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Subject:	Proposal for a Regulation of the European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794 – Compilation of replies by delegations

Following the request for written contribution on the above-mentioned proposal (CM 1323/24) after LEWP (Police) meeting on 19 January 2024, delegations will find in Annex a compilation of the replies as received by the General Secretariat.

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AUSTRIA

As already mentioned [published in doc. 5386/1/24 REV 1], we expressly welcome the objective of the Regulation to step up efforts in the fight against migrant smuggling.

Since the goal of combating migrant smuggling more effectively and the necessary increase in Europol's financial and human resources within the framework of the current MFF only seems possible through a new legislative proposal, the upcoming negotiation process could be used in the best possible way to take into account any further need for adaptation of the current Europol Regulation (should Europol see a need for adaptation almost two years after the current Regulation came into force).

CROATIA

Written contribution of Republic of Croatia on the *Proposal for a Regulation of the European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794*

The Republic of Croatia supports all measures to strengthen the fight against migrant smuggling and human trafficking, such as the European Migrant Smuggling Centre (EMSC), and believes that more attention in this regard should be focused on financial investigations, investigations of corruption and forged documents, which are often closely linked to migrant smuggling and human trafficking.

Furthermore, the Republic of Croatia supports initiatives to:

- strengthen the role of the EMSC, especially as a place for the centralization and exchange of operational data,
- connect the Center with the designated specialized national services of the Member States,
- strengthen the cooperation with the EUROJUST and FRONTEX.

Likewise, Croatia supports the initiative to form a reserve pool of Member States' law enforcement experts. However, concerning this provision, it remains unclear who will make the decision on which expert will be nominated, i.e. will Europol choose the experts individually as an SNEs or will Europol first conduct inquiry on proposed experts and their organization units and then request their approval for individual deployment?

We are also of the opinion that the Seconded Police Officers (SNE) would be much more effective if they were deployed, either in their home countries or in the neighboring Member states, due to their knowledge of the language, structure of the police organization, geographical location, current political and other circumstances.

Moreover, the provisions contained in the Article 7 and the obligations that stem from them are somewhat vague, which might cause problems and inconsistencies in their interpretation and subsequent implementation. Therefore, Croatia believes the text of the Article 7 should be amended in order to make it clearer, so that the Member States would be better prepared for its implementation.

CZECH REPUBLIC

CZ Comments on Proposal for a Regulation on Migrant Smuggling and Trafficking in Human Beings – following 19 January LEWP meeting

These comments are supplement to the previous comments included in document 5386/1/24 REV 1

CZ would like to thank the Belgian Presidency for organizing the general discussion with the Commission and for collecting the written comments of the Member States. CZ supports the strengthening of cooperation against smuggling and human trafficking. However, like many other Member States, CZ still has concerns about the added value of this proposal and its individual elements and would like to elaborate the initial comments as follows. While we consider our initial comments of 28 December 2023 still valid, please find below a reply to the question by the Presidency, our main priorities and complementary comments:

Re-opening of Europol Regulation

CZ believes that a simple amendment to Europol Regulation is a better solution, as the legal form and issue at hand are consistent, but this is no redline. The proper solution should be evaluated on the basis of which elements are retained in the proposal.

CZ main priorities

- Member State control over secondments of its national police officers to Europol
- Member State control over Europol officers taking operative and investigative actions within the territory of the Member State
- more realistic limitation of duty to share information with Europol (gravity, organized nature or similar features)
- streamlining the draft, in particular as regards:
 - o police cooperation activities that are ongoing already (namely OTFs, which should be clearly different from JITs and less formal)
 - o ESMC, which should be treated in a more comparable way to other centres (EC3, ESOC) within Europol
- less demanding rules for usage of SIENA

Priorities raised by other Member States that CZ wishes to support:

- availability of financial and human resources for Europol. Improving the situation requires Europol's own resources, not transfers of seconded police officers between Europol and Member States.

GERMANY

Germany's comments on the proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

This replaces Germany initial comments of 08/01/2024 (published in doc. 5386/1/24 REV 1).

General remarks

- Germany maintains a general scrutiny reservation.
- We generally welcome the Commission's aim of strengthening Europol by means of the proposed Regulation. However, we doubt whether the proposal is truly suitable for achieving this aim.
- Need to amend the law: We are not convinced that the proposed amendments to the law are urgently needed, especially because Europol's mandate was expanded only recently. We request an opinion of the Council Legal Service.
- Resources: In our view, the additional resources proposed cannot be expected to adequately cover the additional tasks. In particular, the desired number of only ten temporary agents seems much too small. Further, the proposal would require the Member States to supply the largest share of personnel (20 seconded national experts).
- Establishing the ECMS: We are critical of the proposal to establish a future centre at Europol on the basis of a Regulation. Under current law, the decision to do so is the task of the Management Board (Article 11 (s) of Regulation (EU) 2016/794 (Europol Regulation)). We also notice that the proposal regulates issues in the text of the Regulation which are not regulated at the same level of detail in other areas of crime which are also covered by Europol's mandate. This applies in particular to the rules on the European Centre Against Migrant Smuggling in comparison with other centres referred to in Article 4 (1) (l) of the Europol Regulation. The unnecessary inclusion of organisational aspects directly in the legislative text should be avoided, not least to prevent negative effects for existing Europol structures in other areas of crime. Germany therefore asks the Commission to explain why it finds it necessary for establishing the Centre to include these details in the present proposal

for the Regulation. How would this affect other (existing or future) centres referred to in Article 4 (1) of the Europol Regulation? In this regard, we request an opinion of the Council Legal Service.

- Reserve pool: We are opposed to establishing a reserve pool made up of Member States' experts because of the additional burden this would place on the Member States. Creating an obligation to this effect in secondary legislation would seriously encroach on the Member States' organisational sovereignty. It is questionable whether such a provision would be compatible with the principle of subsidiarity.
- OTFs: The operational task forces (OTFs) must remain a flexible tactical instrument. Europol and its Management Board must make the relevant rules concerning the OTFs as well.
- Europol deployments: Any regionalisation (decentralisation) of Europol's activities must be carried out in moderation. It must not undermine Europol's core tasks and should be limited to a few clearly justified exceptional cases. Given that Europol already lacks the necessary resources to manage its tasks, pursuing a regional approach would most likely weaken Europol's other central functions.
- Investigative powers of Europol staff: We would also like to point out that Europol staff have no authority to conduct investigations (Article 4 (5) of the Europol regulation). In our view, it would be necessary to ensure that the actual powers are clearly codified.
- Relationship to other instruments / differentiation from judicial cooperation: The Regulation must make it perfectly clear that its subject is not the provision or use of information as evidence in judicial proceedings (see the corresponding provision in Directive 2023/977, Article 1 (3) and (4) as well as Recital 14).
- Data protection aspects: The proposed revisions and additions concerning the processing of biometric data and the mechanisms for transmitting data to third countries still need to be examined.

Article 1 (Subject matter and scope):

- Article 1 (a):

Question for the Council Legal Service/Commission: Is such a provision absolutely required by law to establish the European Centre Against Migrant Smuggling? Additional resources for the ECMS (the core of which already exists) which the law enforcement authorities consider useful would have to be provided in drawing up the budget.

If this provision is not absolutely required by law, we oppose the establishment of the Centre by means of a Regulation. Deciding on the establishment of centres at Europol is the task of the Management Board (Article 11 (s) of the Europol Regulation).

However, even if such a provision is needed, Article 1 (a) and Articles 3 to 6 (Chapter II) must ensure that the competences of Europol and the Management Board for setting up the Centre are not limited. As a result, at least Articles 3 to 6 (Chapter II) would have to be deleted. According to the current Europol Regulation, provisions of this kind would have to be contained in an implementing decision of the Management Board.

Article 2 (Definitions):

Paragraph 3 is missing. Paragraphs 4 and 5 should be renumbered as paragraphs 3 and 4.

Article 3 (European Centre Against Migrant Smuggling):

- Please see our comments above regarding Article 1 (a).
- Most of the tasks of the European Centre which the proposal formalises are already the responsibility of Europol. It is not clear to us why the ECMS needs a separate legal basis apart from the Europol Regulation. This would result in fragmentation and create difficulties in distinguishing this Centre from other areas of crime (and the other four Europol centres), especially in the area of serious and organised crime. There is a risk that this complexity would be very difficult for end users to understand, making it unnecessarily difficult for them to use Europol and its instruments.

- If a provision must be included in the Regulation, then a clarifying provision must be added to the proposal expressing that the ECMS must abide by all of the requirements of the Europol Regulation and that its activities are limited to the powers provided in the Europol Regulation. The individual references to the Europol Regulation (e.g. in Articles 3, 5 and 6) do not suffice in this regard.
- Sentence 2: In addition to listing the relevant forms of crime given in the Annex to the Europol Regulation, reference should also be made to Article 3 (1) of the Europol Regulation.

Article 4 (Composition of the European Centre Against Migrant Smuggling):

- Please see our comments above regarding Article 1 (a).
- Paragraphs 1 and 2: The specific composition should be left up to Europol and its Management Board. If necessary, this provision or possibly Article 1 (b) could state that the involvement of relevant agencies (e.g. Frontex and Eurojust) should be taken into account as needed and in agreement with the mandate in question.

Question for the Council Legal Service/Commission: How were the various participants selected, depending on whether strategic tasks (paragraph 1) or operational tasks (paragraph 2) are to be carried out, especially with regard to (a)? Why does paragraph 1 refer to representatives while paragraph 2 refers to liaison officers? Further, how do Eurojust liaison officers referred to in Article 4 (2) (b) relate to those in Article 4 (3)?

- Paragraphs 1 and 2: The scope of the term “involve” is unclear. Does it mean seconded staff, a permanent contact person (e.g. for the meetings referred to in paragraph 1, subparagraph 2) or a regular exchange? Do the representatives only have an advisory role, or are they involved in decision-making? The proposal’s current wording makes it impossible to assess the effort required and the benefit.

- Paragraph 1 (a): Why does paragraph 1 provide for a representative of a national specialised service to be involved in carrying out strategic tasks of the ECMS, while paragraph 2 provides for a liaison officer as referred to in Article 8 of the Europol Regulation to be involved in carrying out operational tasks? Does this mean that the tasks of the national specialised services (see Article 7 of the present proposal) are to be limited to Europol's strategic tasks? If so, this would also have to be expressed in Article 7.
- Paragraph 1 (d): Please explain: How are “one or more representatives” to be recruited, and from which group of persons? Who is supposed to second these persons (at the invitation of Europol) and whom are they supposed to represent?
- Paragraph 1, subparagraph 3 and paragraph 2, subparagraph 3: Please explain: Do these subparagraphs refer to seconding representatives to the aforementioned meetings or to other forms of participation?
- Paragraph 2 (b) and (c): Article 8 of the Europol Regulation does not include the wording “permanent representative” even though the liaison officers referred to there are apparently permanent secondments. In this context, we ask whether the term “liaison officer” already implies permanent secondment, so that the word “permanent” is unnecessary and could be deleted to ensure consistency with the wording of Article 8 of the European Regulation. If clarification is considered necessary, it would suffice to include it in a recital (see Recital 9).
- Paragraph 4: The wording “as well as” seems incorrect, because the provisions of the Frontex Regulation cited here are not limited to defining purposes (compare the wording “for the purposes of”), but instead govern broader legal obligations.

Article 5 (Strategic tasks of the European Centre Against Migrant Smuggling):

- Specific tasks should be set by Europol or its Management Board, or they may arise from existing provisions of the Europol Regulation.
- Article 5 (c): The tasks need to be clearly defined and distinguished from the responsibilities of Frontex.
- Article 5 (f): Please explain: We do not understand how “strategic analyses and threat assessment” can support the implementation of Article 6 (1) of the Europol Regulation. Article 6 (1) of the Europol Regulation is concerned with initiating criminal investigations in specific cases. By contrast, “strategic analyses and threat assessments” do not appear to relate to specific cases.
- Article 5 (i): Please explain how this provision relates to Article 5 (a) and (b): at least as far as identifying priorities and possible related actions at Union level is concerned, Article 5 (a) and (b) of the present proposal in conjunction with Article 4 (2) of the Europol Regulation appear to relate more specifically to the legal framework of the Europol Regulation (which also applies to the ECMS).
- Article 5 (c) on working arrangements: It is not clear who is to conclude these working arrangements and on what basis. In our view, the ECMS as such cannot conclude any working arrangements. The Europol Regulation conclusively governs Europol’s possibility to conclude working arrangements (see Article 20a (1), Article 21 (2) and Article 23 (4) of the Europol Regulation). The wording “including through working arrangements between them” should therefore be deleted or else it should be made clear that these are working arrangements by Europol based on these provisions of the Europol Regulation.
- Article 5 (d): The wording does not appear to be sufficiently linked to the provisions of the Europol Regulation, in the framework of which the ECMS operates. Article 4 (1) (f) of the Europol Regulation governs the task of preparing “threat assessments, strategic and operational analyses and general situation reports”. Is the monitoring referred to in (d) therefore supposed to be limited to performing the Europol tasks listed in Article 4 (1) (f) within the legal framework of the Europol Regulation? We therefore ask once again for a provision clarifying that the ECMS must abide by all of the requirements of the Europol

Regulation and that its activities are limited to the powers provided in the Europol Regulation.

- Article 5 (e): Unlike the term “strategic analyses”, the term “threat assessment” is not defined in the Europol Regulation. This is true of the term as used throughout the proposal. We assume that no personal data may be processed in the context of threat assessments because this term is not mentioned in Article 18 (2) of the Europol Regulation even though it is used in that Regulation multiple times. However, this should be made clear.
- Article 5 (g) and (h): As we understand it, Article 5 (g) contains examples for Article 5 (h), so that (g) and (h) could be combined.

Article 6 (Operational tasks of the European Centre Against Migrant Smuggling):

- Specific tasks should be set by Europol or its Management Board, or they may arise from existing provisions of the Europol Regulation.
- Article 6 (a): Which tasks may be assigned to the ECMS when carrying out operations? Are Europol staff to take operational action on the sovereign territory of the Member States? Is the permission of the Member States needed for them to do so? We point out once again the importance of clarifying that the Centre’s activities are limited to the powers provided in the Europol Regulation.
- Article 6 (a): Please explain: Europol deployments for operational support should be included in Article 4 (1) (c) of the present proposal. However, it is unclear why this point is mentioned separately here.
- Article 6 (b): Please explain: It is not clear exactly how Europol’s mandate is to be expanded by the proposed new characteristics “analytical” and “forensic”, especially in view of the operational analyses already covered by the Europol Regulation (see Article 2 (c) and Article 4 (1) (f) of the Europol Regulation and the provisions that refer to them, for example in Articles 18, 18a and 20 of the Europol Regulation).
- Article 6 (a): Social media are not mentioned in the provisions of the Europol Regulation referred to here and should therefore be deleted.

- Article 6 (d): The wording should be based more closely on Article 5b (3): “considering the operational needs and its available resources” / “based on a risk assessment”).
- Article 6 (h): The reference to the Europol Regulation is missing.

Article 7 (National specialised services to prevent and combat migrant smuggling and trafficking in human beings):

- Germany already has such specialised services.
- We doubt whether Article 7 is necessary and proportionate. In view of the legal basis cited by the Commission, this provision, which is directed at the Member States, is intended to strengthen cooperation among the Member States and between Europol and the Member States. However, the applicable provisions of the Europol Regulation already govern the formation of a Europol National Unit for the Member States to share information with Europol. Apart from that, Directive (EU) 2023/977) on the exchange of information between the law enforcement authorities of Member States applies and already contains comprehensive requirements for the exchange of information between Member States and Europol; for this purpose it provides for a Single Point of Contact to coordinate and facilitate the exchange of information who must therefore have access to all necessary information (see Article 14 of Directive (EU) 2023/977).
- Paragraph 1: Also in view of the legal basis of the Regulation, shouldn't the purpose (“to prevent and combat migrant smuggling and trafficking in human beings, including through criminal investigations”) aim specifically at strengthening cooperation between the Member States and Europol?
- Paragraph 5: We are opposed to establishing a reserve pool because of the additional burden it would place on the Member States. We therefore call for this paragraph to be deleted. Further, the proposal here seriously encroaches on the national competence to organise the available police forces. We do not see how this could be compatible with the principle of subsidiarity. In addition, a reserve pool makes no apparent sense, and the human resources of the Member States are limited. The administrative/bureaucratic burden for Europol should also be considered, and we fear that demands to establish reserve pools for other areas of crime would follow.

- Paragraph 2: It remains entirely unclear what is meant here, particularly as distinguished from the existing provisions of the Europol Regulation and Directive (EU) 2023/977, which are much more specific.

Article 8 (Provision of information to Europol and the Member States concerning criminal offences on migrant smuggling and trafficking in human beings):

- We doubt whether Article 8 is necessary or proportionate, because these matters are already covered by other legislative acts (Article 7 (6) of the Europol Regulation and Directive (EU) 2023/977). Article 8 should therefore be deleted to avoid confusion and duplication. Specifically:
 - Paragraph 1: If the wording “in accordance with Regulation (EU) 2016/794” is intended to express that this is merely a repetition of the obligations already given in the Europol Regulation (see Article 7 (6) (a) of the Europol Regulation), then the provision seems unnecessary.
 - Paragraph 3: How does this provision relate to Article 7 (6) (a) of the Europol Regulation and Articles 7 and 12 of Directive (EU) 2023/977? Why is this provision needed in addition to those of the Europol Regulation and Directive (EU) 2023/977?
 - Paragraph 4: How does this provision relate to Article 13 (1) of Directive (EU) 2023/977? Why is this provision considered necessary in addition to that of Directive (EU) 2023/977?
 - Paragraph 5: This provision should be deleted because it unnecessarily infringes on the sovereignty of the Member States. Furthermore, in Germany, immigration liaison officers (Federal Police) are not responsible for the tasks listed.

Article 9 (Amendments to Regulation (EU) 2016/794):

- Article 2 (Definitions):
 - Paragraph 1 (x): How does the term “operational task force” differ from joint investigation teams and the existing provisions concerning them in both the Europol Regulation and the Eurojust Regulation? Why is this definition seen as necessary?

- Paragraph 1 (x): Please explain what is meant by “criminal intelligence activities” as opposed to investigations.
- Article 4 (Tasks):
 - Paragraph 1 (za): We ask first of all for explanation: We can already note that it is entirely unclear which data processing processes are to be allowed in addition to the existing provisions of the Europol Regulation, especially since no amendments to Article 30 (2) of the Europol Regulation on the processing of biometric data are planned.
 - Paragraph 5: The added text in subparagraph 2 (“Europol staff shall have the power to execute non-coercive investigative measures”) requires more detailed analysis. It appears questionable in view of the primary law framework after Article 88 (3) of the TFEU. The wording in subparagraph 3 should be made consistent with that of Article 88 (3) of the TFEU (“in liaison and in agreement with the authorities of the Member State or States whose territory is concerned”).
- Article 5a (Operational task forces):
 - We believe that operational task forces are generally a useful instrument. However, they must remain a flexible and tactical instrument. We are therefore opposed to including requirements in the Regulation and are in favour of deletion. In the absence of the proposed provision, which only constitutes an option (“may”), the Member States could take the same action in the framework of their national law, and Europol could offer support in the framework of its mandate. It is therefore unclear why Union law is necessary or proportionate. Furthermore, the OTF strategy has already been revised multiple times; in future, such revision would require amending the Regulation, which would make it more difficult or even impossible to respond quickly to changing threat situations and investigative requirements. It is also unclear how OTFs differ from joint investigation teams, and how the proposal differs from the existing provisions of the Europol Regulation and the Eurojust Regulation.

- What about the material requirements for setting up a task force?
- Question for the Council Legal Service/Commission: As we understand it, the provisions apply to all areas of crime covered by Europol's mandate (i.e., not only migrant smuggling and human trafficking). Is that correct? What is the reason for it?
- Paragraph 3: Would this exclude areas which lie outside of the EMPACT framework (terrorism, politically motivated crime)? The text needs to be revised to avoid negative impacts on areas of crime outside of the EMPACT framework.
- Article 5b (Europol deployment for operational support):
 - Any regionalisation (decentralisation) of Europol's activities must be carried out in moderation. It must not undermine Europol's core tasks and should be limited to a few clearly justified exceptional cases. Given that Europol already lacks the necessary resources to manage its tasks, pursuing a regional approach would most likely weaken Europol's other central functions.
 - As we understand it, the provisions apply to all areas of crime covered by Europol's mandate (i.e., not only migrant smuggling and human trafficking). Is that correct? What is the reason for it?
 - Paragraph 2: We assume that the tasks of staff deployed pursuant to Article 5b will operate within the framework set by the Europol Regulation (see also paragraph 4: "shall operate in accordance with this Regulation"). In this context, we ask for an explanation of how support for checks against relevant databases to strengthen control of the Union's external borders is anchored in the Europol Regulation.
 - Paragraph 6: We oppose setting up a reserve pool, also because experts would have to be at the disposal of Europol for all areas of crime (not only migrant smuggling and human trafficking). Compared to the Frontex Regulation, these requirements also seem very vague; in particular, according to paragraph 9, the details concerning the number and profiles of experts are to be determined by the Management Board, although the proposal provides no further details about this.

- Paragraph 8: It must be up to the Member States to decide whether to participate in deployments or to make staff available for deployments (voluntary).
- Paragraph 10: How is this paragraph to be understood? Are Europol deployments to take place in third countries as well? Would these be Member State participation in operations in third countries? The Article refers in its direct application to a request for support from a Member State (see paragraph 1). This corresponds to Europol's mission to support and strengthen action by the Member States pursuant to Article 88 of the TFEU and cannot be applied to third countries. Can the Commission explain the application of the provision using a concrete example?
- Article 18 (Purposes of information processing activities): (-)
- Annex I:
 - Question for the Council Legal Service/Commission: Which specific tasks should Europol take on if its mandate is expanded?
 - Question for the Council Legal Service/Commission: How does the expansion relate to the existing coordination networks at European level? How will parallel structures and greater efforts to coordinate be avoided?

HUNGARY

General comments of Hungary on

Proposal for a

Regulation of the European Parliament and of the Council

on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

As a frontline country, Hungary generally supports any initiative that strengthens the efficiency and effectiveness of law enforcement in the fight against migrant smuggling and human trafficking.

It is welcomed that the proposal is especially dedicated to ensure that Member States have the necessary legal and operational tools to combat the new operating methods of migrant smugglers. However, the measures proposed in the draft regulation do not provide adequate responses to the challenges. The majority of the measures proposed in the draft are already included in the renewed EU Action Plan against migrant smuggling (2021-2025), which should be properly implemented and its implementation evaluated.

The revision of the Europol Regulation is not timely and should be based on a comprehensive evaluation of Europol's mandate, which has not yet been carried out. Based on the experience of the discussions during the previous revision of the Regulation, it is not appropriate to reopen the recently adopted mandate. We are not able to support any modification that would entitle Europol to any executive status in addition to its coordinating, organising and informative tasks.

The further development of the European Migrant Smuggling Centre (EMSC) is a matter of properly allocated agency or EU resources and capacity building. We are not able to support any specialisms in its management model. Being at the dependence of external capacities to Europol is not good either (home affairs and justice agencies, Member State officials). The organisational structure and complex activities of the European Centre Against Migrant Smuggling require a detailed definition of the tasks of the Member States and Europol, but the text of the draft regulation does not allow for a full coverage of that, so the regulation may be incomplete, partial, and further amendments may become necessary. In our view, it is against the EU regulatory technique to regulate such specific issues at the level of a regulation, therefore we suggest to determine the strategic and operational tasks of the European Centre Against Migrant Smuggling at a lower level

of legal regulation, preferably in an internal regulation (e.g., organisational and operational rules of Europol).

- Hungary proposes to take into account the human resources capacities of the Member States, it may be worth considering the possibility for then national liaison officer to perform other tasks in addition to this function in migrant smuggling.

On non-coercive investigative measures, we do not support the authorisation to carry out such actions because it would grant for Europol much broader powers than the Member States originally intended to authorise it with when the Agency was established.

The current Europol Regulation already allows for Europol's cooperation with other EU agencies and for an appropriate exchange of information between agencies and Member States, including the exchange of biometric data.

The establishment of a specialised unit at national level can be implemented by Member States on their own, it does not require any EU legislation. In line with the national priorities HU have already established such a unit.

On Europol deployment for operational support, we support it in general, but the human resources available to Member States are limited, it should be on voluntary basis. The frontline Member States, including Hungary, have a very heavy workload in terms of law enforcement forces and the withdrawal of human resources from a Member State in this way could jeopardise the effective functioning of law enforcement agencies. Hungary cannot make any significant additional commitment to Europol in terms of human resources in this format.

Proposals for operational task forces (OTF) and a pool of experts are already included in the Action Plan and we see no added value in the proposed regulation. Additionally we do not support the establishment of such obligations for Member States and the authorisation of Europol to carry out such actions. These compulsory provisions would have a negative impact on the effectiveness and flexibility of OTFs.

The strengthening of the effectiveness of operational support is rather seen in the enhancement of Europol's strategic and operational analysis capacities, the facilitation of operational information exchange with Middle Eastern and North African countries, which can significantly contribute to the introduction of preventive measures, the asset recovery and seizure of organised criminal groups

involved in migrant smuggling, the support of related financial investigations, the dismantling of these groups and the prevention of conditions that enable migrant smuggling.

Incorporated comments of Hungary on the relevant proposal (16204/23)

(26) This Regulation fully respects the fundamental rights and safeguards, and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the right to respect for private and family life and the right to the protection of personal data as provided for by Articles 7 and 8 of the Charter, as well as by Article 16 of the Treaty on the Functioning of the European Union.

(27) Regulation (EU) 2016/794 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation lays down rules to enhance police cooperation and the support of the European Union Agency for Law Enforcement Cooperation (Europol) in preventing and combating migrant smuggling and trafficking in human beings, by:

- (a) establishing a European Centre Against Migrant Smuggling within Europol ~~and a governance framework to regulate and support its activities;~~
- (b) enhancing cooperation and coordination between the Member States, Europol and other Union agencies;
- (c) reinforcing the exchange of information between the Member States and with Europol;
- (d) providing Europol with the necessary tools to support and strengthen actions by the competent authorities of the Member States and their mutual cooperation in preventing and combating criminal offences falling within Europol's objectives;
- (e) enhancing cooperation between Europol and third countries.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'migrant smuggling' means any of the activities referred to in Articles 3, 4 and 5 of Directive [XXX] *[laying down minimum rules to prevent and counter the facilitation*

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*of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA]*²⁴;

- (2) 'trafficking in human beings' means any of the activities referred to in Articles 2 and 3 of Directive 2011/36/EU of the European Parliament and of the Council²⁵;
- (4) 'competent authorities' means the competent authorities of the Member States defined in Article 2, point (a), of Regulation (EU) 2016/794;
- (5) 'immigration liaison officer' means a liaison officer deployed in a third country by the competent authorities of a Member State, in accordance with its national law, to deal with immigration-related issues, including when those issues are only a part of the liaison officer's duties.

Chapter II

GOVERNANCE FRAMEWORK OF THE EUROPEAN CENTRE AGAINST MIGRANT SMUGGLING

Article 3

European Centre Against Migrant Smuggling

The European Centre Against Migrant Smuggling is established within Europol as a Union centre of specialised expertise as referred to in Article 4(1), point (l), of Regulation (EU) 2016/794. It shall support Member States in the prevention and combating of migrant smuggling and trafficking in human beings and shall perform the tasks set out in Articles 5 and 6.

Article 4

Composition of the European Centre Against Migrant Smuggling

1. The European Centre Against Migrant Smuggling shall be composed of Europol staff and involve representatives of the following entities in carrying out the strategic tasks referred to in Article 5:
 - (a) a representative of each Member State, from a national specialised service referred to in Article 7;

²⁴ [please add the title and the publication reference]

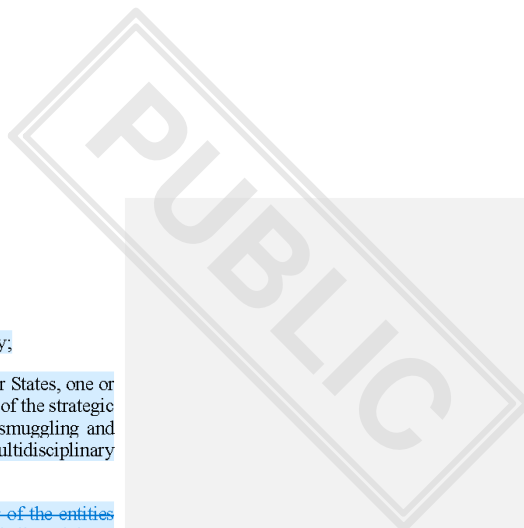
²⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/36/oj>).

Commented [S1]: In Art. 1 (a), we propose to delete the words "and a governance framework to regulate and support its activities" since the further development of the European Migrant Smuggling Centre (EMSC) is a matter of properly allocated agency or EU resources and capacity building. We do not want to see specialisms in its management model. Being at the dependence of external capacities to Europol is not good either (home affairs and justice agencies, Member State officials).

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- (b) a representative of Eurojust;
- (c) a representative of the European Border and Coast Guard Agency;
- (d) at the discretion of Europol and, after consultation of the Member States, one or more representatives involved in the operational implementation of the strategic and operational priorities of the Union for combating migrant smuggling and trafficking in human beings, in particular in the European Multidisciplinary Platform Against Criminal Threats (EMPACT).

~~The European Centre Against Migrant Smuggling shall hold a meeting of the entities referred to in points (a) to (d) at least twice a year and the Commission shall participate in such meeting.~~

~~Europol may invite other entities to be involved in carrying out the activities referred to in Article 5, including other relevant Union bodies or agencies.~~

2. The European Centre Against Migrant Smuggling shall be composed of Europol staff and involve representatives of the following entities in carrying out the operational tasks referred to in Article 6:

- (a) for each Member State a liaison officer referred to in Article 8 of Regulation (EU) 2016/794 specifically designated to deal with migrant smuggling;
- (b) a liaison officer of Eurojust as a permanent representative at Europol;
- (c) a liaison officer of the European Border and Coast Guard Agency as a permanent representative at Europol.

~~Europol may invite other entities to be involved in carrying out the activities referred to in Article 6, including other relevant Union bodies or agencies.~~

3. For the purpose of paragraph 2 of this Article, and in accordance with Article 4(1), point (g), of Regulation (EU) 2018/1727 of the European Parliament and of the Council²⁶, Eurojust shall deploy a liaison officer, acting in accordance with that Regulation, to the European Centre Against Migrant Smuggling.
4. For the purposes of paragraph 2 of this Article as well as Article 68(1), point (b), Article 87(1), point (d) and Article 90 of Regulation (EU) 2019/1896, and in accordance with Article 68(2) and (5) of that Regulation, the European Border and Coast Guard Agency shall deploy a liaison officer, acting in accordance with that Regulation, to the European Centre Against Migrant Smuggling.
5. For the purposes of paragraphs 1 and 2, and to facilitate the fulfilment of the strategic and operational tasks set out in Articles 5 and 6 of this Regulation, the European Centre Against Migrant Smuggling shall be provided with the necessary support by all other relevant parts of Europol's internal structures.

²⁶ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138, ELI: <http://data.europa.eu/eli/reg/2018/1727/oj>).

Commented [S2]: Hungary proposes to delete the paragraph, as we believe that the agencies and the Commission should work together on a day-to-day basis to ensure efficiency.

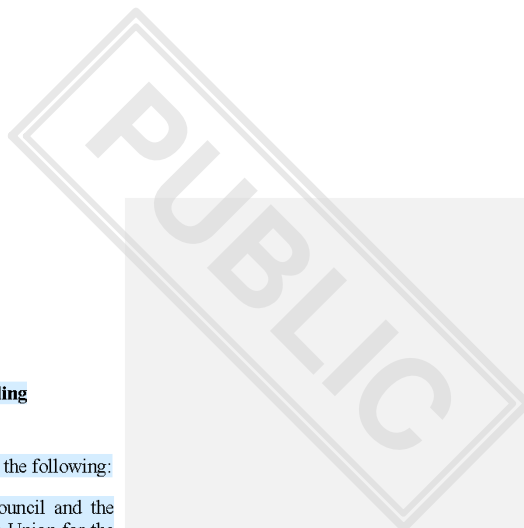
Commented [S3]: Hungary proposes to delete the paragraph as we consider it is too general and does not ensure transparent operation of the Centre.

Commented [S4]: Hungary proposes to take into account the human resources capacities of the Member States, it may be worth considering the possibility for then national liaison officer to perform other tasks in addition to this function.

Commented [S5]: Hungary proposes to delete the paragraph as we consider it is too general and does not ensure transparent operation of the Centre.

Commented [S6]: We support the establishment of the European Centre Against Migrant Smuggling. We consider it necessary to examine the budgetary implications affecting the Member States in this subject.

Commented [S7]: In our view, this provision is not specific enough and should be more specific about the support granted for the Centre.



Article 5

Strategic tasks of the European Centre Against Migrant Smuggling

The strategic tasks of the European Centre Against Migrant Smuggling shall be the following:

- (a) providing strategic analyses and threat assessments to assist the Council and the Commission in laying down strategic and operational priorities of the Union for the prevention and combating of migrant smuggling and trafficking in human beings, in accordance with Article 4(2) of Regulation (EU) 2016/794;
- (b) providing a framework to support the operational implementation of the strategic and operational priorities of the Union for the prevention and combating of migrant smuggling and trafficking in human beings, in particular in the framework of the EMPACT, in accordance with Article 4(2) of Regulation (EU) 2016/794;
- (c) supporting the coordination, cooperation and exchange of information on migrant smuggling and trafficking in human beings between Union agencies, notably with the European Border and Coast Guard Agency, Eurojust and, where appropriate, other relevant Union bodies or agencies, in line with their respective legal frameworks, including through working arrangements between them, in accordance with Article 4(1), point (j), of Regulation (EU) 2016/794;
- (d) monitoring migrant smuggling and trafficking in human beings taking place in the Union and in third countries, in cooperation with Member States, relevant Union bodies or agencies and, where appropriate, third countries, in accordance with Article 4(1), point (f), of Regulation (EU) 2016/794, and regularly providing information to the Member States and the Commission, including aggregated statistical data and situational updates derived from information shared by Member States;
- (e) providing strategic analyses and threat assessments to support the implementation of operational task forces referred to in Article 5a of Regulation (EU) 2016/794 and Europol deployments for operational support referred to in Article 5b of Regulation (EU) 2016/794, in accordance with Article 4(1), point (f), of Regulation (EU) 2016/794;
- (f) providing strategic analyses and threat assessments to support the implementation of Article 6(1) of Regulation (EU) 2016/794 on requesting the initiation of a criminal investigation into migrant smuggling and trafficking in human beings, in accordance with Article 4(1), point (f), of Regulation (EU) 2016/794;
- (g) providing strategic analyses and threat assessments to Member States and the Commission as well as relevant Union agencies or bodies, where appropriate, on routes and *modi operandi* of migrant smuggling and trafficking in human beings, including on indications that private parties may be used for migrant smuggling and trafficking in human beings, in accordance with Article 4(1), point (f), of Regulation (EU) 2016/794;

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- (h) providing strategic analyses and threat assessments to Member States and the Commission as well as relevant Union agencies or bodies, where appropriate, on the prevention and combating of migrant smuggling and trafficking in human beings, in accordance with Article 4(1), point (f), of Regulation (EU) 2016/794;
- (i) preparing an annual report on migrant smuggling and on trafficking in human beings, identifying the main operational priorities and possible related actions at Union level, in accordance with Article 4(1), point (f), of Regulation (EU) 2016/794.

Article 6

Operational tasks of the European Centre Against Migrant Smuggling

The operational tasks of the European Centre Against Migrant Smuggling shall be the following:

- (a) coordinating, organising and implementing investigative and operational actions to support and strengthen actions by the competent authorities of the Member States in preventing and combating migrant smuggling and trafficking in human beings, including when these crimes are facilitated, promoted or committed using the internet, including social media, and including in the context of Europol deployments for operational support, in accordance with Article 4(1), points (c) and (m), of Regulation (EU) 2016/794;
- (b) supporting Member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams and operational task forces, on migrant smuggling and trafficking in human beings, including by providing analytical, operational, technical, forensic and financial support, in accordance with Article 4(1), point (h), of Regulation (EU) 2016/794;
- (c) providing administrative, logistical, financial and operational support to operational activities led by Member States, in particular in the framework of EMPACT, in accordance with Article 4(2) of Regulation (EU) 2016/794;
- (d) supporting the Europol Executive Director in evaluating, in accordance with Article 5b(3) of Regulation (EU) 2016/794, requests made by Member States for Europol deployments for operational support related to migrant smuggling and trafficking in human beings, including in the prioritisation of such requests based on operational needs;
- (e) identifying cases of migrant smuggling and trafficking in human beings that may require the setting up of an operational task force in accordance with Article 5a of Regulation (EU) 2016/794, and informing the Europol Executive Director of such cases;
- (f) identifying cases of migrant smuggling and trafficking in human beings that may require Europol deployments for operational support in accordance with Article 5b of Regulation (EU) 2016/794, and informing the Europol Executive Director of such cases;
- (g) identifying cases of migrant smuggling and trafficking in human beings that may require the application of Article 6 of Regulation (EU) 2016/794 on requests by Europol for the

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initiation of a criminal investigation and informing the Europol Executive Director of such cases;

- (h) identifying cases of migrant smuggling and trafficking in human beings that may require cooperation with third countries, including by exchanging personal data.

Chapter III

COOPERATION BETWEEN MEMBER STATES AND EUROPOL ON PREVENTING AND COMBATING MIGRANT SMUGGLING AND TRAFFICKING IN HUMAN BEINGS

Article 7

National specialised services to prevent and combat migrant smuggling and trafficking in human beings

1. Each Member State shall designate, one year after the entry into force of this Regulation at the latest, one or more specialised services within its competent authorities, in accordance with national law, to prevent and combat migrant smuggling and trafficking in human beings, including through criminal investigations. Each Member State shall immediately after such designation inform the Commission thereof.
2. Each Member State shall ensure that its specialised services designated in accordance with paragraph 1 of this Article collect all relevant information concerning and resulting from criminal investigations into migrant smuggling and trafficking in human beings and share such information as soon as possible with Europol and other Member States in accordance with Article 8.
3. Each Member State shall connect, one year after the entry into force of this Regulation at the latest, its specialised services designated in accordance with paragraph 1 of this Article directly to Europol's Secure Information Exchange Network Application (SIENA) referred to in Article 2, point (w), of Regulation (EU) 2016/794. Each Member State shall immediately after such connection inform the Commission thereof.
4. Each Member State shall provide its specialised services designated in accordance with paragraph 1 ~~with adequate resources~~ to ensure that those specialised services are equipped to prevent and combat effectively migrant smuggling and trafficking in human beings, and to collect and share information in accordance with paragraph 2 in an effective and efficient manner.
5. ~~Each Member State shall make available an appropriate number of staff members of the specialised services designated in accordance with paragraph 1 of this Article for the reserve pool referred to in Article 5b(6) of Regulation (EU) 2016/794, so that those staff members can participate in Europol deployments for operational support as seconded national experts.~~

Commented [S8]: Hungary proposes to delete Articles 5 and 6. The tasks listed in a tentative manner in these Articles of the draft regulation do not have added value in the context of the draft regulation and make the text of the regulation redundant. In our opinion, this regulatory technique is contradictory to the provisions of Article 288 of the TFEU, as the relevant provisions intend to regulate in detail the individual tasks of the participants in addition to the basic principles and systems of the structure, operation of the European Centre Against Migrant Smuggling. The organisational structure and complex activities of the European Centre Against Migrant Smuggling require a detailed definition of the tasks of the Member States and Europol, but the text of the draft regulation does not allow for a full coverage of that, so the regulation may be incomplete, partial, and further amendments may become necessary. In our view, it is against the EU regulatory technique to regulate such specific issues at the level of a regulation, therefore we suggest to determine the strategic and operational tasks of the European Centre Against Migrant Smuggling at a lower level of legal regulation, preferably in an internal regulation (e.g., organisational and operational rules of Europol).

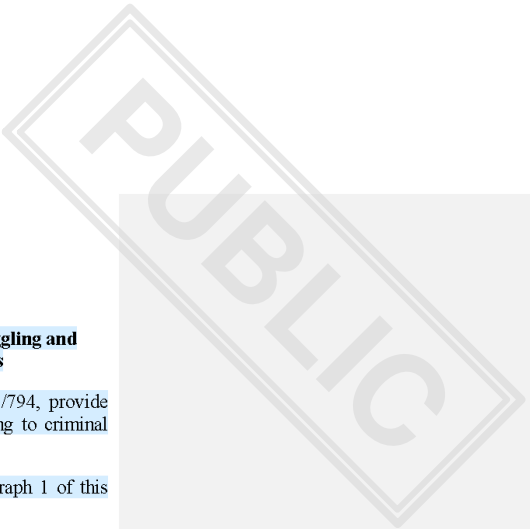
Commented [S9]: Hungary generally supports Article 7. We already have a specialised unit at national level.

Commented [S10]: Hungary proposes to delete the words "with adequate resources" since it is necessary to take into account the human and financial capacities available in Member States. The Regulation cannot impose such an obligation on Member States.

Commented [S11]: Hungary proposes to delete paragraph (5) since the human resources available to Member States are limited, it should be on voluntary basis. The frontline Member States, including Hungary, have a very heavy workload in terms of law enforcement forces and the withdrawal of human resources from a Member State in this way could jeopardise the effective functioning of law enforcement agencies. We cannot make any significant additional commitment to Europol in terms of human resources.

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Article 8

Provision of information concerning criminal offences on migrant smuggling and trafficking in human beings to Europol and the Member States

1. Each Member State shall, in accordance with Regulation (EU) 2016/794, provide Europol with information held by its competent authorities and relating to criminal offences on migrant smuggling and trafficking in human beings.
2. Each Member State shall provide the information referred to in paragraph 1 of this Article to Europol in a timely manner.
3. Each Member State shall provide other Member States and, at the same time, Europol with information held by its competent authorities and relating to criminal offences on migrant smuggling and trafficking in human beings where there are objective reasons to believe that such information could be relevant to those other Member States for the purpose of preventing, detecting or investigating such criminal offences in those Member States.
4. Each Member State shall use SIENA to provide the information referred to in paragraph 3 of this Article to other Member States and Europol, in accordance with Article 8(4) and Article 18(2), point (d), of Regulation (EU) 2016/794.
5. Each Member State shall connect its immigration liaison officers to SIENA. Where it is not possible to connect an immigration liaison officer to SIENA due to imperative technical reasons related to the situation in the third country of deployment, that immigration liaison officer shall submit the information referred to in paragraph 1 to a national competent authority through other secure channels. That competent authority shall provide the information to Europol, directly or through the Europol national unit, using SIENA.

Commented [S12]: Hungary proposes to delete Article 8 since it addresses issues that already have been regulated in Regulation (EU) 2016/794. In order to avoid unnecessary duplication, we do not support the adoption of these provisions.

Chapter IV

ENHANCING EUROPOL'S SUPPORT TO COMBATING MIGRANT SMUGGLING AND TRAFFICKING IN HUMAN BEINGS

Article 9

Amendments to Regulation (EU) 2016/794

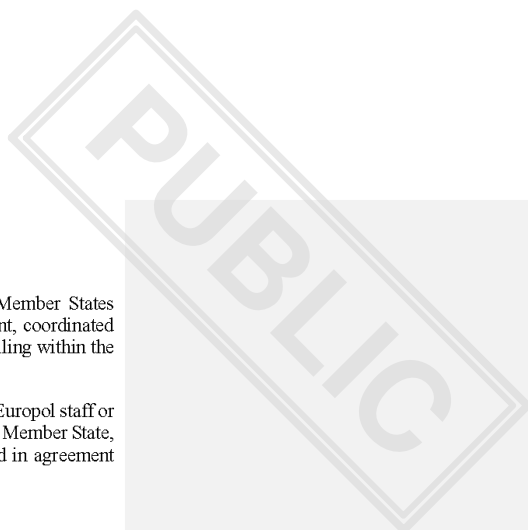
Regulation (EU) 2016/794 is amended as follows:

- (1) in Article 2, the following points (w), (x) and (y) are added:

‘(w) ‘SIENA’ means the secure information exchange network application, managed by Europol, aimed at facilitating the exchange of information;

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(x) ‘operational task force’ means a coordination mechanism set up by Member States among their competent authorities with the support of Europol to conduct joint, coordinated and prioritised criminal intelligence activities and investigations into a crime falling within the scope of Europol’s objectives that requires coordinated and concerted action;

(y) ‘Europol deployment for operational support’ means the deployment of Europol staff or seconded national experts in the territory of a Member State, upon request of that Member State, to provide analytical, operational, technical and forensic support in liaison and in agreement with the competent authorities of that Member State.’;

(2) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) coordinate, organise and implement investigative and operational actions to support and strengthen actions by the competent authorities of the Member States, that are carried out:

(i) jointly with the competent authorities of the Member States;

(ii) in the context of joint investigation teams in accordance with Article 5 and, where appropriate, in liaison with Eurojust;

(iii) in the context of operational task forces in accordance with Article 5a;

(iv) in the context of Europol deployments for operational support in accordance with Article 5b.’;

(ii) point (h) is replaced by the following:

‘(h) support Member States’ cross-border information exchange activities, operations and investigations, as well as joint investigation teams and operational task forces, including by providing analytical, operational, technical, forensic and financial support;’;

(iii) point (l) is replaced by the following:

‘(l) develop Union centres of specialised expertise for combating certain types of crime falling within the scope of Europol’s objectives, including the European Cybercrime Centre and, in accordance with Regulation (EU) .../... of the European Parliament and of the Council* [Regulation on Combating Migrant Smuggling], the European Centre Against Migrant Smuggling;

** Regulation (EU) .../... of the European Parliament and of the Council of ... on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol’s support to preventing and combating such crimes and amending Regulation (EU) 2016/794 (OJL ..., ELI: ...)’;*

(iv) point (s) is replaced by the following:

Commented [S13]: Hungary proposes to delete the new points (iii) and (iv) since we do not support the authorisation to carry out such actions regarding the new points because it would grant for Europol much broader powers than the Member States originally intended when the Agency was established.



‘(s) facilitate joint, coordinated and prioritised criminal intelligence activities and investigations, including with regard to persons referred to in point (r), and including through operational task forces and Europol deployments for operational support;’;

(v) the following point (za) is added:

‘(za) support Member States with the effective and efficient processing of biometric data.’;

(b) paragraph 5 is replaced by the following:

‘5. Europol shall not apply coercive measures in carrying out its tasks.

Europol staff may provide operational support to the competent authorities of the Member States during the execution of investigative measures by those authorities, at their request and in accordance with their national law, including in the context of the implementation of operational task forces and Europol deployment for operational support, in particular by facilitating cross-border information exchange, by providing analytical, operational, technical and forensic support, and by being present during the execution of those measures.

~~Europol staff shall have the power to execute non-coercive investigative measures themselves provided that Europol has been requested to do so by a Member State in accordance with its national law and the Executive Director has authorised Europol staff to execute the requested non-coercive investigative measures.~~

~~Europol staff shall carry out such non-coercive investigative measures in liaison and in agreement with the competent authorities of the Member State concerned, and in accordance with this Regulation and the national law of that Member State.’;~~

~~(3) the following Articles 5a and 5b are inserted:~~

~~Article 5a~~

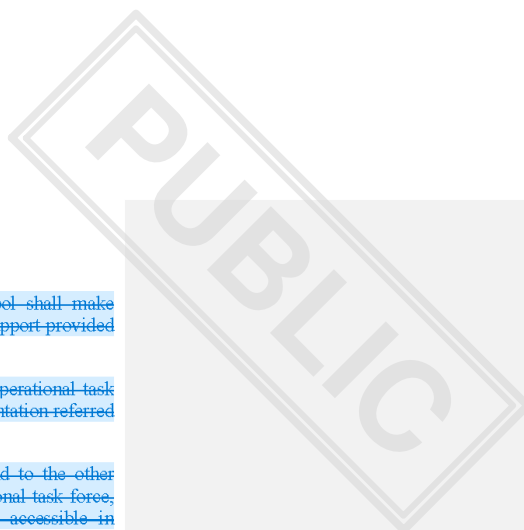
~~Operational task forces~~

- ~~1. Member States may set up an operational task force for the duration of certain dedicated criminal intelligence activities or investigations. Europol shall facilitate the setting up and support the implementation of an operational task force.~~
- ~~2. The Member States setting up an operational task force shall agree with Europol on the planning, coordination and implementation of the criminal intelligence activities and investigations of the operational task force.~~
- ~~3. The Member States setting up an operational task force shall ensure coherence and synergies with the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT).~~
- ~~4. The Member States setting up an operational task force may decide to invite other Member States, third countries and other partners referred to in Article 22 to participate in or support the operational task force. The participation of third countries and other partners in the operational task force shall take place in accordance with this Regulation.~~

Commented [S14]: Hungary proposes to delete these paragraphs as we do not support the establishment of such obligations for Member States and the authorisation of Europol to carry out such actions because it would grant much broader powers than the Member States originally intended when the Agency was established.

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- ~~5. To support the implementation of an operational task force, Europol shall make available the analytical, operational, technical, forensic and financial support provided for by this Regulation, in accordance with paragraph 2.~~
- ~~6. Each Member State setting up, or participating in, or supporting an operational task force shall, in accordance with the planning, coordination and implementation referred to in paragraph 2:~~
- ~~(a) provide all relevant information without delay to Europol and to the other Member States setting up, participating in, or supporting the operational task force, using SIENA and, where appropriate, make information directly accessible in accordance with Article 20(2a);~~
 - ~~(b) make use of the analytical, operational, technical, forensic and financial support provided by Europol;~~
 - ~~(c) initiate certain dedicated criminal intelligence activities and investigations in accordance with national law where required to address the crime to which the operational task force relates;~~
 - ~~(d) initiate parallel financial investigations in accordance with national and Union law to identify and seize criminal assets;~~
 - ~~(e) engage its liaison officers deployed in third countries where criminal activities are investigated in the context of the operational task force to enhance cooperation and information sharing, and provide Europol with the information obtained, in accordance with Union and national law.~~
- ~~7. The Executive Director may propose setting up an operational task force to the competent authorities of the Member States concerned via their national units where the Executive Director considers it would add value to combating a crime falling within the scope of Europol's objectives.~~
- ~~8. The Management Board shall adopt implementing rules for the setting up and implementation of operational task forces.~~

Article 5b

Europol deployment for operational support

- ~~1. A Member State may request, in accordance with its national law, Europol deployment for operational support on its territory to make use of the analytical, operational, technical, forensic and financial support provided by Europol to prevent and combat crimes falling within Europol's objectives.~~
- ~~2. Europol deployment for operational support shall take place in the context of complex and large-scale investigations requiring Europol's support, including in the context of joint investigation teams or operational task forces, or to support checks against relevant databases to strengthen controls at the Union's external borders, or migration management support teams in accordance with Regulation (EU) 2019/1896 of the European Parliament and of the Council or to provide support to Member States in major international events.~~

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3. The Executive Director shall evaluate the request made by a Member State in accordance with paragraph 1 and may approve the Europol deployment for operational support for a limited period of time that can be renewed, considering the operational needs and its available resources. The decision of the Executive Director shall be based on a risk assessment.
4. Once the Executive Director has approved the request made by a Member State in accordance with paragraph 1, that Member State and Europol shall jointly agree on the modalities of the Europol deployment for operational support. Europol staff and seconded national experts deployed in the Member State shall operate in accordance with this Regulation, notably Article 4(5), and in accordance with the national law of the Member State in whose territory the deployment takes place.
5. In exceptional cases of urgency requiring immediate Europol deployment for operational support in the territory of a Member State, that Member State and the Executive Director shall ensure that the steps set out in paragraphs 1, 3 and 4 take place within a period of 72 hours.
6. Europol shall set up a reserve pool of Member States' experts for the purpose of Europol deployments for operational support. The reserve pool shall constitute a reserve of experts working in their Member States that can be placed at the immediate disposal of Europol for that purpose. The Member States shall ensure that their experts are available to take part, as seconded national experts, in Europol deployments for operational support at the request of Europol.
7. The Member State in whose territory the Europol deployment for operational support takes place shall, in accordance with the agreed modalities referred to in paragraph 4:
 - (a) provide all relevant information without delay to Europol, where possible by making information in national databases directly accessible to the Europol staff and seconded national experts deployed in its territory in accordance with its national law;
 - (b) make use of the analytical, operational, technical and forensic support provided by the Europol staff deployed in its territory;
 - (c) enable the Europol staff and seconded national experts deployed in its territory to be present during the execution of investigative measures.
8. The Executive Director may propose the Europol deployment for operational support in the territory of a Member State to the competent authorities of that Member State via its national unit where the Executive Director considers it would add value to preventing or combating a crime falling within the scope of Europol's objectives.
9. The Management Board shall adopt implementing rules for the preparation and implementation of Europol deployments for operational support, including on the number and profiles of experts to be included in the reserve pool and any subsequent changes thereto.
10. This Article shall apply *mutatis mutandis* where Europol deployment for operational support takes place in a third country as referred to in Article 25(1), point (a), (b) or (c).

Commented [S15]: Hungary proposes to delete the new Articles 5a and 5b since we do not support the authorisation to carry out such actions because it would grant for Europol much broader powers than the Member States originally intended when the Agency was established. Proposals for an operational task force (OTF) and a pool of experts are already included in the Action Plan and we see no added value in the proposed regulation. These taxative provisions would have a negative impact on the effectiveness and flexibility of OTFs.

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* Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/1896/oj>).’;

(5) in Article 18(2), point (d) is replaced by the following:

‘(d) facilitating, including through SIENA, the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties;’;

(6) Annex I is amended as follows:

(a) the sixth indent (“immigrant smuggling”) is replaced by the following:

‘- migrant smuggling’;

(b) the following indent is added:

‘- violation of Union restrictive measures’.

Chapter V

FINAL PROVISIONS

Article 10

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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THE NETHERLANDS

The Netherlands would like to ask the Commission to clarify the following questions:

- Can the Commission explain the necessity and proportionality of codifying the EMCS and why this is being done for the EMCS and not for other centres? And does the formalization of the ECMS also require additional staff support from the Member States on top of the staff already provided by Member States?
- Why does the requested liaison for the operational tasks of the EMSC referred to in Article 4(2) of the proposal appear to be limited to 'specifically targeted at smuggling of human beings' when the operational tasks of the Centre cover both smuggling and trafficking in human beings?
- Given the size of the proposal, why did the Commission choose not to carry out an impact assessment?
- In addition, could the Commission explain why OTFs should be formalized by the Regulation?
- Regarding Europol's operational deployment in/for the benefit of Member States: what order of magnitude are we talking about here, how many staff should Member States contribute to a reserve pool? What is the added value of the reserve pool compared to the deployment of 'guest experts'?
- Is the 9 million in personnel costs (page 23) part of the 48.892 million? (reference is made to footnote 44 - The Europol staff increase mentioned in the proposal will be offset with a reduction of the future reinforcement in FRONTEX staff. The two agencies will agree the concrete modalities for the transfer, within the respect of the criteria and timeline set by the co-legislators;
- What does this mean; Has a future expansion of FRONTEX staff already been agreed? And how are they going to do this in practice?

SLOVAKIA

Comments from Slovak Republic on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794):

General observations/comments:

Slovak Republic generally supports the objectives of the draft regulation as any other activities/proposals focused on international police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings. SK maintains a general scrutiny reservation on the whole proposal.

The establishing the European Centre against Migrant Smuggling

SK is not convinced of the necessity to establish a future Centre at Europol based on the Regulation. Under the current law – Article 11 (s) of the Regulation (EU) 2016/794 (Europol Regulation) the decision to establish the European Centre against Migrant Smuggling is in the competence of the Management Board of Europol. In connection with Article 4(1) (l) of the Europol Regulation, we would like to emphasize that the proposal regulates issues in the text of the Regulation, which are not regulated at the same level of detail in other areas of crime, which are also covered by Europol's mandate.

SK understands that the European Centre against Migrant Smuggling (ECMS) would be built on the existing “European Migrant Smuggling Centre” and this new Centre constitutes a hybrid model because

- a) is established by a separate legal act (regulation),
- b) has a specific composition and competence, and
- c) has legal basis covering not only Europol (Article 88 of TFEU), but also police cooperation (Article 87 of TFEU) and Eurojust (Article 85 of TFEU).

In this regard, we would welcome an opinion of the Council Legal Service.

Question for the Council Legal Service/Commission:

1. How this new/hybrid model fits into Europol structure and governing model, and – in particular – vis à vis other Centres established within Europol?

Article 1

Please see our comments above regarding the establishing the European Centre against Migrant Smuggling

Article 2

Paragraph 3 is missing. Paragraphs 4 and 5 should be renumbered as paragraphs 3 and 4.

Article 3

If this provision shall be included in the Regulation, then a clarifying provision should be added to the proposal expressing that the ECMS must abide by all of the requirements of the Europol Regulation and that its activities are limited to the powers provided in the Europol Regulation. The individual references to the Europol Regulation (e.g. in Articles 3, 5 and 6) do not suffice in this regard.

In addition to listing the relevant forms of crime given in the Annex to the Europol Regulation, reference should also be made to Article 3 (1) of the Europol Regulation.

Article 4

SK agrees.

Article 5 and 6

SK appreciates clear references to the provisions of Europol Regulation setting relevant tasks of Europol. If this Regulation cannot be merged with the Europol Regulation, SK would welcome much shorter and concise description of the tasks in Articles 5 and 6

Article 7

SK already has a specialized unit at national level within our National Unit Combating Illegal Migration, so the obligations set out in Article 7 can be met by SK. However, these obligations would require more human resources. Art 7(5): The activities described in Art 7 (5) and Art 5b (6) (amendment to Regulation (EU) 2016/794) could lead to constraints at national level.

Therefore, SK proposes to postpone the connection by two years (i. e. three years after the entry into force of the Regulation instead of one year). At the same time, these services should not be required to connect to SIENA Restreint (such cases can be dealt with by SPOC) handle), such connection should remain optional.

The obligation to second national law enforcement staff to Europol could significantly influence the ability of the Member State to use its specialists. Therefore, SK proposes to enable each Member State to declare a unilateral limit on such staff available to the reserve pool. The access of Europol officers and seconded experts to the national systems should remain optional and should be clarified (responsibility, role of national data protection authority etc.).

Article 7 (5) states that member states shall make available an appropriate number (which is a vague reference itself) of staff members of specialized services for the reserve pool; for SK it is important that the draft regulation is mindful of member states limited human resources and that more discretion and flexibility for the Member States is ensured in this regard (possibly also by foreseeing this as a voluntary clause rather than a mandatory one).

In addition, SK also finds it important to understand the implications the Europol reserve pool would make on Member States national budgets.

Article 8

The duty to provide information should be limited (either to organized or serious crime) to reserve capacities of the Member States. Reference to the general conditions for provision of information to Europol (including Article 7(7) of Europol Regulation) should be made.

Chapter IV

SK supports the limitation to operational and non-coercive investigative measures (amendments to Article 4).

SK is not satisfied with the formulation “in liaison and in agreement” in Art. 4(5). SK typically requires that foreign law enforcement officers act under instructions and responsibility of the Slovak law enforcement official.

Deployment for operational support (mainly Article 5b)

SK agrees that such deployment must be prioritized on the side of Europol.

SK suggest deleting the term "immediate" in the second sentence of paragraph (6) of Article 5b of the draft Regulation. ("The reserve pool shall constitute a reserve of experts working in their Member States that can be placed at the immediate disposal of Europol for that purpose.")

SK suggest reformulating the last sentence of paragraph (6) of Article 5b of the draft Regulation so that it is not mandatory, but an voluntary option for the Member States. ("The Member States shall ensure that their experts are available to take part, as seconded national experts, in Europol deployments for operational support at the request of Europol.")

What is the planned size of the reserve pool referred to in Article 7 (5) and Article 9 (3) (new Article 5b (6, 9)) of the draft?

The draft indicates that the size of the pool will be determined by the Management Board in accordance with Article 5b of Regulation (EU) 2016/794, but does not present any estimate as to the planned size of the pool.

Article 5b (7): The direct access to national databases described in Art 5b(7) (amendment to Regulation (EU) 2016/794) would require a legislative amendment in Slovakia. It would also be helpful if these were Slovak officials at Europol who are familiar with these databases.

SPAIN

Comments regarding the file of the legislative proposal 16204/23, titled "Regulation of the European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection, and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016".

Firstly, the Spanish delegation wishes to receive feedback from the **Management Board** of Europol and Frontex. We believe it is essential to obtain an updated situation report on these agencies before proceeding with any regulatory changes. This feedback is crucial for informed and effective decision-making.

Regarding the contribution of experts to the talent pool, our position is that the secondment of experts should be voluntary. Additionally, it would be beneficial to clarify their administrative status, specifically if they will be considered as Seconded National Experts (SNE). This clarification is vital for a full understanding of the implications and expectations of such secondment.

As for access to national databases, it is imperative to discuss and clarify how this access will be granted to the responsible personnel. Moreover, there are particularly sensitive issues related to the use of information obtained from **victims' devices**. These aspects require thorough analysis and debate to ensure the protection of rights and privacy.

Furthermore, from the analysis of the functions and responsibilities assigned to the EMSC, concerns arise about potential overlaps and redundancies with the activities currently carried out by the European Border and Coast Guard Agency, Frontex. Specifically, we refer to functions such as strategic analysis, situation monitoring, threat assessment, technical and operational cooperation, and advising Member States on police activities for the prevention and combat of transnational crime dedicated to migrant trafficking.

The effort required to enhance the ESMC's capabilities, in terms of human reinforcement and economic expenditure, is significant. It is therefore paramount that the Commission ensures that the activities of its Agencies, in this case, Europol and Frontex, do not overlap or duplicate.

We consider it necessary for the European Commission to clarify to the Member States the specific mandates of both Agencies (Europol-Frontex) in this field and in the activities mentioned. It is crucial to ensure perfect coordination operationally and in information handling, data exchange, intelligence, and analysis, to avoid any possible redundancy or conflict between the agencies. We request the conduct of a comprehensive impact study on the matter to evaluate the potential operational, financial, and administrative implications of enhancing the ESMC's capabilities. This study should include a detailed analysis of the roles and functions of the involved agencies to avoid redundancy and ensure efficient resource allocation.

We appreciate your attention to these matters and look forward to the opportunity to discuss them in more detail. Continuous and constructive dialogue will be key to ensuring effectiveness and efficiency in the fight against these transborder crimes.
