with regard to any other matter <i>within the sphere of his or her competence</i> ;	(j) acting as the contact point for the European Data Protection Supervisor on issues relating to processing, including the prior consultation under Articles 39 and 90 of Regulation (EU) 2018/1725, and consulting, where appropriate, with regard to any other matter;	<u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text (j) acting as the contact point for the European Data Protection Supervisor on issues relating to processing, including the prior consultation under Articles 39 and 90 of Regulation (EU) 2018/1725, and consulting, where appropriate, with regard to any other matter <i>within the sphere of his or her competence</i> ;
451	(k) preparing an annual report and communicating that report to the Management Board and to the EDPS;		(k) preparing an annual report and communicating that report to the Management Board and to the EDPS;	
452		AM 164 <i>(k a) ensuring that the rights and freedoms of data subjects are not adversely affected by processing operations;</i>		<u>Political trilogue (30/11/2021):</u> provisional agreement to use EP text (aligned with Art. 45(1)(h) EUDPR) <i>(k a) ensuring that the rights and freedoms of data subjects are not adversely affected by processing operations;</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
453		<p>AM 165</p> <p><i>1a. The Data Protection Officer may make recommendations to the Management Board for the practical improvement of data protection and advise on matters concerning the application of data protection provisions. Furthermore, the Data Protection Officer may, on his or her own initiative or at the request of the Management Board or any individual, investigate matters and occurrences directly relating to his or her tasks which come to his or her notice, and report back to the person who commissioned the investigation or to the Management Board.</i></p>		<p>EP proposal (25/11/2021): use EP text (aligned with Art. 45(2) EUDPR) - still to be checked by CSL</p>
454	<p>2. The Data Protection Officer shall carry out the functions provided for by Regulation (EU) 2018/1725 with regard to administrative personal data.</p>		<p>2. The Data Protection Officer shall carry out the functions provided for by Regulation (EU) 2018/1725 with regard to administrative personal data.</p>	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
455	3. In the performance of his or her tasks, the Data Protection Officer and the staff members of Europol assisting the Data Protection Officer in the performance of his or her duties shall have access to all the data processed by Europol and to all Europol premises.		3. In the performance of his or her tasks, the Data Protection Officer and the staff members of Europol assisting the Data Protection Officer in the performance of his or her duties shall have access to all the data processed by Europol and to all Europol premises.	
456	4. If the Data Protection Officer considers that the provisions of this Regulation, of Regulation (EU) 2018/1725 related to the processing of administrative personal data or the provisions of this Regulation or of Article 3 and of Chapter IX of Regulation (EU) 2018/1725 concerning the processing of operational personal data have not been complied with, he or she shall inform the Executive Director and shall require him or her to resolve the non-compliance within a specified time.		4. If the Data Protection Officer considers that the provisions of this Regulation, of Regulation (EU) 2018/1725 related to the processing of administrative personal data or the provisions of this Regulation or of Article 3 and of Chapter IX of Regulation (EU) 2018/1725 concerning the processing of operational personal data have not been complied with, he or she shall inform the Executive Director and shall require him or her to resolve the non-compliance within a specified time.	
457	If the Executive Director does not resolve the non-compliance of the processing within the time specified, the Data Protection Officer shall		If the Executive Director does not resolve the non-compliance of the processing within the time specified, the Data Protection Officer shall inform the	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	inform the Management Board. The Management Board shall reply within a specified time limit agreed with the Data Protection Officer. If the Management Board does not resolve the non-compliance within the time specified, the Data Protection Officer shall refer the matter to the EDPS.”;		Management Board. The Management Board shall reply within a specified time limit agreed with the Data Protection Officer. If the Management Board does not resolve the non-compliance within the time specified, the Data Protection Officer shall refer the matter to the EDPS.”;	
458		AM 166 <i>(30a) the following Article 41c is inserted</i>		
459		<i>“Article 41c</i>		<u>COM compromise proposal</u> <u>26/11/2021: delete EP wording</u>
460		<i>Fundamental Rights Officer</i>		<u>COM compromise proposal</u> <u>26/11/2021: delete EP wording</u>
461		<i>1. A Fundamental Rights Officer shall be appointed by the Management Board on the basis of a list of three candidates. The Fundamental Rights Officer shall be selected on the basis of professional</i>		<u>COM compromise proposal</u> <u>26/11/2021: delete EP wording</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>qualities and, in particular, the expert knowledge and experience in the field of fundamental rights and the ability to fulfil the tasks referred to in this Article.</i>		
462		<i>2. The Fundamental Rights Officer shall perform the following tasks:</i>		<u>COM compromise proposal 26/11/2021: delete EP wording</u>
463		<i>(a) monitoring Europol's compliance with fundamental rights;</i>		<u>COM compromise proposal 26/11/2021: delete EP wording</u>
464		<i>(b) promoting Europol's respect of fundamental rights in the performance of its tasks and activities;</i>		<u>COM compromise proposal 26/11/2021: delete EP wording</u>
465		<i>(c) advising Europol where he or she deems it necessary or where requested on any activity of Europol without impeding or delaying those activities; (d) providing opinions on working arrangements;</i>		<u>COM compromise proposal 26/11/2021: delete EP wording</u>
466		<i>(f) informing the Executive Director about possible violations of fundamental rights during activities of Europol;</i>		<u>COM compromise proposal 26/11/2021: delete EP wording</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
467		<i>(g) performing any other tasks, where provided for by this Regulation; The Executive Director shall reply to the Fundamental Rights Officer as to how possible violations of fundamental rights as referred to in point (f) of the first subparagraph have been addressed.</i>		<u>COM compromise proposal</u> <u>26/11/2021: delete EP wording</u>
468		<i>3. Europol shall ensure that the Fundamental Rights Officer acts independently and does not receive any instructions regarding the exercise of those tasks. Europol shall support the Fundamental Rights Officer in performing the tasks referred to in this Article by providing the resources and staff necessary to carry out those tasks and access to all information concerning respect for fundamental rights in the activities of Europol.</i>		<u>COM compromise proposal</u> <u>26/11/2021: delete EP wording</u>
469		<i>4. The Fundamental Rights Officer shall report directly to the Management Board and publish annual reports on his or her activities, including the extent to which the activities of</i>		<u>COM compromise proposal</u> <u>26/11/2021: delete EP wording</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>Europol respect fundamental rights. The Management Board shall ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.</i>		
470		<i>5. The Fundamental Rights Officer and the Data Protection Officer shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation.”</i>		COM compromise proposal 26/11/2021: delete EP wording
471		<i>AM 167 (30 b) the following Article 41d is inserted:</i>		
472		<i>“Article 41d</i>		
473		<i>Fundamental Rights Training</i>		
474		<i>All Europol staff involved in operational tasks involving personal data processing shall receive mandatory training on the protection of fundamental rights and freedoms, including with regard to the processing of personal data. This training shall be developed and organised in cooperation with</i>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>the FRA and CEPOL.</i> ”		
475	(31) In Article 42, paragraphs 1 and 2 are replaced by the following:		(31) In Article 42, paragraphs 1 and 2 are replaced by the following:	
476	“1. For the purpose of exercising their supervisory function the national supervisory authority shall have access, at the national unit or at the liaison officers’ premises, to data submitted by its Member State to Europol in accordance with the relevant national procedures and to logs as referred to in Article 40.		“1. For the purpose of exercising their supervisory function the national supervisory authority <u>referred to in Article 41 of Directive (EU) 2016/680</u> shall have access, at the national unit or at the liaison officers’ premises, to data submitted by its Member State to Europol in accordance with the relevant national procedures and to logs as referred to in Article 40.	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text .1. For the purpose of exercising their supervisory function the national supervisory authority <u>referred to in Article 41 of Directive (EU) 2016/680</u> shall have access, at the national unit or at the liaison officers’ premises, to data submitted by its Member State to Europol in accordance with the relevant national procedures and to logs as referred to in Article 40.
477	2. National supervisory authorities shall have access to the offices and documents of their respective liaison officers at Europol.”;”.		2. National supervisory authorities shall have access to the offices and documents of their respective liaison officers at Europol.”;”.	
478	(32) Article 43 is amended as follows:		(32) Article 43 is amended as follows:	
479	(a) in paragraph 1, the first sentence is replaced by the following:		(a) in paragraph 1, the first sentence is replaced by the following:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
480	“The EDPS shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and Regulation (EU) 2018/1725 relating to the protection of fundamental rights and freedoms of natural persons with regard to the processing of personal data by Europol, and for advising Europol and data subjects on all matters concerning the processing of personal data.”;		“The EDPS shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and Regulation (EU) 2018/1725 relating to the protection of fundamental rights and freedoms of natural persons with regard to the processing of personal data by Europol, and for advising Europol and data subjects on all matters concerning the processing of personal data.”;	
481		AM 168 <i>(aa) the following paragraph 1a is inserted:</i>		
482		<i>“1a. The EDPS shall be provided with the financial and human resources necessary for the effective and efficient performance of his or her tasks*.”</i>		COM compromise proposal 26/11/2021 (data protection package): <i>1a. The EDPS shall be provided with the financial and human resources necessary for the effective and efficient performance of his or her tasks</i>
483		<i>AM 169 (a b) in paragraph 2, point (c) is replaced by the following:</i>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
484		“(c) monitoring and ensuring the application of this Regulation and Regulation (EU) 2018/1725 relating to the protection of natural persons with regard to the processing of personal data by Europol;”		
485		AM 170 <i>(a c) the following paragraph 2a is inserted:</i>		
486		<i>“2a. The EDPS shall have access to the operational personal data processed by and to the premises of Europol to the extent necessary for the performance of his or her tasks.”</i>		Linked to discussion on Art. 43(3) in line 488
487		AM 171 <i>(a d) paragraph 3 is replaced by the following:</i>		
488		<i>3. The tasks and powers of the EDPS as set out in Articles 57 and 58 of Regulation(EU)</i>		TM 06/12/2021 (data protection package): updated COM proposal has the same intention as the EP’s

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>2018/1725 shall apply mutatis mutandis to all personal data processing by Europol under this Regulation.;</i>		<p>AM but singles out the EUDPR provisions that are not relevant and should therefore not apply; <u>CSL/EP to check internally</u></p> <p><u>Updated COM compromise proposal (06/12/2021):</u></p> <p>3. The tasks and powers of the EDPS as set out in Articles 57 and 58 of Regulation(EU) 2018/1725 shall apply mutatis mutandis to all personal data processing by Europol under this Regulation. <u>As regards the processing of operational personal data those tasks apply with the exception of those set out in Article 57)(i-j) and (n).</u></p> <p><u>The powers of the EDPS as set out in Article 58 of Regulation (EU) 2018/1725 shall apply to all personal data processing by Europol under this Regulation. As regards the processing of operational personal data those powers apply with the exception of those set out in Article 58(3)(d- g)."</u></p> <p><u>COM compromise proposal 26/11/2021: use EP wording</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
489		<i>AM 172</i> <i>(a e) paragraph 4 is deleted.</i>		Linked to discussion on Art. 43(3) in line 488
490	(b) paragraph 5 is replaced by the following:		(b) paragraph 5 is replaced by the following:	
491	“5. The EDPS shall draw up an annual report on his or her supervisory activities in relation to Europol. That report shall be part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The national supervisory authorities shall be invited to make observations on this report before it becomes part of the annual report. The EDPS shall take utmost account of the observations made by national supervisory authorities and, in any case, shall refer to them in the annual report.	AM 173 5. The EDPS shall draw up an annual report on his or her supervisory activities in relation to Europol. That report shall be part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The national supervisory authorities shall be invited to make observations on <i>the annual report on the supervisory activities of the EDPS in relation to Europol</i> before it becomes part of the annual report <i>of the EDPS</i> . The EDPS shall take utmost account of the observations made by national supervisory authorities and, shall refer to them in the annual report.	“5. The EDPS shall draw up an annual report on his or her supervisory activities in relation to Europol. That report shall be part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The national supervisory authorities shall be invited to make observations on this report before it becomes part of the annual report. The EDPS shall take utmost account of the observations made by national supervisory authorities and, in any case, shall refer to them in the annual report.	<u>Written procedure (25/11/2021):</u> provisional agreement to use EP text 5. The EDPS shall draw up an annual report on his or her supervisory activities in relation to Europol. That report shall be part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The national supervisory authorities shall be invited to make observations on <i>the annual report on the supervisory activities of the EDPS in relation to Europol</i> before it becomes part of the annual report <i>of the EDPS</i> . The EDPS shall take utmost account of the observations made by national supervisory authorities and, shall refer to them in the annual report.
492	The report shall include statistical information regarding complaints,	The report shall include statistical information regarding complaints, inquiries, and investigations, as well as	The report shall include statistical information regarding complaints, inquiries, and investigations, as well	Linked to discussion on Art. 43(3) in line 488

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	inquiries, and investigations, as well as regarding transfers of personal data to third countries and international organisations, cases of prior consultation, and the use of the powers laid down in paragraph 3.”;	regarding transfers of personal data to third countries, including to private parties, international organisations, cases of prior consultation, and the use of the powers laid down <i>in this Article</i> .	as regarding transfers of personal data to third countries and international organisations, cases of prior consultation, and the use of the powers laid down in paragraph 3.”;	
493	(33) in Article 44, paragraph 2 is replaced by the following:	AM 174 (33) Article 44 <i>is amended as follows</i>	(33) in Article 44, paragraph 2 is replaced by the following:	
494		(a) paragraph 2 is replaced by the following:		
495	“2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725. The EDPS shall use the expertise and experience of the national supervisory authorities in carrying out his or her duties as set out in Article 43(2). In carrying out joint inspections together with the EDPS, members and staff of national supervisory authorities shall, taking due		“2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725. The EDPS shall use the expertise and experience of the national supervisory authorities in carrying out his or her duties as set out in Article 43(2). In carrying out joint inspections together with the EDPS, members and staff of national supervisory authorities shall, taking due account of the principles of subsidiarity and proportionality,	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	account of the principles of subsidiarity and proportionality, have powers equivalent to those laid down in Article 43(4) and be bound by an obligation equivalent to that laid down in Article 43(6).”;		have powers equivalent to those laid down in Article 43(4) and be bound by an obligation equivalent to that laid down in Article 43(6).”;	
496			<u>(33 bis): in Article 44, paragraph 4 is replaced by the following:</u>	<u>Written procedure (25/11/2021):</u> provisional agreement to use the CSL text <u>(33 bis): in Article 44, paragraph 4 is replaced by the following:</u>
497			<p>"4. In cases relating to data originating from one or more Member States, including the cases referred to in Article 47(2), the EDPS shall consult the national supervisory authorities concerned. The EDPS shall not decide on further action to be taken before those national supervisory authorities have informed the EDPS of their position, within a deadline specified by him or her which shall not be shorter than one month and not longer than three months. The EDPS shall take the utmost account of the respective positions of the national supervisory authorities</p>	<u>Written procedure (25/11/2021):</u> provisional agreement to use CSL text <p>“4. In cases relating to data originating from one or more Member States, including the cases referred to in Article 47(2), the EDPS shall consult the national supervisory authorities concerned. The EDPS shall not decide on further action to be taken before those national supervisory authorities have informed the EDPS of their position, within a deadline specified by him or her which shall</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
			concerned. In cases where the EDPS intends not to follow the position of a national supervisory authority, he or she shall inform that authority, provide a justification and submit the matter for discussion to the <u>European Data Protection Board</u> Cooperation Board established by Article 45(1). "	not be shorter than one month and not longer than three months. The EDPS shall take the utmost account of the respective positions of the national supervisory authorities concerned. In cases where the EDPS intends not to follow the position of a national supervisory authority, he or she shall inform that authority, provide a justification and submit the matter for discussion to the <u>European Data Protection Board</u> Cooperation Board established by Article 45(1). "
498		AM 175 <i>(33 a) in paragraph 4, the second subparagraph is replaced by the following:</i>		<u>Written procedure (25/11/2021):</u> provisional agreement to delete this line
499		<i>"In cases where the EDPS intends not to follow the position of a national supervisory authority, he or she shall inform that authority, provide a justification and submit the matter to the EDPB."</i>		<u>Written procedure (25/11/2021):</u> provisional agreement to delete this line
500	(34) Articles 45 and 46 are deleted;		(34) Articles 45 and 46 are deleted;	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
501	(35) Article 47 is amended as follows:		(35) Article 47 is amended as follows:	
502	(a) paragraph 1 is replaced by the following:		(a) paragraph 1 is replaced by the following:	
503	“ 1. Any data subject shall have the right to lodge a complaint with the EDPS if he or she considers that the processing by Europol of personal data relating to him or her does not comply with this Regulation or Regulation (EU) 2018/ 1725.”;[we have to replace the whole paragraph][“1. or Regulation (EU) 2018/ 1725.”		“ 1. Any data subject shall have the right to lodge a complaint with the EDPS if he or she considers that the processing by Europol of personal data relating to him or her does not comply with this Regulation or Regulation (EU) 2018/ 1725.”;[we have to replace the whole paragraph][“1. or Regulation (EU) 2018/ 1725.”	
504	(b) in paragraph 2, the first sentence is replaced by the following:		(b) in paragraph 2, the first sentence is replaced by the following:	
505	“Where a complaint relates to a decision as referred to in Article 36, 37 or 37a of this Regulation or Article 80, 81 or 82 of Regulation (EU) 2018/1725, the EDPS shall consult the national supervisory authorities of the Member State that provided the data or of the	AM 176 Where a complaint relates to a decision as referred to in Article 36 or 37 of this Regulation or Article 81 or 82 of Regulation (EU) 2018/1725, the EDPS shall consult the national supervisory authorities of the Member State that provided the data or of the	“Where a complaint relates to a decision as referred to in Article 36, 37 or 37a of this Regulation or Article 80, 81 or 82 of Regulation (EU) 2018/1725, the EDPS shall consult the national supervisory authorities of the Member State that provided the data or of the Member State directly concerned.”;”;	Written procedure (25/11/2021): Use EP text as consequential amendment in relation to Article 37/37a: Where a complaint relates to a decision as referred to in Article 36 or 37 of this Regulation or Article 81 or 82 of Regulation (EU) 2018/1725, the EDPS shall consult

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	Member State directly concerned.”;”;	Member State directly concerned.”;		the national supervisory authorities of the Member State that provided the data or of the Member State directly concerned.”;
506	(c) the following paragraph 5 is added:		(c) the following paragraph 5 is added:	
507	“5. The EDPS shall inform the data subject of the progress and outcome of the complaint, as well as the possibility of a judicial remedy pursuant to Article 48.”;		“5. The EDPS shall inform the data subject of the progress and outcome of the complaint, as well as the possibility of a judicial remedy pursuant to Article 48.”;	
508	(36) Article 50 is amended as follows:		(36) Article 50 is amended as follows:	
509	(a) the title is replaced by:		(a) the title is replaced by:	
510	“Right to compensation”;		“Right to compensation”;	
511	(b) paragraph 1 is deleted;	AM 177 (b) paragraph 1 is <i>replaced by the following:</i>	(b) paragraph 1 is deleted;	TM 26/11/2021: provisionally agreed; use EP text (b) paragraph 1 is <i>replaced by the following:</i>
512		<i>“Any person who has suffered material or non-material damage as a result of an infringement of this</i>		TM 26/11/2021: provisionally agreed; use EP text <i>“Any person who has suffered</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>Regulation shall have the right to receive compensation in accordance with Article 65 of Regulation 2018/1725 and national laws transposing Article 56 of Directive (EU) 2016/680.”</i>		<i>material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation in accordance with Article 65 of Regulation 2018/1725 and national laws transposing Article 56 of Directive (EU) 2016/680.”</i>
513	(c) paragraph 2 is replaced by the following:		(c) paragraph 2 is replaced by the following:	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
514	<p>“2. Any dispute between Europol and Member States over the ultimate responsibility for compensation awarded to a person who has suffered material or non-material damage in accordance with Article 65 of Regulation (EU) 2018/1725 and national laws transposing Article 56 of Directive (EU) 2016/680 shall be referred to the Management Board, which shall decide by a majority of two-thirds of its members, without prejudice to the right to challenge that decision in accordance with Article 263 TFEU.”;</p>	<p>AM 178</p> <p>2. Any dispute between Europol and Member States over the ultimate responsibility for compensation awarded to a person who has suffered material or non-material damage in accordance with paragraph 1 shall be referred to the Management Board, which shall decide by a majority of two-thirds of its members, without prejudice to the right to challenge that decision in accordance with Article 263 TFEU.”;</p>	<p>“2. Any dispute between Europol and Member States over the ultimate responsibility for compensation awarded to a person who has suffered material or non-material damage in accordance with Article 65 of Regulation (EU) 2018/1725 and national laws transposing Article 56 of Directive (EU) 2016/680 shall be referred to the Management Board, which shall decide by a majority of two-thirds of its members, without prejudice to the right to challenge that decision in accordance with Article 263 TFEU.”;</p>	<p>TM 26/11/2021: provisionally agreed; use EP text</p> <p>“2. Any dispute between Europol and Member States over the ultimate responsibility for compensation awarded to a person who has suffered material or non-material damage in accordance with paragraph 1 shall be referred to the Management Board, which shall decide by a majority of two-thirds of its members, without prejudice to the right to challenge that decision in accordance with Article 263 TFEU.”</p>
515	(37) Article 51 is amended as follows:		(37) Article 51 is amended as follows:	
516		<p>AM 179</p> <p>(-a) in paragraph 3, point (c) is replaced by the following:</p>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
517		“(c) the <i>consolidated annual activity report on Europol’s activities</i> , referred to in <i>point (c) of Article 11(1)</i> , with a <i>detailed section on Europol’s activities in and results obtained in processing complex datasets</i> ;		<p>TM 06/12/2021: COM: EP wording is fine; activity report mirrors single programming document; no operational data are included; currently, the text is shared with the JPSG anyway</p> <p><i>CSL: sensitive issue; <u>CSL will prepare compromise wording which is clearer regarding the info to be provided regarding the processing of complex dataset</u></i></p> <p>Presidency compromise suggestion (6/12/2021):</p> <p>“(c) the <i>consolidated annual activity report on Europol’s activities</i>, referred to in <i>point (c) of Article 11(1)</i>, including relevant information on Europol’s activities in and results obtained in processing large datasets;</p>
518	(a) in paragraph 3, the following points (f) to (i) are added:		(a) in paragraph 3, the following points (f) to (i) are added:	
519	“(f) annual information about the number of cases in which Europol issued follow-	AM 180 (f) annual information about the number of cases in	“(f) annual information pursuant to Article 26(11) about the number of cases in which	<p>TM 06/12/2021:</p> <p>COM: follow-up and own initiative requests are a remnant from early</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
	up requests to private parties or own-initiative requests to Member States of establishment for the transmission of personal data in accordance with Article 26, including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks;	which Europol issued follow-up requests to private parties or own-initiative requests to Member States of establishment for the transmission of personal data in accordance with <i>Article 26, relevant details on the private parties concerned and an assessment of the effectiveness of cooperation, and</i> specific examples of cases demonstrating why these requests were necessary <i>and proportionate</i> for Europol to fulfil its objectives and tasks;	Europol issued follow-up requests to private parties or own-initiative requests to Member States of establishment for the transmission of personal data in accordance with <u>on the personal data exchanged with private parties pursuant to Article 26 and Article 26a,</u> including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks; <u>examples shall be anonymized insofar as personal data is concerned;</u>	drafting; anonymisation requirement is fine - does not mean absolute cap; concerns that EP's proposal could jeopardize cooperation if sensitive data from private parties are included EP: ok to delete references to follow-up/own initiative requests; info on private parties needs to be sufficiently detailed; anonymisation of examples is acceptable <u>Rapporteur's proposal (07/12/2021): add content of PRES proposal in line 527 to the text:</u> “(f) annual information <u>pursuant to Article 26(11)</u> about the number of cases in which Europol issued follow-up requests to private parties or own-initiative requests to Member States of establishment for the transmission of personal data in accordance with <u>on the personal data exchanged with private parties pursuant to Article 26, and Article 26a and Article 26b,</u> including <u>an assessment of the effectiveness of cooperation, and</u> specific examples of cases demonstrating why these requests were necessary <u>and proportionate</u> for Europol to fulfil its objectives and tasks, <u>and, as regards personal</u>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p><i>data exchanges pursuant to Article 26b, the number of children identified as a result of those exchanges to the extent that this information is available to Europol; <u>examples shall be anonymized insofar as personal data is concerned;</u></i></p> <p><u>Presidency compromise suggestion (6/12/2021):</u></p> <p>“(f) annual information <u>pursuant to Article 26(11)</u>about the number of cases in which Europol issued follow-up requests to private parties or own initiative requests to Member States of establishment for the transmission of personal data in accordance with <u>on the personal data exchanged with private parties pursuant to Article 26 and Article 26a,</u> including <u>an assessment of the effectiveness of cooperation and</u> specific examples of cases demonstrating why these requests were necessary <u>and proportionate</u> for Europol to fulfil its objectives and tasks; <u>examples shall be anonymized insofar as personal data is concerned;</u></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
520	(g) annual information about the number of cases where it was necessary for Europol to process personal data outside the categories of data subjects listed in Annex II in order to support Member States in a specific criminal investigation in accordance with Article 18a, including examples of such cases demonstrating why this data processing was necessary;	AM 181 (g) annual information about the number of cases where it was necessary for Europol to process personal data outside the categories of data subjects listed in Annex II in order to support Member States in a specific criminal investigation in accordance with Article 18a, <i>alongside information on the duration and outcomes of the processing</i> , including examples of such cases demonstrating why this data processing was necessary <i>and proportionate</i> ;	(g) annual information about the number of cases where it was necessary for Europol to process personal data outside the categories of data subjects listed in Annex II in order to support Member States in a specific criminal investigation in accordance with Article 18a, including examples of such cases demonstrating why this data processing was necessary; <u>examples shall be anonymized insofar as personal data is concerned</u> ;	<u>TM 06/12/2021:</u> CSL and EP texts should be merged (g) annual information about the number of cases where it was necessary for Europol to process personal data outside the categories of data subjects listed in Annex II in order to support Member States in a specific criminal investigation in accordance with Article 18a, <i>alongside information on the duration and outcomes of the processing</i> , including examples of such cases demonstrating why this data processing was necessary <i>and proportionate</i> ; <u>examples shall be anonymized insofar as personal data is concerned</u> ;
521		AM 182 (g a) <i>annual information about transfers of personal data to third countries and international organisations pursuant to Article 25(1) broken down per legal basis, and on the number of cases in which the Executive Director authorised, pursuant to Article</i>		<u>TM 06/12/2021:</u> COM is fine with the EP text; CSL positive scrutiny to be checked internally p.m.: following agreement to insert Art. 25(4a), info on the use of this legal basis should also be covered

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>25(5), the transfer or categories of transfers of personal data related to a specific ongoing criminal investigation to third countries or international organisations, including information on the countries concerned and the duration of the authorisation;</i>		
522	(h) annual information about the number of cases in which Europol issued alerts in the Schengen Information System in accordance with Article 4(1)(r), and the number of ‘hits’ these alerts generated, including specific examples of cases demonstrating why these alerts were necessary for Europol to fulfil its objectives and tasks;	AM 183 (h) annual information about the number of cases in which Europol issued alerts in the Schengen Information System in accordance with Article 4(1)(r) <i>per category of alert and in aggregate</i> , the number of ‘hits’ these alerts generated <i>per category of alert and in aggregate</i> , including specific examples of cases demonstrating why these alerts were necessary for Europol to fulfil its objectives and tasks, <i>the number of objections by Member States to proposals by Europol to issue an alert, and, where this information is available to Europol, the number of investigations initiated and convictions as a</i>	(h) annual information about the number of cases in which Europol issued alerts in the Schengen Information System in accordance with Article 4(1)(r), and the number of ‘hits’ these alerts generated, including specific examples of cases demonstrating why these alerts were necessary for Europol to fulfil its objectives and tasks; <u>examples shall be anonymized insofar as personal data is concerned;</u>	<u>TM 06/12/2021:</u> Pending outcome on Art. 4(1)(r)

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>result of those alerts;</i>		
523	(i) annual information about the number of pilot projects in which Europol processed personal data to train, test and validate algorithms for the development of tools, including AI-based tools, for law enforcement in accordance with Article 33a, including information on the purposes of these projects and the law enforcement needs they seek to address.”;	AM 184 (i) annual information about the number of research and innovation projects in which Europol processed personal data to train, test and validate algorithms for the development of tools, including AI-based tools, for law enforcement in accordance with Article 18(2)(e), including information on the purposes of these projects, <i>the categories of personal data processed, the additional safeguards used, including data minimisation, the law enforcement needs they seek to address, the outcome of the projects and, where the projects resulted in law enforcement tools, information on the deployment of the tools in the Member States alongside their effectiveness;</i>	(i) annual information about the number of research and innovation pilot projects in which Europol processed personal data to train, test and validate algorithms for the development of tools, including AI-based tools, for law enforcement undertaken in accordance with Article 33a, <u>including information on the purposes of these projects and the law enforcement needs they seek to address.”;</u>	<u>TM 06/12/2021:</u> CSL: last part of EP AM is problematic; proposal to accept deletion proposed by CSL and to otherwise use EP text until ‘[...] outcome of the projects’ COM: deployment in MS cannot be reported by Europol as Europol lacks the necessary information <u>EP to check internally</u> <u>Possible compromise</u> (i) annual information about the number of research and innovation projects in which Europol processed personal data to train, test and validate algorithms for the development of tools, including AI-based tools, for law enforcement undertaken in accordance with Article 18(2)(e), including information on the purposes of these projects, <i>the categories of personal data processed, the additional safeguards used, including data minimisation, the law enforcement needs they seek to address, the outcome of the projects</i>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				and, where the projects resulted in law enforcement tools, information on the deployment of the tools in the Member States alongside their effectiveness;
524		AM 185 <i>(ia) annual information about the number of cases in which Europol made use of temporary processing in accordance with Article 18(6a) and, where applicable, the number of cases in which the maximum processing period was prolonged;</i>		<u>TM 06/12/2021:</u> CSL: processing would be a burden for Europol; COM: no issue with the substance; data is collected automatically <u>CSL to check internally</u>
525		AM 186 <i>(ib) annual information on the number and types of cases where special categories of personal data were processed, pursuant to Article 30(2);</i>		<u>TM 06/12/2021:</u> <u>CSL to check internally</u> <u>COM agrees with EP amendment</u>
526		AM 187 <i>(i c) annual information about the number of cases in which Europol processed personal data in accordance with Article 26a;</i>		<u>TM 06/12/2021:</u> Line should be looked at together with line 519; COM agrees with EP amendment on the substance, but covered in 519

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				<p><u>Presidency suggestion</u> <u>(6/12/2021): delete this EP AM as covered in line 519</u></p>
527		<p>AM 188</p> <p><i>(id) annual information about the number of cases in which Europol processed personal data in accordance with Article 26b, including, to the extent that this information is available to Europol, the number of children identified and saved as a result of the processing of personal data to prevent the dissemination of child sexual abuse material.”;</i></p>		<p><u>TM 06/12/2021:</u></p> <p>Line should be looked at together with line 519;</p> <p>CSL is opposed to number of children ‘saved’; will propose COMP wording</p> <p>COM: difficult to add number of children saved; children ‘identified’ could be used</p> <p><u>Rapporteur’s proposal</u> <u>(07/12/2021): delete wording in this line (included in line 519)</u></p> <p><u>Presidency compromise suggestion (6/12/2021):</u></p> <p><i>(id) annual information about the number of cases in which Europol processed personal data in accordance with Article 26b, including, to the extent that this information is available to Europol, the number of children identified and saved as a result of the processing of personal data to</i></p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
				prevent the dissemination of child sexual abuse material.”;
528		AM 189 <i>(a a) paragraph 5 is replaced by the following:</i>		
529		“5. The JPSG may draw up summary conclusions on the political monitoring of Europol's activities, <i>including specific recommendations to Europol</i> , and submit those conclusions to the European Parliament and national parliaments. The European Parliament shall forward them, for information purposes, to the Council, the Commission and Europol.”		<u>TM 06/12/2021:</u> CSL to check internally
530		AM 190 <i>(37 a) the following Article 52a is inserted</i>		
531		“Article 52a		<u>Political trilogue 30/11/2021 (part of the governance package):</u> COM proposal to attach consultative forum to the JPSG

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
532		<i>Consultative Forum</i>		Political trilogue 30/11/2021 (part of the governance package): COM proposal to attach consultative forum to the JPSG
533		<i>1. A consultative forum shall be established by Europol to assist it by providing independent advice in fundamental rights matters upon request. The Executive Director and the Management Board, in coordination with the Fundamental Rights Officer, may consult the consultative forum on any matter related to fundamental rights.</i>		<p>TM 06/12/2021: COM compromise wording for lines 533 and 534 (CSL and EP to check):</p> <p>1. A consultative forum shall be established by Europol the JPSG to assist it by providing independent advice in fundamental rights matters upon request. The JPSG and the Executive Director and the Management Board, in coordination with the Fundamental Rights Officer may consult the consultative forum on any matter related to fundamental rights.</p> <p>Political trilogue 30/11/2021 (part of the governance package): COM proposal to attach consultative forum to the JPSG</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
534		<p><i>2. Europol shall invite independent experts, the European Union Agency for Fundamental Rights and other relevant organisations in the field of fundamental rights to participate in the consultative forum. On the basis of a proposal from the Fundamental Rights Officer that was made after consulting the Executive Director, the Management Board shall decide on the composition of the consultative forum, its working methods and the terms of the transmission of information to the consultative forum."</i></p>		<p>Political trilogue 30/11/2021 (part of the governance package): COM proposal to attach consultative forum to the JPSG:</p> <p>2. Europol <u>The JPSG</u> shall invite independent experts, the European Union Agency for Fundamental Rights and other relevant organisations in the field of fundamental rights to participate in the consultative forum. On the basis of a proposal from the Fundamental Rights Officer that was made after consulting the Executive Director, the Management Board <u>The JPSG</u> shall decide on the composition of the consultative forum, its working methods and the terms of the transmission of information to the consultative forum.</p>
535		<p><i>AM 191</i></p> <p><i>(37 b) Article 52b (new) is inserted:</i></p>		
536		<p><i>"Article 52b</i></p>		
537		<p><i>Accountability</i></p>		
538		<p><i>Europol shall be accountable to the European Parliament,</i></p>		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>to the Council and to the Commission in accordance to this Regulation."</i>		
539	(38) in Article 57, paragraph 4 is replaced by the following:		(38) in Article 57, paragraph 4 is replaced by the following:	
540	<p>“4. Europol may benefit from Union funding in the form of contribution agreements or grant agreements in accordance with its financial rules referred to in Article 61 and with the provisions of the relevant instruments supporting the policies of the Union. Contributions may be received from countries with whom Europol or the Union has an agreement providing for financial contributions to Europol within the scope of Europol’s objectives and tasks. The amount of the contribution shall be determined in the respective agreement.”;</p>	<p>AM 192</p> <p>4. Europol may benefit from Union funding in the form of contribution agreements or grant agreements in accordance with its financial rules referred to in Article 61 and with the provisions of the relevant instruments supporting the policies of the Union. <i>Europol may, within the scope of its objectives and tasks, receive contributions from European Economic Area (EEA) countries with which it or the Union has concluded an agreement on operational cooperation providing for financial contributions in accordance with point (a) of Article 20(2) of Commission Delegated Regulation (EU) 2019/715^{1a} or from third</i></p>	<p>“4. Europol may benefit from Union funding in the form of contribution agreements or grant agreements in accordance with its financial rules referred to in Article 61 and with the provisions of the relevant instruments supporting the policies of the Union. Contributions may be received from countries with whom Europol or the Union has an agreement providing for financial contributions to Europol within the scope of Europol’s objectives and tasks. The amount of the contribution shall be determined in the respective agreement.”;</p>	<p>Political trilogue (30/11/2021) - part of governance package: COM proposal to delete the text</p>

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<p><i>countries which fulfil one of the conditions listed in Article 25(1) of this Regulation for specific projects in accordance with point (d) of Article 20(2) of Commission Delegated Regulation (EU) 2019/715.</i></p> <p>The amount of the contribution shall be determined in the respective agreement. <i>The amount, origin and purpose of such contributions shall be included in the annual accounts of Europol and clearly detailed in the annual report on the Europol's budgetary and financial management referred to in Article 60(2)."</i></p>		
541		<p>AM 193</p> <p><i>(38 a) In Article 58, paragraph 9 is replaced by the following:</i></p>		
542		<p>"For any building projects likely to have significant implications for Europol's budget, Commission Delegated Regulation (EU) 2019/715 shall apply."</p>		
543		AM 194		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
		<i>(38 b) In Article 60, paragraph 4 is replaced by the following:</i>		
544		4. On receipt of the Court of Auditors' observations on Europol's provisional accounts for year N pursuant to Article 246 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council^{25a} , Europol's accounting officer shall draw up Europol's final accounts for that year. The Executive Director shall submit them to the Management Board for an opinion.”		
545		<hr/> ^{25a} Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013 (EU) No 1301/2013, (EU) No 1303/2013. (EU)No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No282/2013, and		

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		<i>Decision No 541/2014/EU and repealing Regulation (EU) No 996/2012(OJ L 122, 10.5.2019, p.1)."</i>		
546		<i>AM 195</i> <i>(38 c) In Article 60, paragraph 9 is replaced by the following:</i>		
547		9. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N, as laid down in <i>Article 106 (3) of Delegated Regulation (EU) 2019/715</i> .		

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
548	(39) Article 61 is amended as follows:		(39) Article 61 is amended as follows:	
549	(a) Paragraph 1 is replaced by the following:		(a) Paragraph 1 is replaced by the following:	
550	“1. The financial rules applicable to Europol shall be adopted by the Management Board after consultation with the Commission. They shall not depart from Commission Delegated Regulation (EU) No 2019/715 unless such a departure is specifically required for the operation of Europol and the Commission has given its prior consent.”		“1. The financial rules applicable to Europol shall be adopted by the Management Board after consultation with the Commission. They shall not depart from Commission Delegated Regulation (EU) No 2019/715 unless such a departure is specifically required for the operation of Europol and the Commission has given its prior consent.”	
551	(b) paragraphs 2 and 3 are replaced by the following:		(b) paragraphs 2 and 3 are replaced by the following:	
552	“2. Europol may award grants related to the fulfilment of its objectives and tasks as referred to in Articles 3 and 4.”;	AM 196 2. Europol may award grants related to the fulfilment of its tasks as referred to in Article 4. ;	“2. Europol may award grants related to the fulfilment of its objectives and tasks as referred to in Articles 3 and 4.”;	

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
553	3. Europol may award grants without a call for proposals to Member States for performance of activities falling within Europol's objectives and tasks.”;	AM 197 3. Europol may award grants without a call for proposals to Member States for performance of activities falling within <i>the scope of</i> Europol's tasks <i>set out in Article 4.</i> ;	3. Europol may award grants without a call for proposals to Member States for performance of activities falling within Europol's objectives and tasks.”;	
554	(c) the following paragraph 3a is inserted:		(c) the following paragraph 3a is inserted:	
555	“3a. Where duly justified for operational purposes, financial support may cover the full investment costs of equipment, infrastructure or other assets.”;	AM 198 3a. Where duly justified for operational purposes, <i>following authorisation by the Management Board</i> , financial support may cover the full investment costs of equipment <i>and</i> infrastructure.;	“3a. Where duly justified for operational purposes, financial support may cover the full investment costs of equipment, infrastructure or other assets. <u>The Management Board may specify the criteria under which financial support may cover the full costs in the financial rules in accordance with paragraph 1</u> ”;	
556	(40) Article 67 is replaced as follows:	AM 199 <i>Deleted</i>	(40) Article 67 is replaced as follows:	
557	“Article 67	<i>Deleted</i>	“Article 67	<u>Provisionally agreed to delete the provision</u> Deleted

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
558	Security rules on the protection of classified information and sensitive non-classified information	<i>Deleted</i>	Security rules on the protection of classified information and sensitive non-classified information	Deleted
559	1. The Europol shall adopt its own security rules that shall be based on the principles and rules laid down in the Commission's security rules for protecting European Union classified information (EUCI) and sensitive non-classified information including, inter alia, provisions for the exchange of such information with third countries, and processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443 (44) and (EU, Euratom) 2015/444 (45). 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.	<i>Deleted</i>	1. The Europol shall adopt its own security rules that shall be based on the principles and rules laid down in the Commission's security rules for protecting European Union classified information (EUCI) and sensitive non-classified information including, inter alia, provisions for the exchange of such information with third countries, and processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443 (44) and (EU, Euratom) 2015/444 (45). 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.	Deleted

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560	2. The Management Board shall adopt the Europol's security rules following approval by the Commission. When assessing the proposed security rules, the Commission shall ensure that they are compatible with Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444."	<i>Deleted</i>	2. The Management Board shall adopt the Europol's security rules following approval by the Commission. When assessing the proposed security rules, the Commission shall ensure that they are compatible with Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444."	Deleted
561		<i>AM 200</i> <i>(40a) In Article 68, paragraph 1 is replaced by the following:</i>		
562		"1. By... <i>[five years after entry into force of this Regulation]</i> and every five years thereafter, the Commission shall ensure that an evaluation assessing, in particular, the impact, effectiveness and efficiency of Europol and of its working practices is carried out. The evaluation may, in particular, address the possible need to modify the structure, operation, field of action and tasks of Europol, and the financial implications of any such modification."		<u>TM 06/12/2021:</u> COM: starting a new 'review cycle' with this amending regulation; changes brought by the amending Regulation would not be taken into account CSL: to check internally; 'this Regulation' has to be replaced by reference to amending regulation

	COM (13908/20 + COR 1)	EP (A9-9999/2021)	Council	Provisional agreement
563	(41) in Article 68, the following paragraph 3 is added:		(41) in Article 68, the following paragraph 3 is added:	
564	<p>“3. The Commission shall, by [three years after entry into force of this Regulation], submit a report to the European Parliament and to the Council, assessing the operational benefits of the competences provided for in Article 18(2)(e) and (5a), Article 18a, Article 26 and Article 26a with regard to Europol’s objectives. The report shall cover the impact of those competences on fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights.”.</p>	<p>AM 201</p> <p>3. The Commission shall, by [two years after entry into force of this Regulation], submit a report to the European Parliament and to the Council, evaluating and assessing the operational benefits of the competences provided for in this Regulation, in particular with regard to Article 4(1)(r), Article 18(2)(e), Article 18(6a), and Articles 18a, 26, 26a and 26b with regard to Europol’s objectives as set out in Article 3. The report shall assess the impact of those competences on fundamental rights and freedoms as enshrined in the Charter. It shall also provide a cost-benefit analysis of the extension to Europol’s mandate.”.</p>	<p>“3. The Commission shall, by [three years after entry into force of this Regulation], submit a report to the European Parliament and to the Council, assessing the operational benefits impact of the implementation of the competences provided for in Article 18(2)(e) and (5a), Article 18a, Article 26 and Article 26a with regard to Europol’s objectives. The report shall cover the impact of those competences on fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights.”.</p>	<p><u>TM 06/12/2021:</u></p> <p>CSL could accept EP text; asks for ‘benefits’ to be replaced by ‘impact’; prefers three years given that processing activities might last a while</p> <p>COM: prefers three years</p> <p><u>EP: to check internally</u></p> <p><u>Possible compromise:</u></p> <p>The Commission shall, by [three years after entry into force of this Regulation], submit a report to the European Parliament and to the Council, evaluating and assessing the operational benefits impact of the implementation of the competences provided for in this Regulation, in particular with regard to Article 4(1)(r), Article 18(2)(e), Article 18(6a), and Articles 18a, 26, 26a and 26b with regard to Europol’s objectives as set out in Article 3. The report shall assess the impact of those competences on fundamental rights</p>

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				and freedoms as enshrined in the Charter. <i>It shall also provide a cost-benefit analysis of the extension to Europol's mandate.</i>
565	<i>Article 2</i>		<i>Article 2</i>	
566	This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .		This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
567	This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.		This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.	
568	Done at Brussels,		Done at Brussels,	
569	For the European Parliament For the Council		For the European Parliament For the Council	
570	<i>The President</i> <i>The President</i>		<i>The President</i> <i>The President</i>	