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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation - Written comments

Delegations will find attached a compilation of the Member States' initial comments regarding the Commission proposal for a Regulation amending Regulation (EU) 2016/794 (Europol Regulation).

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AUSTRIA

Austria may present some remarks concerning the Articles 26, 26a and 33a of the draft:

Art. 26 and 26a:

We always supported the enhancement of information exchange between Europol and private parties and we acknowledge that Europol will have the possibility to process data obtained from private parties on the substance, we also welcome that the “resubmission problem” is solved with the new Article 26. We regret that Europol will not be allowed to request personal data directly from private parties. If a procedure of consent from the Member States would be foreseen in the regulation this should be feasible.

We propose to mention Article 26 in Article 18 Purpose of information processing activities.

Art. 33a:

Generally we support this article, regulating the data processing for innovation and research purpose, but we would like to ask you about the deletion of the “old” Article 33 in the Europol Regulation? Will there be a new Article 33? We are of the opinion, that this article, containing regulations concerning developments of technical tools and procedures for lawful data processing still remains very useful.

Two additional remarks:

Austria would strongly prefer if Europol attends the (virtual) meetings.

Europol can support delegations with its know how directly in the discussions if needed.

BELGIUM

Written comments by Belgium concerning the proposed revision of the Europol Regulation (EU) 2016/794

We welcome the negotiations on the proposed revision of the Europol Regulation (EU) 2016/794, based on the European Commission's document COM(2020)796 as presented in Council document 13908/20. As requested by the Portuguese Presidency we have some general preliminary comments to share as well as some questions, which indicate certain desired clarifications or concerns. Most of these however will require consultations with the European Commission and/or Europol. We thank you for your consideration.

In general, we consider the proposed changes to the Europol Regulation to reflect very well the current concerns and necessities in relation to Europol's support to the MS. For example, we are pleased to note a delicate balance that has been sought in relation to the cooperation with private parties, the processing of large data sets and the request to the MS to initiate investigations. We also welcome the codification of several important existing and emerging tasks, such as concerning EMPACT or in relation to research and innovation.

We would like to focus on the articles to be discussed during the meeting of 25 January 2021. Our preliminary concerns regarding the first building block are the following:

- As for the determining the **private parties** in question we note that there is no definition or limitation to them, we welcome exchanging of views on this extremely important matter. We would like clarifications by the Commission and/or Europol on the intended cooperation with financial institutions. We believe the topic of Europol's cooperation with FIUs is closely linked to the debate on Europol's cooperation with private parties. It is necessary to receive further information about *how* this current proposal will coexist with and not duplicate the way in which FIUs function amongst themselves and cooperate with reporting entities. In this regard we are also very interested to hear about FR's idea during the meeting of 17 December 2020 about including the content of recital 33 in relation to Europol's cooperation with financial intelligence units into article 7. We note that the Commission is not eager to describe in an article what Europol cannot do, but we do find it essential to not interfere with FIU functioning through the rules on Europol's cooperation with private parties. As an alternative it thus seems logical as well as necessary to exclude obliged entities from the private parties Europol can cooperate with directly. Moreover, when it concerns information from financial institutions that is not subjected to FIU reporting (namely non-suspicious activity), how will Europol process such information based on the current proposal? The proposed articles concerning processing information outside Annex II does not seem to allow for this.
- Next to this, regarding the possibility of Europol to request a MS to contact a private party (namely article 26(6a)), we would like to enquire whether this process is also subjected to same reasoning of §2 of article 26 that the concerned MS has/have to resubmit the

information to Europol via their national units. The text of paragraph 6a namely doesn't seem to suggest such a reasoning.

- We would welcome a clarification on the reason for deleting the phrasing concerning "the circumstances allow(ing) a clear presumption of consent" in article 26(5).
- Furthermore, we would welcome clarifications concerning the use of the terminology and the differences between "transmission" and "transfer" throughout the text, namely in article 26(5), taking into account the terminology used in Regulation (EU) 2018/1725.
- We would welcome clarifications on the added value and the intended impact of the proposed changes concerning **terrorist content online**. How does article 4(1)(m) relate to article 4(1)(u)?

Moreover, we already want to highlight certain other aspects concerning the other topics:

- As regards article 18a, namely the possibility of Europol to **process large data files** related to an "investigative case file" we wonder how this phrasing relates to proactive investigations. The definition does not seem to clarify this aspect, which we however consider to be important. Throughout the text we also note other phrasings, such as "specific criminal investigation" (in article 51(3)(g)) and "individual investigation or specific project" (in article 21(8)). We wonder about the meaning of these types of phrasing and how they are linked to the concept of the "investigative case file".
- We note in recital 21 on **giving evidence in proceedings** the condition of taking into account "applicable use restrictions", which we of course welcome. In article 20(5) however we do not see any reference to such restrictions and we wonder whether a reference to for example article 19(2) could be considered.
- We do not consider beneficial to refer in recital 7 concerning **EMPACT** to the certain terminology which is more suited to be flexible and based on Council conclusions. We thus suggest to amend the last sentence as follows: *"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."*

In conclusion, we look forward to fruitful discussions within the LEWP in order to strengthen the Europol mandate where appropriate. As requested by the Portuguese Presidency, we will express our position on the proposed information alert by Europol in the Schengen Information System within the IXIM community before addressing this topic again in the LEWP.

CROATIA

PROPOSAL AMENDMENTS TO THE EUROPOL REGULATION:

1. Enabling Europol to cooperate effectively with private parties
2. Enabling Europol to process large and complex datasets
3. Strengthening Europol's role on research and innovation
4. Enabling Europol to enter data (alarms) in the SIS
5. Strengthening Europol's cooperation with third countries
6. Strengthening Europol's cooperation with the European Public Prosecutor's Office (EPPO)
7. Clarifying Europol's role in initiating investigations
8. Strengthening the data protection framework applicable to Europol

BLOCK 1

Currently, Europol is not allowed to exchange data directly with private parties (this primarily relates to banks, telecommunication operators and ISPs), which results in the lack of exchanges or leads to slow-paced exchanges. This is above all important when obtaining data relating to criminal investigations concerning several Member States. We are therefore of the opinion that amendments should allow for direct exchange.

BLOCK 2

In August 2020, EDPS issued a warning to Europol regarding the processing and analysis of large sets of computer data. The EDPS considers that Europol may not process and analyze all data on criminal offences submitted to Europol by Member States (obtained through court orders), because such data could include data from entities that have no connections to a criminal offense. Europol was given 6 months to align its systems and policies with the EDPS's recommendations. The discussions at LAWP showed that the EC and the Member States consider that the EDPS's opinion and recommendation are illogical and display a misunderstanding of Europol's legal framework, the origin and structure of the data as well as the purposes of data analysis. In this context, the HR representatives underlined that attempts should be made during the remainder time until the EDPS's deadline expires to clarify to the EDPS all the details of the process on which EDPS had given their opinion, since suspending the analysis of large sets of computer data done by the Europol would bring extremely adverse effects for the Member States. At the same time, while we deem Europol's legal framework in this area to be at satisfactory level, we are in favor of its amendments in order to

define more clearly the data handling, the implementation of data protection and limits for data storage.

In short, we support the proposed change to the rules (restrictions) of data processing, because, in processing large sets of (computer) data, Europol is not in a position to distinguish immediately whether individual data relate to entities connected to a criminal offence (the only data that may be processed). We also support extending the storage limits of such large datasets to make them available in subsequent judicial proceedings.

BLOCK 3

Proposal is to strengthen the Europol's role in a way that Europol could assist the EC and the Member States in identifying, developing and using new technologies under its mandate. We support these changes.

BLOCK 4

Proposal is to allow Europol to enter data (alarms) in the SIS. These alarms would be based on information received from third countries that do not have signed agreements on cooperation with Europol and would target potential terrorists and sex offenders. We consider it essential, from an operational standpoint, to make relevant data held by third States available to Member States. An alternative to this proposal could be to instruct Member States to use, thoroughly, Interpol databases into which those third countries enter the same data. If the proposal is accepted, it will be imperative to establish a verification system to check how reliable the third country data are and to verify the ownership of such data in terms of possibility of its further use. We are not against, but also not thrilled about this proposal. If an initiative is accepted, we will closely monitor its implementation.

BLOCK 5

With the adoption of the current Europol Regulation, the power to conclude operational agreements on cooperation with third countries was transferred from Europol to the European Commission. Although such move was reasonable, in reality it turned out that the European Commission has not been able to conclude a single Europol cooperation agreement with third countries for more than three years. Needs for such agreements exist, and we therefore consider it necessary to modify the rules on the conclusion of operational agreements with third countries within the amendments to the Europol Regulation. In practice, this would suggest reinstating part of the power to conclude an agreement to the Europol Management Board, in which the European Commission would also have

the right to vote on this matter. It remains to be seen how this issue will be resolved, but we are supportive of the initiative.

BLOCK 6

We consider it necessary to regulate Europol's cooperation with the EPPO within the Regulation and the Working Arrangement. As regards Europol's obligation to report likely criminal offences to the EPPO, we want to avoid possible overlaps with Member States' obligations, and we are therefore in favor of clear and precise outlines of this obligation through amendments to the Regulation.

BLOCK 7

Currently, Europol may request Member States to initiate an investigation only if there is a cross-border element of the criminal offence. Proposal is to remove this restriction on offences that are detrimental to the interests of the EU. We support this proposal.

BLOCK 8

Proposed are specific changes to the rules on the protection of personal data, the most important being the alignment with the 'police' Directive. We support this proposal.

CZECH REPUBLIC

CZ comments on Revision of Europol Regulation

Please find interim Czech comments on document 13908/20. Further comments may be raised following ongoing scrutiny of the text:

Article 4 (1) (h) – (q), (s) - (u)

These points are superfluous and inconsequential. There is no need to stipulate particular examples of how the Europol supports Member State law enforcement. For example, it is not necessary to legislate that Europol supports cross-border cooperation of special intervention units; on the contrary, it puts in doubt any other support that is not explicitly included. In other cases, there are concrete rules on Europol action in separate instruments, such as TCO draft Regulation. Therefore, these points should be deleted.

Article 4 (4a)

This point diverges too far from the core tasks of Europol in that it mandates Europol to draw up and implement research and innovation programmes.

Article 6

CZ is strictly against such enhanced requests, which go beyond the mandate of Europol and are unnecessary.

Article 18

The stipulation of the extended period of provisional processing of data in paras 5a appears to exclude, in practice, processing of data that typically falls outside the categories in Annex II, such as data from suspicions transactions (cooperation between FIUs). CZ believes it would be better to simply provide for exception from Annex II at least in systematically important cases, similarly to Art. 18a(1).

Article 20a

The application of Art. 21(6), or Art. 19(2)(3), should be unambiguously stipulated to all types of cooperation with EPPO.

Article 25

While CZ supports appropriate strengthening of Europol's ability to transfer personal data to third countries, neither this amendment nor recital 23 provide sufficient explanation of how the approval of category of transfers differs from approval of transfers and when such an approval can be used on case-by-case basis in a specific situation.

Article 26

Council Conclusions 14745/19 should form a basis of this proposal. In certain instances the consent or similar involvement of relevant Member State should be required (e.g. in para 5(a) or (d)). It should be clearly stipulated that cooperation of private parties is voluntary.

Obviously, the para 6a goes too far. The purpose of the Europol is to support the Member States, not the other way around.

Article 26a

This provision should be limited to Europol's obligations under draft TCO Regulation. For example, para 5 goes too far and interferes with the responsibilities of Member States.

(end of file)

FRANCE

NOTE DE COMMENTAIRES DES AUTORITÉS FRANÇAISES

Les autorités françaises prient la présidence de bien vouloir trouver ci-après leurs commentaires écrits suite à la réunion de groupe LEWP du 17 décembre 2020, en particulier sur les aspects liés à l'échange de vues sur la révision du règlement d'Europol.

1. Rappel des éléments portés par la délégation française lors de la réunion du LEWP du 17 décembre 2020.

Remarque générale sur la proposition de révision du règlement de l'agence Europol :

Les autorités françaises souhaitent faire part de leur accueil favorable à ce projet de la Commission qui propose de nombreuses solutions juridiques permettant de répondre aux besoins de l'agence dans son rôle de soutien aux services répressifs des États membres. En effet, l'agence Europol doit être pleinement intégrée dans une architecture de sécurité intérieure européenne solide et contribuer directement au développement d'une meilleure autonomie stratégique de l'Union en matière de sécurité intérieure. Cette proposition pose des bases très encourageantes.

S'agissant de la gestion des données :

Les autorités françaises accueillent favorablement les dispositions permettant à Europol de traiter des données obtenues auprès de parties privées, des données de masse ou des données obtenues dans le cadre d'enquêtes de grande ampleur répondant à des enjeux opérationnels centraux. Elles garantissent la pérennité du modèle de fonctionnement de l'agence dans le cadre des obligations posées par le CEPD, vis-à-vis du règlement 2016/794. Plus particulièrement, les autorités françaises saluent la proposition de la Commission qui prend en compte les risques pesants sur l'articulation efficace avec les cadres nationaux LBC/FT – et par voie de conséquence sur les dispositifs relatifs aux cellules de renseignement financier - en cas d'ouverture sans réserve des échanges entre Europol et les parties privées, par l'insertion d'un considérant spécifique sur ce point (considérant 33) mais qui pourrait être renforcé par une mention dans un article.

Enfin, les autorités françaises font part de leur étonnement sur le fait que le régime d'Europol en matière d'échanges de données avec des États tiers tel que proposé ne soit pas aligné sur celui d'autres agences JAI en utilisant toutes les potentialités prévues par le règlement 2018/1725 (articles 47 et 48 notamment).

Sur le rôle d'Europol en matière d'innovation :

Les autorités françaises marquent leur soutien au rôle octroyé à Europol en matière d'innovation. Le positionnement de l'agence s'en trouve renforcé ce qui permettra de soutenir et d'apporter un appui utile aux services répressifs. À cet égard, et pour placer l'agence dans une perspective plus globale, outre le laboratoire d'innovation, le Hub d'innovation JAI aurait mérité d'être mentionné.

Sur la relation avec le parquet européen :

La relation avec le parquet européen était fortement attendue et correspond au rôle que les États membres ont entendu confier à Europol dans ces **champs de compétence déterminants** pour

l'avenir des forces de sécurité intérieure de l'Union. Une attention particulière demeurera néanmoins sur la rédaction de l'alinéa 4 de l'article 20(a) portant sur les signalements à EPPO de faits susceptibles de relever de sa compétence.

S'agissant de l'inscription de signalements dans le SIS par l'agence :

Les autorités françaises notent la persistance de la proposition de la Commission s'agissant de la possibilité d'octroyer un **rôle à l'agence dans l'incrémentation du SIS en créant une catégorie pour information**. Elles réaffirment leur **opposition** sur ce point et font remarquer **qu'une telle proposition ne répond pas aux difficultés opérationnelles soulevées** lors des précédentes réunions du LEWP mais aussi dans le cadre des débats en TWP sur le protocole d'insertion des CTE dans le SIS et que le coût particulièrement élevé que représente sa mise en œuvre sans réelle plus-value opérationnelle ne plaide pas en sa faveur.

S'agissant de la gouvernance d'Europol :

L'extension des prérogatives d'Europol ne s'accompagne pas d'un renforcement de sa gouvernance au profit des États membres dans le conseil d'administration, qui doit notamment **être impliqué dans les décisions de transfert de données**.

Concernant les aspects financiers :

Les autorités françaises font part de leur **étonnement concernant l'ajout d'une disposition (article 57) permettant aux États membres ou États tiers (ayant signé un accord avec l'UE ou l'agence) de contribuer directement au budget d'Europol**. Cette nouvelle disposition n'a jamais été évoquée auparavant et introduit un mécanisme qui est susceptible de perturber considérablement l'équilibre sur lequel Europol est construite. Les autorités françaises souhaitent donc obtenir des précisions sur ce sujet et notamment sur l'existence de mécanismes similaires dans d'autres agences et sur les fora au cours desquelles cette proposition a été évoquée précédemment.

Concernant l'articulation des compétences de l'Agence avec les compétences des États membres ou d'autres entités européennes :

De nouvelles compétences d'Europol apparaissent telle que la production de l'analyse de la menace, alors que cette tâche est dévolue à l'IntCen. Les autorités françaises sollicitent des précisions sur la plus-value attendue d'Europol sur ce volet.

2. Analyse détaillée de la proposition de la commission (considérants et articles)

De manière plus détaillée, les autorités françaises souhaitent faire part de leurs avis et commentaires concernant les considérants et les articles de la proposition de révision du règlement de l'agence dans le tableau ci-dessous :

Commentaires des autorités françaises sur la proposition de refonte du règlement Europol de la Commission européenne

I) CONSIDERANTS

Proposition de la Commission européenne	Commentaires des autorités françaises
<u>Considérant 4:</u> As Europe faces 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 crisis situations. In the Union, the 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	Tout d'abord, les autorités françaises soulignent qu'il convient de définir les termes "situations de crise" qui ne recoupent pas les mêmes acceptions d'un Etat membre à un autre. Elles rappellent également qu'il convient d'être prudent sur le soutien que pourrait apporter Europol aux unités spécialisées d'intervention. Les récentes difficultés rencontrées avec le réseau ATLAS doivent impérativement être surmontées avant tout approfondissement du soutien de l'agence à ce type d'unité.
<u>Considérant 6 :</u> 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.	Le terme de « <i>high risks criminals</i> » est à rapprocher du concept de HVT utilisé par Europol. S'agissant d'un article qui doit fixer les missions et objectifs généraux de l'agence, on peut s'interroger sur la pertinence d'intégrer ce niveau de détail qui relève d'un processus de priorisation des dossiers. Cette précision n'a vocation ni à apporter des clarifications légales ni à codifier des tâches existantes. S'agissant de l'utilisation de la notion de risque, le SOP relatif à la sélection des High Value Target renvoie à des prérequis qui relèvent davantage d'une menace concrète que du risque : <i>"The prerequisite for the initiation of the identification and selection process of the High Value Target is that Europol's criteria for the prioritization of the cases are met and the potential target is:</i> <i>- Suspected of planning or preparing of one or more of the offenses defined in Article 3 of the Europol Regulation during the past year; or</i> <i>- Suspected to have committed one or more of the offences defined in Article 3 of the Europol Regulation during the past year. "</i>

	Les critères d'objectivation du niveau de la cible sont également révélateurs de la réalité d'une menace alors que la notion de risque sous-tend une notion de probabilité. Les autorités françaises proposent donc de supprimer cette référence aux « <i>high-risks criminals</i> ». Toutefois, si la référence à ce niveau de détail devait être maintenue, il serait souhaitable de faire référence à la menace criminelle plutôt qu'au risque et ce en cohérence avec le termes utilisé habituellement « <i>Threat assessment</i> » pour l'acronyme SOCTA. Soit la proposition de rédaction suivante : <i>To combat 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.</i>
<u>Considérant 8:</u> 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 Council⁵⁵⁵⁶, 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	Les autorités françaises sont défavorables à ce considérant conformément aux positions déjà exprimées sur cette problématique. Elles tiennent à rappeler qu'Europol doit contribuer à faire en sorte que les États membres inscrivent eux-mêmes toutes les données des États tiers dans le SIS. Par ailleurs, un protocole concernant l'inscription des combattants terroristes étrangers dans le SIS a été négocié en TWP.

<u>Considérant 9:</u> Europol has an important role to play in support of the evaluation and monitoring mechanism to verify the application of the Schengen acquis 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.	Les autorités françaises s'interrogent sur la plus-value d'une référence à ce règlement ainsi que sur le rôle qu'Europol pourrait prendre dans ce dispositif déjà prévu dans le règlement 1053/2013. Le cadre actuel impliquant une évaluation entre « pairs » apparaît satisfaisant et les autorités françaises rappellent que la référence à ce règlement n'a pas été inscrite par le législateur en 2016 lors de l'élaboration du règlement actuel. De même, il convient de s'interroger sur la façon dont ce considérant s'articule avec les objectifs fixés par l'analyse d'impact initiale sur le renforcement du mandat d'Europol.
<u>Considérant 10 :</u> Risk assessments are an essential element of foresight to anticipate new 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.	La proposition de reformulation vise à bien prendre en compte l'évolution de la menace qui vient compléter l'évolution des risques. Soit la proposition de rédaction suivante : <i><u>Criminal threat</u> and risk assessments are an essential element of foresight to anticipate new trends and to address new threats in serious crime and terrorism. To support the Commission and the Member States in carrying out effective <u>criminal threat and</u> risk assessments, Europol should provide analysis based on the information it holds on criminal phenomena and trends.</i>
<u>Considérant 11:</u> 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	Les autorités françaises rappellent que l'agence Europol n'est pas la seule agence de l'UE intervenant dans le domaine de la sécurité intérieure. À ce titre, elles estiment qu'une telle mission pourrait être dévolue au pôle d'innovation (Hub) actuellement en cours de création. Cette structure distincte d'Europol – qui n'en assure que le soutien et le secrétariat – apparaît comme plus pertinente pour éviter les redondances et mutualiser les efforts. La rédaction de ce considérant devrait donc être adaptée en mettant en avant l'approche globale de mise en relation des agences et réseaux

from that programme in accordance with the conflict of interest principle.	souhaitée par la création du pôle d'innovation. Soit la proposition de rédaction suivante : <i>Europol in association with relevant security agencies 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>
<u>Considérant 12:</u> 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 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	Tout d'abord, les autorités françaises rappellent que le règlement 2019/452 cité ne fait pas référence à l'agence Europol ce qui pourrait créer une situation d'insécurité juridique quant à la mise en pratique d'une telle mission. Ensuite, le considérant introduit la notion « d'ordre public » pour laquelle l'agence Europol n'est pas compétente. Enfin, un conflit d'intérêt pourrait émerger quand il s'agira pour l'agence d'étudier des investissements directs étrangers qui concernent le développement/l'utilisation de technologies par Europol comme peut le démontrer le développement du Poste de commandement virtuel (VCP) d'Europol. Pour rappel le VCP est une technologie développée par une entreprise dont l'établissement légal se situe hors de l'Union européenne. Les autorités françaises s'interrogent enfin sur la façon dont ce considérant s'articule avec les objectifs fixés par l'analyse d'impact initiale sur le renforcement du mandat d'Europol.

Considérant 13 : Europol provides specialised expertise for countering serious crime and terrorism. Upon request by a Member State, Europol staff should be able to provide operational support to that Member State’s law enforcement authorities on the ground in operations and investigations, in particular by facilitating cross-border information exchange and providing forensic and technical support in operations and investigations, including in the context of joint investigation teams. Upon request by a Member State, Europol staff should be entitled to be present when investigative measures are taken in that Member State and assist in the taking of these investigative measures. Europol staff should not have the power to execute investigative measures.	Les autorités françaises demeurent attentives à la proposition de la Commission permettant au personnel d’Europol d’assister les autorités compétentes dans la mise en place de « mesures d’enquête ». Si ce point n’apparaît pas bloquant en l’état, il importe que la Commission détaille davantage cette disposition et fournisse des cas concrets d’application.
<u>Considérant 14:</u> 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-border nature. Europol should inform Eurojust of such requests.	Dans la continuité de la note de commentaire des autorités françaises du 30 octobre 2020, les autorités françaises sont défavorables à la révision de l’article 6 du règlement Europol actuel. En effet, cette disposition n’est quasiment pas mise en œuvre et les enquêteurs, en lien avec leurs autorités judiciaires, doivent disposer de la maîtrise de l’ouverture de leurs enquêtes. Les autorités françaises rappellent tout de même que, interrogées sur le sujet, ni la Commission, ni Europol n’ont pu fournir de statistiques concernant le recours à l’article 6 du règlement Europol actuel. Toutefois, les autorités françaises constatent que la nouvelle rédaction de l’article 6 tient compte de certaines réserves exposées et ne prévoit pas de pouvoir d’enquête d’initiative pour l’agence. Elles relèvent enfin que la préservation de l’efficacité des choix des stratégies d’entrave milite en faveur de la maîtrise du dialogue entre services enquêteurs et autorités judiciaires.

<u>Considérant 15:</u> 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.	Les autorités françaises proposent que ce considérant soit modifié comme suit : <u>“Upon request from Member States, Europol may provide its support 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>
<u>Considérant 18:</u> 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 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.	Les autorités françaises soulignent qu'une telle demande risque de réduire le nombre de contributions nationales à Europol si les outils mis à disposition par l'agence ne facilitent pas la catégorisation des données attendues dans ce considérant. La responsabilité devrait être ainsi partagée entre les États membres responsables des contributions et Europol, en charge de l'administration des outils utilisés par les enquêteurs pour soumettre lesdites contributions. Ce considérant pourrait en conséquence être retravaillé en vue de rappeler la responsabilité d'Europol de proposer des outils adaptés aux contraintes pesant sur les États membres. Dès lors, il appartient à Europol de faire évoluer les outils de communication mis à disposition des EM en conséquence. La prise en compte de ces contraintes ne doit pas peser sur les EM. Proposition d'amendement en ce sens : <i>To ensure that any data processing is necessary and proportionate, Member States should ensure compliance with national and Union law, provided that Europol delivers adequate tools to Member states when 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.</i>

	<i>Europol should document that assessment</i> 
Considérant 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.	Les autorités françaises attirent l’attention sur ce considérant qui semble prévu pour couvrir juridiquement le rôle de soutien d’Europol pour les dossiers impliquant des interceptions de masse telles que celles permises par l’opération EMMA. Concernant le dernier alinéa de ce considérant, il doit être rappelé que la conservation des données ou l’accès au dossier dans ce cadre ne peuvent être autorisés que par l’autorité judiciaire mandante.
Considérant 22: Europol and the European Public Prosecutor’s Office (‘EPPO’) established by Council Regulation (EU) 2017/193958, should	Les autorités françaises rappellent qu’au titre de l’article 102 du règlement Parquet européen, Europol fournit un soutien à cet organe pour <u>les enquêtes</u> et non pour les poursuites.

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 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 EPPO. Europol should also be able to support criminal investigations by the EPPO by way of analysis of large and complex datasets.	
<u>Considérant 24:</u> 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.	Les autorités françaises doutent que la modification mineure du régime dérogatoire de l'article 25 du règlement Europol puisse résoudre le problème de fond lié à la rigidité du régime juridique applicable aux relations d'Europol avec les parties privées. Pour mémoire, la France soutient « l'option 2 » proposée par la Commission européenne : <i>ajouter la possibilité, en l'absence d'une coopération opérationnelle structurelle visée à l'option 1, de transférer des données à caractère personnel dans les cas où l'existence de garanties appropriées dans le pays tiers, en ce qui concerne la protection des données à caractère personnel, est prévue dans un instrument juridiquement contraignant (intervention législative).</i> Les autorités françaises proposent que le régime juridique des relations d'Europol avec les pays

	tiers soit assoupli tout en permettant un contrôle strict des États membres et l'assurance du respect des codes de gestion dans cet échange de données entre l'agence et les États tiers. Ces échanges devront impérativement respecter les principes de la règle du tiers service. Également, les autorités françaises s'interrogent sur la notion « categories of transfers » ajoutée par la Commission à l'article 25 paragraphe 5 et souhaiterait disposer d'éclaircissements. Au titre de la gouvernance des EM sur Europol, et au regard de la règle du tiers service/propriété de l'information, ces derniers doivent être impliqués dans le dispositif de validation visant au transfert de données. Proposition d'amendements : Serious crime and terrorism often have links beyond the territory of the Union. Europol can exchange personal data with third countries <i>within the agreement of the management board</i> while safeguarding the protection of privacy and fundamental rights and freedoms of the data subjects.
<u>Considérant 25:</u> 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.	Les autorités françaises notent que le considérant 25 ne mentionne que le soutien d'Europol aux États membres pour coopérer avec les parties privées prestataires de services transfrontaliers. Les articles modifiés figurant dans la révision du Règlement vont cependant bien au-delà de cet objectif, soulevant un problème de cohérence entre les objectifs et la proposition. Aussi les autorités françaises s'interrogent sur la possibilité de mieux inscrire cet objectif dans les articles liés à l'échange d'information entre Europol et les parties privées (articles 26 et 26a).

Considérant 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 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 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.

La notion d'autorité compétente telle que définie à l'article 2 du Règlement Europol et évoquée au considérant 31 (partie en rouge) de la présente proposition de révision entraîne des interrogations sur les autorités effectivement concernées.

Les autorités françaises aimeraient obtenir des clarifications sur la nature des autorités compétentes nationales qui devraient pouvoir obtenir des données personnelles des parties privées pour le compte d'Europol.

En effet, les échanges d'information entre Europol et certaines autorités publiques font l'objet de dispositions distinctes, notamment concernant les cellules de renseignement financier, celles énoncées par la Directive 2019/1153 fixant les règles facilitant l'utilisation d'informations financières aux fins de la prévention ou de la détection de certaines infractions pénales (dont la transposition doit intervenir au plus tard le 1er août 2021). Les autorités françaises marquent leur attachement à ce que ces cadres existants soient respectés.

Considérant 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 Council⁵⁹. Europol should continue to cooperate with FIUs in particular via the national units.

Les autorités françaises saluent la proposition de la Commission qui prend en compte les risques pesant sur l'articulation efficace avec les cadres nationaux LBC/FT – et par voie de conséquence sur les dispositifs relatifs aux cellules de renseignement financier - en cas d'ouverture sans réserve des échanges entre Europol et les parties privées, par l'insertion d'un considérant spécifique sur ce point (considérant 33) mais qui pourrait être renforcé par **une mention dans un article** (cf. proposition sur article 1 (4)).

Considérant 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 multiple online service providers.	Les autorités françaises soulignent la nécessité de clairement définir la notion de « situation de crise ». Le passage en situation de crise pourrait être décidé ad-hoc après concertation des États membres (exemple : attentats sur le territoire européen concernant plusieurs États membres)
Considérant 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 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.	Les autorités françaises s'étonnent de l'absence de référence aux autres agences JAI dans ce considérant consacré à l'innovation. Elle rappelle que la Commission, dans sa stratégie de sécurité intérieure pour l'Union 2020-2025 évoquait dans la lignée de la révision du règlement Europol « <i>la création d'un pôle d'innovation européen pour la sécurité intérieure qui serait chargé de définir des solutions conjointes à des défis communs en matière de sécurité et face à des opportunités que les États membres ne peuvent exploiter seuls</i> ». Elle précisait que ce pôle travaillerait avec Frontex, CEPOL, eu-LISA et le Centre commun de recherche (JRC). Afin de mutualiser les moyens humains et financiers, les autorités françaises souhaitent que l'ensemble des agences JAI soient impliquées dans le développement d'outils technologiques. Elles ajoutent que le CEPD et la FRA doivent pouvoir être impliquées dans ce processus si nécessaire. Proposition d'amendement : “To that end, Europol should <i>in close</i>

	<i>cooperation with relevant Union bodies</i> support Member States in the use of emerging technologies in preventing and countering crimes falling within the scope of Europol's objectives.”
Considérant 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 human centric artificial intelligence subject to robust safeguards in terms of security, safety and fundamental rights.	Les autorités françaises réitèrent leur commentaire précédent (considérant 37). et propose l'amendement suivant : <i>Europol should in close cooperation with relevant Union bodies 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 human centric artificial intelligence subject to robust safeguards in terms of security, safety and fundamental rights.</i>
<u>Considérant 40:</u> 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 with annual information on the use of these tools and capabilities and the result thereof.	Afin de suivre et d'enrichir les travaux de l'agence, cette information annuelle doit être communiquée aux États-membres. Les autorités françaises proposent de modifier le considérant comme suit : « <i>To enable effective political monitoring of the way Europol applies additional tools and capabilities, Europol should provide the Joint Parliamentary Scrutiny <u>Group and the Member States</u> with annual information on its use of these tools and capabilities and the result thereof</i> ».
Considérant 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	Les autorités françaises s'étonnent d'une telle proposition et rappellent que l'agence Europol ne peut voir se créer un lien de dépendance plus spécifique avec un État au prétexte qu'il contribuerait davantage à son budget que les autres. Cette situation serait préjudiciable à la fois pour les États-membres mais également pour l'image de l'agence et la confiance que les États-membres placent en elle. Elles souhaitent donc que la Commission soit interrogée sur l'existence d'un tel mécanisme

countries on the basis of financial agreements within the scope of its objectives and tasks.	dans d'autres agences de l'UE qui concerne non seulement les États-Membres mais également les États tiers. L'expérience acquise par les autorités françaises dans d'autres enceintes multilatérales où les États-membres financent les projets au cas par cas leur permet d'émettre d'importantes réserves sur ce mécanisme. Celui-ci créera inévitablement des déséquilibres forts, en matière d'influence, entre les États capables de financer des projets et ceux qui ne le peuvent ou ne le souhaitent pas. Enfin il doit être redouté que les projets soutenus par les États membres soient systématiquement soumis à des conditions de ressources dans les documents de programmation tandis que ceux portés par la Commission ou Europol seront considérés comme financés <i>ab initio</i>.
II) ARTICLES	
<u>Article – 1 (1) (c)</u> (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	Les autorités françaises jugent cette disposition restrictive et précise que d'autres agences JAI pourraient également transférer des dossiers d'enquête à Europol.
<u>Article 1 (2) (a) (i)</u> <u>Tasks</u> (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;	Les autorités françaises réitèrent leur commentaire précédent sur le considérant 4. De nouvelles tâches sont assignées à Europol, sans articulation avec les compétences des États membres ou avec d'autres entités européennes : quid de l'articulation avec l'IntCen ?

<u>Article 1 (2) (a) (iv):</u> (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 ;	(q) : CF commentaires sur le concept de « high risk ». Soit la proposition de rédaction suivante : (q) support Member States in identifying persons or groups whose involvement in crimes falling within the scope of Europol's mandate, as listed in Annex I, constitute a high criminal threat for security, and facilitate joint, coordinated and prioritised investigations ;
<u>Article 1 (2) (a) (iv)</u> <u>Tasks</u> (r) enter data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862, following consultation with the Member States in accordance with Article 7 of this Regulation, and under authorization 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 organizations within the meaning of Article 17(1)(b);	La délégation française notera la persistance de la proposition de la Commission s'agissant de la possibilité d'octroyer un rôle à l'agence dans l'incrémentation du SIS en créant une catégorie pour information. La délégation française réaffirmera son opposition sur ce point et fera remarquer qu'une telle proposition ne répond pas aux difficultés opérationnelles soulevées lors des précédentes réunions du LEWP mais aussi dans le cadre des débats en TWP sur le protocole d'insertion des CTE dans le SIS et que le coût particulièrement élevé que représente sa mise en œuvre sans réelle plus-value opérationnelle ne plaide pas en sa faveur.
<u>Article 1 (2) (a) (iv)</u> <u>Tasks</u> (s) support the implementation of the evaluation and monitoring mechanism under Council Regulation (EU) No 1053/2013 within the scope of Europol's objectives as set out in Article 3;	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 9. <u>Pour mémoire</u> : Les autorités françaises s'interrogent sur la plus-value d'une référence à ce règlement ainsi que sur le rôle qu'Europol pourrait prendre dans ce dispositif déjà prévu dans le règlement 1053/2013. Le cadre actuel impliquant une évaluation entre « pairs » apparaît satisfaisant et les autorités françaises rappellent que la référence à ce règlement n'a pas été inscrite par le législateur en 2016 lors de l'élaboration du règlement actuel. De même, il convient de s'interroger sur la façon dont ce considérant s'articule avec les objectifs fixés par l'analyse d'impact initiale sur le

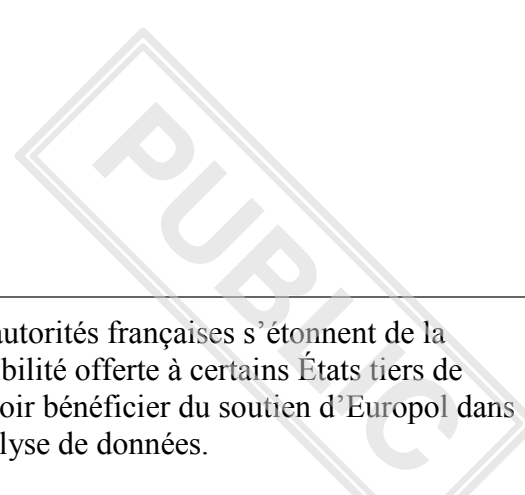
	renforcement du mandat d'Europol.
<u>Article 1 (2) (a) (iv)</u> <u>Tasks</u> (t) proactively monitor and contribute to research and innovation activities relevant to achieve the objectives set out in Article 3, support related activities of Member States, and implement its research and innovation activities regarding matters covered by this Regulation, including the development, training, testing and validation of algorithms for the development of tools	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 37. <u>Pour mémoire</u> : Les autorités françaises s'étonnent de l'absence de référence aux autres agences JAI dans ce considérant consacré à l'innovation.
<u>Article 1 (2) (d)</u> <u>Tasks</u> 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.	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 37. <u>Pour mémoire</u> : Les autorités françaises s'étonnent de l'absence de référence aux autres agences JAI dans ce considérant consacré à l'innovation.
<u>Article 1 (2) d)</u> <u>Tasks</u> 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 technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes covered by Article 3	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 12. <u>Pour mémoire</u> : les autorités françaises rappellent que le règlement 2019/452 cité ne fait pas référence à l'agence Europol ce qui pourrait créer une situation d'insécurité juridique quant à la mise en pratique d'une telle mission. Ensuite, le considérant introduit la notion « d'ordre public » pour laquelle l'agence Europol n'est pas compétente.

on the expected implications for security.	Enfin, un conflit d'intérêt pourrait émerger quand il s'agira pour l'agence d'étudier des investissements directs étrangers qui concernent le développement/l'utilisation de technologies par Europol comme peut le démontrer le développement du Poste de commandement virtuel (VCP) d'Europol. Pour rappel le VCP est une technologie développée par une entreprise dont l'établissement légal se situe hors de l'Union européenne. Les autorités françaises s'interrogent enfin sur la façon dont ce considérant s'articule avec les objectifs fixés par l'analyse d'impact initiale sur le renforcement du mandat d'Europol.
<u>Article 4 paragraph 5</u> <u>Tasks</u> 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.	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 13. <u>Pour mémoire :</u> Les autorités françaises demeurent attentives à la proposition de la Commission permettant au personnel d'Europol d'assister les autorités compétentes dans la mise en place de « mesures d'enquête ». Si ce point n'apparaît pas bloquant en l'état, il importe que la Commission détaille davantage cette disposition et fournisse des cas concrets d'application.
<u>Article 1 (3)</u> <u>Request by Europol for the initiation of a criminal investigation</u> 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.	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 14. <u>Pour mémoire :</u> Dans la continuité de la note de commentaire des autorités françaises du 30 octobre 2020, les autorités françaises sont défavorables à la révision de l'article 6 du règlement Europol actuel. En effet, cette disposition n'est quasiment pas mise en œuvre et les enquêteurs, en lien avec leurs autorités judiciaires, doivent disposer de la maîtrise de l'ouverture de leurs

	enquêtes. Les autorités françaises rappellent tout de même que, interrogées sur le sujet, ni la Commission, ni Europol n'ont pu fournir de statistiques concernant le recours à l'article 6 du règlement Europol actuel. Toutefois, les autorités françaises constatent que la nouvelle rédaction de l'article 6 tient compte de certaines réserves exposées et ne prévoit pas de pouvoir d'enquête d'initiative pour l'agence. Elles relèvent enfin que la préservation de l'efficacité des choix des stratégies d'entrave milite en faveur de la maîtrise du dialogue entre services enquêteurs et autorités judiciaires.
<u>Article 1(4)</u> <u>Article 7 :</u> “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. * 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). ** 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	Les autorités françaises suggèrent de modifier à l'article 7 paragraphe 8 la phrase qui indique que les CRF sont autorisées à coopérer avec Europol par la phrase suivante : « les CRF sont habilitées à donner suite aux demandes dûment justifiées présentées par Europol ». Cela permettrait de mieux retranscrire la Directive (UE) 2019/1153 dont est issue cette modification. Soit la proposition de rédaction suivante : <i>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 <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 regarding financial information and analyses, within the limits of their mandate and competence.</i>

prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).”	
<u>Article 1(5)</u> <u>Purposes of information processing activities</u> (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.	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 15. Pour <u>mémoire</u> : Les autorités françaises proposent que ce considérant soit modifié comme suit : <u>“Upon request from Member States, Europol may provide its support 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>
<u>Article 1 (6)</u> <u>Art 18a</u> <u>Information processing in support of a criminal investigation</u> 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: (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 pursuant to point (c) of Article 18(2); and (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.	

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. 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. 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 where necessary for the support of the specific criminal investigation for which they were provided.	
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 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 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. 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.	
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 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	Les autorités françaises s'étonnent de la possibilité offerte à certains États tiers de pouvoir bénéficier du soutien d'Europol dans l'analyse de données. Sur le plan juridique, la mise en œuvre d'une telle proposition nécessiterait de réviser l'ensemble des accords opérationnels de l'agence en prenant en compte ces nouvelles dispositions Par ailleurs, les autorités françaises considèrent que si ces transmissions de données personnelles n'ont pas donné lieu à une ouverture d'enquête par un Etat membre, une telle proposition implique pour Europol la nécessité de soutenir une enquête criminelle menée par un État tiers. Or, Europol est une agence qui soutient <u>en priorité les États membres</u> dans leurs enquêtes. Il est donc indispensable que, si les données fournies par un Etat tiers devaient être ainsi exploitées, cela ne devrait se faire qu'au profit d'un ou plusieurs États-membres ayant ouvert une enquête miroir permettant d'exploiter ces données. Les autorités françaises rappellent l'importance de la règle du tiers service/propriété de l'information s'agissant des données communiquées à Europol. Dès lors, les échanges relatifs à des données en provenance des EM doivent strictement respecter ce cadre.
<u>Article 1(8)</u> <u>Article 20a</u> <u>Relations with the European Public Prosecutor's Office</u>	La relation avec le parquet européen était fortement attendue et correspond au rôle que les États membres ont entendu confier à Europol dans ces champs de compétence déterminants pour l'avenir des forces de sécurité intérieure de l'Union. Une attention particulière demeurera néanmoins sur les conditions d'encadrement de l'alinéa 4 de l'article 20(a) portant sur le

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. 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. 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. 4. Europol shall without undue delay report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence.	transfert de données à l'EPPO. Les autorités françaises rappellent les dispositions de l'article 102 du règlement Parquet européen qui disposent que le Parquet européen <i>« peut également demander à Europol de fournir une aide à l'analyse dans le cadre d'une enquête particulière conduite par le Parquet européen »</i>. Elles estiment par conséquent que le terme de « poursuites » doit être retiré de cette proposition d'article. Les autorités françaises s'interrogent également sur la compatibilité entre le quatrième alinéa de l'article 20(a) et le principe de propriété de l'information tel que prévu par le règlement Europol. Enfin, un cinquième alinéa pourrait être proposé invitant Europol à produire devant le CAE, un rapport annuel sur la relation entre l'agence et l'EPPO.
<u>Article 1 (11)</u> <u>Article 25</u> Transfer of personal data to third countries and international organisations (a) In paragraph 5, the introductory phrase is replaced by the following: "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: (b) In paragraph 8, the following sentence is deleted : Where a transfer is based on paragraph 5,	Les autorités françaises soulignent que la Commission européenne n'a pas modifié le régime général de l'échange de données par Europol avec les États tiers. Les autorités françaises estiment que l'article 25 ne permet pas de pallier aux rigidités du cadre juridique actuel en la matière. Enfin, elles proposent que le cadre relatif à l'échange de données personnelles entre Europol et les États tiers soit calqué sur celui d'Eurojust.

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, about the justification for the transfer and about the operational personal data transferred.	
<u>Article 1 (12)</u> <u>Article 26 :</u> “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: (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 (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 (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: (i) the transmission or transfer concerns an individual and specific case; (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 (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: (i) the transmission or transfer follows a receipt of personal data directly from a private party in accordance with paragraph 2 of this Article;	Les autorités françaises s’interrogent sur les conditions mentionnées au paragraphe 5 de l’article 26 et sur la nature cumulative de ces dernières.

(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; (iii) the missing information, which Europol may refer to in these notifications, is strictly limited to what is necessary for Europol to identify the national units concerned.	
<u>Article 26 :</u> 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: (a) necessary in order to protect the vital interests of the data subject or another person; or (b) necessary in order to safeguard legitimate interests of the data subject; or (c) essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; 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 (e) 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 for which Europol is competent. Personal data shall not be transferred if the Executive Director determines that fundamental rights and freedoms of the data subject	Il est précisé à l'article 26, paragraphe 6 (e) que les transferts ne doivent pas être systématiques, massifs ou structurels. Les autorités françaises aimeraient obtenir des clarifications sur ce point et notamment afin de savoir s'il concerne uniquement les demandes d'information d'Europol aux parties privées située hors de l'UE ou dans un pays sans accord en matière de protection des données personnelles ou s'il s'applique à l'ensemble des échanges entre Europol et les parties privées.

concerned override the public interest in the transfer referred to in points (d) and (e). Transfers shall not be systematic, massive or structural.”	
<u>Article 1 (20)</u> <u>Article 34 :</u> (a) paragraph 1 is replaced by the following: “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 unlikely to result in a risk to the rights and freedoms of natural persons.”; (b) paragraph 3 is deleted;	La modification de l’article 34 et la suppression de la notification à l’EDPS ne sont pas documentées dans la présentation des modifications apportées à l’actuel règlement. Une réinsertion de cette notification à l’EDPS est donc souhaitable pour l’instant. Soit la proposition de rédaction suivante : In the event of a personal data breach, Europol shall without undue delay notify <u>the EDPS as well as</u> 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.”;
<u>Article 1 (37)</u> <u>Article 51</u> Joint Parliamentary scrutiny (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;	Les autorités françaises demandent la suppression de cet article, lequel ne tient pas compte du protocole validé en COSI.
<u>Article 1 (38)</u> <u>Article 57</u> <u>Budget</u> 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	Les autorités françaises réitèrent leurs commentaires précédents sur le considérant 41. <u>Pour mémoire :</u> Les autorités françaises s’étonnent d’une telle proposition et rappellent que l’agence Europol ne peut voir se créer un lien de dépendance plus

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.	spécifique avec un État au prétexte qu'il contribuerait davantage à son budget que les autres. Cette situation serait préjudiciable à la fois pour les États-membres mais également pour l'image de l'agence et la confiance que les États-membres placent en elle. Elles souhaitent donc que la Commission soit interrogée sur l'existence d'un tel mécanisme dans d'autres agences de l'UE qui concerne non seulement les États-Membres mais également les États tiers. L'expérience acquise par les autorités françaises dans d'autres enceintes multilatérales où les États-membres financent les projets au cas par cas leur permet d'émettre d'importantes réserves sur ce mécanisme. Celui-ci créera inévitablement des déséquilibres forts, en matière d'influence, entre les États capables de financer des projets et ceux qui ne le peuvent ou ne le souhaitent pas. Enfin il doit être redouté que les projets soutenus par les États membres soient systématiquement soumis à des conditions de ressources dans les documents de programmation tandis que ceux portés par la Commission ou Europol seront considérés comme financés <i>ab initio</i>. La définition « 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 » mériterait d'être précisée.
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Article 1 (40) Article 67 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. 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.	Les autorités françaises remarquent que, là où les règles de sécurité d'Europol étaient auparavant alignées sur les règles de sécurité du Conseil (décision 2013/488/UE), elles sont désormais basées sur les règles de sécurité de la Commission. En outre, la Commission est dotée d'un pouvoir important, puisqu'elle approuve les règles de l'agence avant qu'elles ne soient adoptées. Pourtant, il nous semble ressortir du règlement Europol que l'agence répond au Conseil, et non à la Commission (c'est notamment le Conseil qui nomme le directeur exécutif, et qui peut lui demander de lui rendre compte). Les autorités françaises s'interrogent sur les raisons de ce changement envisagé par la proposition de la Commission.
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3. Propositions d'articles additionnels

Afin d'enrichir cette proposition, les autorités françaises souhaitent proposer l'ajout de certains articles.

1) Renforcer la confiance des services opérationnels dans l'agence Europol

a) **Permettre aux services opérationnels de demander à Europol de recueillir des données personnelles auprès de parties privées**

Les autorités françaises proposent l'ajout d'un article 26 (b) : La création d'un article 26b vise à demander à Europol, sur sollicitation de **deux ou plusieurs États membres enquêtant sur un même dossier**, de recueillir des données personnelles auprès d'une entreprise privée dont le principal établissement légal se trouve sur ou hors du territoire de l'Union européenne. L'agence communiquera ensuite aux Unités nationales les informations captées et pourra elle-même les intégrer dans ses bases de données.

Exemple : dans le cadre d'une enquête commune (ECE) entre la France, la Belgique et les Pays-Bas en matière de trafic de stupéfiants, les États membres travaillant sur un même dossier pourraient exiger d'Europol – via SIENA et un modèle de demande préétabli – que l'agence les représente et puisse exiger des données personnelles détenues par un GAFAM (Google, Apple, Facebook, Amazon, Microsoft).

Justifications : Europol – agence représentant 500 M de citoyens – disposerait d'un poids démographique beaucoup plus important qu'un État membre seul en termes de représentation et de négociation avec des entreprises mondialisées. En outre, elle déchargerait les services opérationnels de demandes chronophages et fastidieuses.

Proposition d'article : Nouvel article 26 (b) : Demande de données personnelles avec les parties privées :

« Dans le cadre d'une enquête relevant des infractions pour lesquelles l'agence est compétente et touchant au moins deux États-membres, Europol peut, à la demande d'un État membre solliciter d'une partie privée, dont le principal établissement légal est établi sur ou en dehors du territoire de l'Union européenne, la communication de données personnelles pertinentes. »

« Europol peut, dans la mesure où cela est nécessaire à l'accomplissement de ses missions traiter ces données personnelles et les communiquer aux Unités nationales concernées ».

b) Assurer la transparence sur le traitement par Europol des informations transmises par les services opérationnels

Les autorités françaises proposent de modifier l'article 19 du règlement Europol consacré au principe de propriété de l'information transmise à Europol. Elle propose que soit clairement inscrite dans cet article **la notion de propriété de l'information** et souhaite, à l'instar de ce qui se pratique actuellement pour les codes de gestion, que le service contributeur puisse faire savoir à l'agence s'il souhaite que la donnée transmise puisse être ultérieurement transférée aux institutions, agences, et organes de l'Union européenne.

Justification : Cette disposition permettra aux services contributeurs de s'assurer que les informations soient traitées de manière transparente. Cette disposition permettra en outre de renforcer la confiance des enquêteurs dans l'agence et de ce fait d'augmenter leurs contributions.

Proposition : article 19 : détermination des finalités du traitement d'informations par Europol et des limitations en la matière

1. Tout État membre, organe de l'Union, pays tiers ou organisation internationale qui fournit des informations à Europol définit la ou les finalités du traitement de ces données conformément à l'article 18. À défaut, Europol, en accord avec le fournisseur des informations concerné, traite ces informations en vue de déterminer leur pertinence ainsi que la ou les finalités de leur traitement ultérieur. Europol ne peut traiter ces informations à des fins autres que celles pour lesquelles elles ont été fournies que si le fournisseur des informations l'y autorise.

BIS. Tout Etat Membre qui fournit des informations à Europol et qui définit la finalité du traitement de ces données doit au préalable s'assurer de leur propriété sur celles-ci.

2. ***Dans le respect du principe de propriété de l'information*** les États membres, les organes de l'Union, les pays tiers et les organisations internationales peuvent notifier, lors de la fourniture des informations à Europol, toute limitation de l'accès à ces données ou de leur utilisation, en termes généraux ou spécifiques, y compris en ce qui concerne leur transfert, effacement ou destruction. ***Les États membres peuvent notifier dès la fourniture d'information toute limitation de l'accès à ces données ou de leur utilisation, en termes généraux ou spécifiques lorsque ces données sont susceptibles d'être transmises aux institutions, agences et organes de l'Union européenne.*** Lorsque la nécessité d'appliquer ces limitations apparaît après la fourniture des informations, ils en informent Europol. Europol se conforme à ces limitations.

Dans des cas dûment justifiés, Europol peut soumettre les informations extraites auprès de sources accessibles au public à des limitations d'accès ou d'utilisation par les États membres, les organes de l'Union, les pays tiers et les organisations internationales.

2) renforcer le contrôle des États membres sur l'agence

- a) **Clarifier le nombre d'informations échangées par Europol avec les parties privées et les États tiers**

Les autorités françaises proposent un nouvel article 7 (12) consacré aux informations personnelles échangées par Europol avec les États tiers et les parties privées avec l'établissement d'un rapport annuel sur les informations échangées par Europol avec les États membres et les États tiers.

Justification: elles considèrent que les nouvelles missions dévolues à Europol doivent être accompagnées d'un plus grand contrôle des États membres.

Proposition de rédaction de l'article 7 (12) : Informations échangées par Europol avec les États tiers et les parties privées

« Europol rédige un rapport annuel portant sur la nature et le volume des données personnelles fournies à Europol par les États tiers et les parties privées sur la base des critères d'évaluation quantitatifs et qualitatifs fixés par le conseil d'administration. Ce rapport annuel est transmis au Parlement européen, au Conseil, à la Commission et aux parlements nationaux ».

b) Permettre aux États de disposer d'informations claires et précises sur les activités de l'agence

Les autorités françaises proposent de créer un nouvel article 7 (bis) afin de permettre aux États membres de disposer du maximum d'informations pour le bon suivi des travaux de l'agence. A l'instar de ce qui se pratique pour le Groupe parlementaire conjoint de surveillance JPSCG, elles proposent la création d'un cadre dédié aux questions des États membres pour lesquelles Europol devra présenter des réponses claires et précises. A l'heure actuelle, les États membres sont confrontés à une agence qui ne répond pas toujours avec précision aux questions posées.

Justification : les autorités françaises considèrent que certaines questions posées par les États membres à l'agence trouvent des réponses insatisfaisantes.

Proposition de rédaction de l'article 7 bis: Contrôle opérationnel et stratégique d'Europol

« Europol met en place toutes les mesures nécessaires pour permettre à chaque Etat membre de disposer des informations opérationnelles et stratégiques nécessaires au contrôle de l'ensemble de ses activités.

Le Conseil d'administration, sur proposition du directeur exécutif, adopte des règles internes permettant aux États membres de disposer de ces informations ».

3) Ressources humaines

En mars 2020 Europol nous informait que depuis 2010, **51 contrats à durée indéterminés (CDI)** avaient été accordés (47 TA et 4 CA). Pour la seule année 2019, 18 CDI ont été accordés et se répartissent à des niveaux d'encadrement élevé (AD 07 à AD 10). Les autorités françaises considèrent que la pérennisation d'emplois est une pratique dangereuse quand il s'agit de poste de direction, dit de haut niveau d'encadrement.

Sans préjudice des règles européennes en la matière et suivant une analyse juridique précise qu'il conviendra de mener, les autorités françaises proposent que la question de la « CDisation » des postes à haut niveau soit discutée et **encadré** dans le règlement Europol.

GERMANY

Please find below Germany's written submission for agenda item 5 – Revision of the Europol Regulation – of the last LEWP meeting:

We would like to thank the Commission for this comprehensive legislative proposal that addresses important and pressing challenges not only for Europol, but also for law enforcement authorities throughout the EU. The assessment of the proposal and the consultations within the federal government are still pending. Therefore, Germany has to enter a general scrutiny reservation and will confine itself to the following initial comments:

For MS it is essential that Europol has the ability to effectively support national law enforcement authorities. This has been demonstrated by the discussion in the LEWP over the past months and years. And this is shown by the fact that the EU Home Affairs Ministers – in their Declaration on the Future of Europol – have jointly and unanimously defined the MS's core ideas for the future development of Europol.

Based on our initial assessment, Germany welcomes the general aim of the proposal insofar as it addresses existing deficits and legal challenges. This includes, in particular, the aims of remedying the EDPS' admonishment regarding the "Europol's big data challenge", improving cooperation with Private Parties and third countries as well as strengthening Europol's ability to support MS in the field of innovation. We still have to check the suitability of the proposals to achieve these objectives in detail. As for the further discussion of the proposal in the LEWP, we think it is urgent to reach first and tangible results on these crucial issues. We also take positive note of the proposed increase in resources.

Besides that, our first assessment of the proposal already led to certain points that we are not convinced of at this stage and that certainly require further examination and discussion:

The first point is the proposed active role of Europol in the SIS. We would like to raise a scrutiny reservation on this point, as we will have to look further into this issue. We still have general questions, including the following:

- We would like to ask the Commission how they assess compatibility with EU primary law, liability for the alerts and for the follow up measures taken.
- It would be interesting to learn how the Commission envisages resolving the following situation: If the information available is not sufficient for Member States to issue an alert, on what basis would Europol be able to issue an alert in such a case? What is the added value of Europol issuing an alert compared with a solution in which Europol analyses and prepares the information for the Member States in such a way that it is sufficient for issuing an alert, which the Member States can then issue themselves?
- In addition, we would be interested in how the Commission assesses the practical use of a separate alert category for Europol, when the question of how to deal with a hit is left to MS. How does the Commission assess the shift in responsibility vis-à-vis the general principles of the SIS, that include mutual trust in the decisions of law enforcement authorities of Member States and that the information in the system is actionable?

The second point relates to proposals that would give the Commission a right to issue instructions to Europol, i.e. in the context of preparing situational analyses or when it comes to evaluation research projects. This could undermine the independence of the agency and it also contradicts the clear positioning in the Ministerial Declaration.

The third point relates to the proposed cooperation with the EPPO insofar as it would go beyond the cooperation foreseen in the EPPO regulation.

The fourth point relates to the proposal to provide operational support to special intervention units. The Home Affairs Ministers have clearly stated that the agency should not have executive powers.

The fifth point concerns the numerous changes concerning data protection, including the reaction to the EDPS decision concerning “Europol’s big data challenge”. We still have to examine more closely whether the proposal appropriately addresses the concerns raised by the EDPS and at the same time ensures that Europol can continue to process big data in their support of Member States.

Lastly, we would be interested to hear the reasons why the proposal lacks an improvement of the structural exchange of personal data with third countries and did not try to find a solution that takes into account the conditions set out in the ECJ’s Schrems II decision. From an operational point of view, it seems urgently necessary to address this topic in the proposal, as no new third-country agreement has been concluded since the entry into force of the Europol Regulation in 2017 and therefore there was the conclusion in the recent discussions in LEWP that the current regime is dysfunctional.

Our further positioning will take place within the framework of discussions of the individual topics.

HUNGARY

Please find below the preliminary comments made by Hungary on the proposal for amending Regulation (EU) 2016/794. First of all we would like to stress that the Hungarian authorities are scrutinising the text of the regulation, and in this regard please consider our comments as initial ones.

In general Hungary agrees that the current Europol Regulation needs to be revised in a number of areas, as the challenges of recent years and the shortcomings identified in its implementation have made it clear that the Agency's role in supporting Member States can be implemented much more effectively, furthermore numerous tasks have arisen for Europol which need to be codified, for example strengthening cooperation with private parties and third countries is an urgent task. Having said this we would like to emphasize that by this regulation our aim should be to strengthen the core tasks of the agency and in this regard we consider it important to ensure the compliance with the Treaties and to avoid extending the mandate of the Europol to issues that fall within the exclusive competence of the Member States (such as the initiation/prioritisation of investigations).

However, in line with our preliminary observations, we would like to emphasize that we do not consider it acceptable that the revision of the Europol Regulation should go beyond the provisions set out in the EPPO Regulation. It is a matter of concern that, according to the draft text, Europol would be actively involved into EPPO procedures, as in our view, this would mean that Europol would be able to carry out its analysis based on its own initiative with the aim to suggest the initiation of investigations of the EPPO. In our view this could be considered as an indirect kind of “investigative” activity.

We are also concerned that the regulation would allow EPPO to have an indirect access to information stored in Europol's databases, as part of these information are provided by Member States which do not take part in the implementation of the EPPO regulation.

In our view, it is also worrying that, “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”. We think that this provision would allow the agency to set priorities for the Member States when it comes to investigations carried out in the territory.

Finally, we would like to emphasize that prior consultation of Member States would be essential when it comes to sharing data sharing with private parties especially when 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”.

ITALIAN CONTRIBUTIONS ON THE "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" TO BE DISCUSSED AT THE LEWP MEETING ON 28 JANUARY

DOC. ST.13908/20

PROPOSAL OF THE COMMISSION	ITALIAN COMMENTS
<u>With reference to recital 3:</u> <i><u>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.</u></i>	Italy believes that it is of utmost importance to recall the pivotal role that mafia-style and family-based criminal organizations have played in taking advantage of the opportunities of the health emergency and digitization. We therefore propose a revised version of recital 3: <i>These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal, mafia-style and family based organised crime groups that engage in a wide range of criminal activities.</i>
<u>With reference to recital 6:</u> <i>"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".</i>	Italy believes that with reference to the establishment of the Operational Task Forces (OTF) and the identification of the High Value Targets (HVT), it is of utmost importance to better define, in the proposal Regulation, the evaluation criteria and the selection procedures. Moreover Italy believes that in this part, as said with reference to recital 3, it would be pivotal to mention, mafia style and family based organised crime groups.

<u>With reference to recital 8 and the connected amendment of art.4 r)</u>	Italy will give its contribution when the SIS-Europol proposal will be discussed at the dedicated meeting of IXIM and LEWP. We can anticipate however that we believe that giving Europol such power is likely to alter excessively the SIS general balanced structure based on national judicial or LEAs decision for any SIS alert. Italy believes that the system currently in place ensures the certainty of the actions to be taken and creates a clear responsibility for the Member State concerned.
<u>With reference to recital 12 and connected new paragraph 4b of art.4</u> <i>“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.”</i>	Italy believes that UNEs and AROs should be explicitly involved in the screening of foreign direct investments. <i>Therefore we propose to rephrase the recital as follows:</i> <i>“Europol, through its UNEs and in collaboration with ARO Offices, 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.”</i>
<u>With reference to recital 15 and the connected new article 18 f)</u> <u>Recital 15:</u> <i>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>	Italy believes that the authorization to disclose information concerning investigative activities should be decided by the judicial authorities and investigators. In order to avoid confusion the text of recital 15 should clarify this aspect. Furthermore, we believe that any kind of support from Europol on activities related to informing the public should be only upon explicit support request coming from Member States. Moreover, we have to be cautious with this provision. We have a scrutiny reserve on this point in order to assess the actual need for a support from Europol in informing the public (especially for persons that are only suspects).

Art 18 f <i>“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.”</i>	Therefore we suggest to modify the text of recital 15 and Art 18f as follows: <u>Recital 15</u> <i>To support Member States in this task, Europol, upon competent national judicial authority permission, 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> <u>Art 18 f</u> <i>supporting Member States in informing the public, upon explicit request from Member States as well as authorization by the competent national judicial authority, 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</i>
<u>With reference to recital 33:</u> <i>(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.. Europol should continue to cooperate with FIUs in particular via the national units.</i>	Italy is in favour of this provision and strongly support it. Given its relevance, we would like it to be merged or incorporated under art 7 of the proposal. On top of that, Italy also believes that it would be very important that the new text explicitly refers to the principle that all cooperation between Europol and private parties should be in place in full respect of domestic legal framework. This addition is also motivated in order to align the text proposal with the principle set out under Directive 2019/1153. If agreed the new wording of Art 7 par 8 would be replaced by the following: <i>“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 without prejudice and respecting the domestic legal frameworks with Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European</i>

	<i>Parliament and the Council**, in particular via their national unit regarding financial information and analyses, within the limits of their mandate and competence. 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. Europol should continue to cooperate with FIUs in particular via the national units.</i>
<u>With reference to the amendment of art.4 h) and connected recital 4</u> <i>“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;”</i>	As refers to the envisaged support that Europol should provide to Member State special intervention Units, we believe that it should be first made clear, within the text proposal, the exact procedures to be followed as well as the bodies that are supposed to request and certify the crisis as indicated in recital 4 of the proposal.
<u>With reference to the amendment of art.4 m)</u> <i>“support Member States’ actions in preventing and combating forms of crime listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States, the <u>coordination of law enforcement authorities’</u> response to cyberattacks, <u>the taking down of</u> 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;”</i>	Italy believes that the wording of the text is not very clear. It seems to give to Europol (though in cooperation with Member States) the possibility <u>to coordinate</u> (Member State) Law enforcement authorities response and the taking down of terrorist content online. On the contrary the main role of Europol should be, in our opinion, limited to <u>supporting</u> member States and not coordinating them. Furthermore we believe that it is premature to take decisions on such important topics also in consideration of the fact that the “Digital service act” is still in the in the work and TCO Regulation does not provide Europol such role as competent authority.
<u>With reference to the amendment of art.4 r) and connected recital 8</u>	

(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 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);	Italy recalls the observations made with reference to recital 8. We can not support the text,
<u>With reference to the amendment of art.4 new paragraph 4b and connected recital 12:</u> “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 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”	Italy, recalling what said with reference to recital 12, believes that is of utmost importance that such screening role of Europol with regard to foreign direct investments should be carried out through the ENUs. <i>Therefore we propose to rephrase recital 12 as follows:</i> Europol, through its national units, 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 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
<u>With reference to the new proposed version of Article 6 and connected recital 14:</u> “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	We would like to have explanations on the need to replace the actual Art 6 (under current Europol Regulation) with the proposed version.

<i>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>	We are not in favour of the reviewed text proposed as the actual Europol regulation has already proved to be sufficient and adequate. Furthermore, according to the connected recital 14, Europol would have the possibility to request the competent national authorities to initiate or conduct a criminal investigation even where there is not a cross border nature of the crime. We believe that no modification should involve art. 6 of the Europol actual Regulation.
<u>With reference to the new proposed version of Article 7:</u> <i>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</i>	As already observed under our comment in relation to recital 33, Italy asks for the recital to be merged with Art 7.
<u>With reference to the new article 18 3a:</u> <i>"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."</i>	We believe that the text here should be more specific. In particular, it should be made clear that processing personal data for such purposes is possible only if needed in order to reach the projects objectives. Therefore, we propose the following rephrasing: <i>"If needed in order to reach Europol's research and innovation project's objectives, processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed only by means of the mentioned 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".</i>

<u>With reference with the new Article 25 paragraph 5, replaced by the following:</u> <i>"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:"</i>	Italy would like to have explanations on this provision. If we compare this provision with the actual art 25 under the current regulation, we notice that the powers of the Executive Director now have increased including also « categories of transfers ». Why?
<u>With reference paragraph 8, the following sentence is deleted:</u> <i>"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 receiving competent authority, about the justification for the transfer and about the operational personal data transferred."</i>	This part of the proposal is not clear to us, if the sentence « where a transfer.... » is added or deleted. It seems to us that the sentence is being added and not deleted.
<u>With reference to the Article 26 paragraph 2 that would be replaced by the following:</u> <i>"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</i>	Preliminarily Italy believes that any direct transmission of banking and financial data by private parties to Europol could lead to the possibility that the aforementioned European Agency gets to know this information before the national Law Enforcement Agencies do. This could create a delicate situation, also because of the fact that, to date, there is no similar obligation owed to the latter in the national legislation (except for Court orders to produce documents and measures provided for by special rules aimed at money laundering prevention). Italy considers this new version of article 26 not fully in line with Directive 1153/2019 art.11 « Each Member State shall ensure that its competent authorities are entitled to reply,

<i>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 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.”</i>	through the Europol national unit or, if allowed by that Member State, by direct contacts with Europol, to duly justified requests related to bank account information made by Europol on a case-by-case basis within the limits of its responsibilities and for the performance of its tasks. Article 7(6) and (7) of Regulation (EU) 2016/794 apply » and with the Recital 33 of the Proposal.” Moreover, in our opinion both conditions should apply simultaneously in order to allow Europol to receive data from Private parties: — having identified and forwarded the relevant personal data — it is not possible to identify further national units concerned. Therefore we suggest to replace the word « or » with « and ». In general, Italy believes that any information exchange should comply with the current regulatory framework and fully involve the Europol National Units. Furthermore Italy believes that the first part of the article should be reworded according to the following version: “Europol may only receive personal data directly from private parties, based on third countries, in compliance with national legal framework ...”
<u>Regarding the new paragraphs 6a and 6b of art. 26:</u> <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, 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 with a view to identifying the national units concerned. Irrespective of their jurisdiction over the specific crime in</i>	We need explanations as regards the concrete possibilities to verify that the condition is fulfilled. Will Europol somehow have to certify that the condition underlying its request is met? In general, to Italy the wording appears to us a bit confusing and redundant. In fact, MS can always ensure their competent authorities can lawfully process the request when this is done in accordance with their national law (which automatically implies lawfully). So why foreseeing this obligation explicitly?

<i>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”.</i>	
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<u>With regard to the new art. 26a</u>	We want to raise the same objection of the new version of article 26
<u>With reference to the new version of Article 57, paragraph 4 proposed:</u> <i>“..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.”</i>	Italy believes the Europol cannot have a more specific relationship of financial dependence created with one State on the pretext that it would contribute more to its budget than others would. This situation would be harmful both for Member States but also for the credibility of the Agency, of the European institutions and the confidence that Member States place in it. Therefore, we cannot support the text proposed.

LITHUANIA

In accordance to the last LEWP meeting on 11/01/2021, please find enclosed the Lithuanian contribution/comments on the first two thematic blocks (cooperation with private parties and research and innovation) under the agenda item 5. Revision of Europol Regulation, as requested.

Lithuanian comments:

1. Direct exchange of personal data between Europol and private parties.

We do consider that current restrictions limits Europol's capacity to support some MS investigations. The Agency cannot proactively request data from private parties, moreover, there are national legal requirements to obtain such data. Those requirements can't be fulfilled by Europol at the moment (National Court's, Prosecutor's, or other's decision/approval is needed).

Essentially, we agree to allow Europol to exchange personal data directly with private parties, however, further profound and detailed discussion is needed. It would be not sufficient to amend Europol's Regulation only. Authorization of the prosecutor or even judge according to Lithuania's legislation is required to obtain certain data from private parties. There is no possibility to obtain such data upon request of Europol according to national law. Moreover, multiple laws must be changed if such option for Europol will be approved, including changing details of procedures to obtain the data (e.g. rights, duties, responsibility, order of sanctions and submission, remuneration for private parties for information provided, etc.). Amendment of Europol Regulation would be not sufficient to change national law. Thus, the highest EU legal act should be in place. Also, worth to mention, that some of the data from private parties Lithuanian authorities can obtain through police databases that linked with those companies. Thus, the administrative bargain is less for private sector. From our point of view, the discussions could take place on possibility to give Europol access to mentioned police databases/systems in order to prepare/organize connection between Europol's information system and particular module of national police. Europol's opinion as well as practical examples would be welcome on how such way of getting information from private parties would work if the Agency would get a possibility.

In addition, such an intervention needs to include clear data protection safeguards and mechanisms to fully involve Member States in the exchanges between Europol and private parties

Europol should be able to request and obtain data directly from private parties, however, it should be discussed in detail what will give such legal power and especially requesting private sector in third countries which does not recognize EU law.

Furthermore, the competence of the national authorities should be considered.

Recital of the Proposal (Point 31) contains an explanation which may be applied in the cases provided for in Article 26 Para 6a and Article 26a Para 5, i. e. those cases where the jurisdiction of the Member States has not been established or in cases of multijurisdiction and the information requested is required to establish jurisdiction. However, this purpose does not follow from the wording of Article 26 Para 6a and Article 26a Para 5. On the contrary, following the wording "Irrespective of their jurisdiction", Article 26 Para 6a and Article 26a Para 5 could be applied also in cases, where jurisdiction of the particular Member State would be obvious, but a Member State would still be obliged to comply with Europol's request regardless of its jurisdiction.

2. Considering the explanation of the definition of competent authorities in Article 2 (a) of Regulation (EU) 2016/794, the term "competent authorities" used in Articles 26 Para 6a and 26a Para 5 of the Proposal could cover not only law enforcement but also judicial authorities of the Member States. Therefore, in accordance with the wording, these judicial authorities should be obliged to execute or take measures for execution of the Europol's requests. The judicial authorities of the Member State (prosecutors' offices, courts) cooperate with judicial authorities of the other Member State applying the EU mutual recognition instruments, other procedures of international judicial cooperation in criminal matters, including Eurojust, and special cooperation with the European Public Prosecutor's Office. This cooperation is strictly regulated particularly implementing the basic principle of cooperation - ensuring the eligibility and the protection of human rights, which is guaranteed by judicial supervision. Thus, the other means of communication for judicial authorities, especially direct ones with non-judicial institutions (agencies) of the EU, without judicial supervision, can not be provided.

In Articles 26 Para 6a and 26a Para 5 the Europol's powers and means to request and receive personal data from private subjects are not separated depending the nature and content of this data. As an example that for the production of different kind of data different measures of legal protection should be applied could be the Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters 2018/0108 (COD). In this Proposal 2018/0108 (COD) depending on the data and its nature requested by the European Production Order or European Preservation Order different levels of judicial validation shall be applied (Article 4 Para 1 and 2 of the Proposal 2018/0108 (COD)).

It should be admitted that in crisis situations the specific measures of communication could be considered. However in such case these measures and the grounds for their application should be clearly defined. Nevertheless, Para 5 of new Article 26a, which is dedicated to the exchanges of personal data with private parties in crisis situations, establishes the same procedure as new Para 6a of Article 26, dedicated for all other cases.

Therefore, according to the provisions of Article 26 Para 6a and Article 26a Para 5 it is not clear in which cases, for what kind and content of data from private parties Europol could request, it is not clear on which national competent authorities and what kind of obligations would be imposed, as it is not clear whether these obligations wouldn't be contrary to the principles of judicial cooperation in criminal matters, to the rights of Member States to execute their jurisdiction, it is not clear how the judicial supervision of these requests in terms of protection the human rights and personal data would be ensured.

2. Research and Innovation

We do see a need for Europol to step up its support to Member States on research and

Innovation. Capacity of the separate MS in this area is limited due to limited human and financial resources. Furthermore, countries invest in the similar research and innovation so duplicates their efforts. Europol might coordinate those efforts at some point to avoid such duplicity, also could allocate resources for sophisticated solutions and products that would allow strengthen fight with serious and organized criminality. Although, the cutting-edge products and actual needs of MS must be identified initially. Existing tools at Europol should be exploited efficiently. Consideration of further cooperation with existing innovation labs must be developed.

SPAIN

Spain.- Follow-up comments to the last LEWP meeting (11/01/2021)

REVISION OF THE EUROPOL REGULATION

- Regarding Europol's cooperation with private parties, cooperation with third countries or the processing of large data, Spain's position on this matter is favorable.
 - Relating to strengthen Europol's cooperation with the European Public Prosecutor's Office, Spain certainly believes that Europol's cooperation with the European Public Prosecutor's Office is clearly necessary.
 - Concerning the entry of alerts by Europol, we in Spain, are currently studying this issue thoroughly. However, several legal pitfalls are anticipated to comply with the national and EU legislation. For this reason, Spain supports to explore an alternative and more practical solution which allows to incorporate and make available to MS the information provided by third countries, such as the option of inserting such data in the field of interoperability.
 - Pertaining to clarify the role of Europol in the request for the initiation of an investigation into offences affecting the common interests of the Union, our position of this refers to the article 6 Europol Regulation (REGULATION (EU) 2016/794 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016). In this sense, it is considered that this Article provides sufficient legal cover to request the initiation of investigations and therefore it is not considered necessary to amend the regulation to this effect.
-