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**NOTE**

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| From:           | Presidency   |
| To:             | Delegations  |
| No. prev. doc.: | 14205/21   |
| No. Cion doc.:  | COM(2021) 782 final  |
| Subject:        | Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA |

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Delegations will find in annex the Presidency's compromise proposals on Articles 11 to 23 of the abovementioned proposal for a Directive.

All changes proposed by the Presidency, as compared to the Commission's proposal, appear as ~~striketrough~~ and **bold underlined**.

*Article 11**List of languages*

1. Member States shall establish and keep up to date a list with one or more of the ~~official~~ languages of the Union in which their Single Point of Contact is able to provide information upon a request for information or on its own initiative. That list shall include English.
2. Member States shall provide those lists, as well as any updates thereof, to the Commission. The Commission shall publish those lists, as well as any updates thereof, in the Official Journal of the European Union.

*Article 12**Provision of information to Europol*

1. Member States shall ensure that, where their Single Point of Contact or their law enforcement authorities send requests for information, provide information pursuant to such requests, provide information on their own initiative ~~or send other communications relating thereto~~ under Chapters II and III, they also send, at the same time, a copy thereof to Europol, insofar as the information to which the communication relates concerns offences falling within the scope of the objectives of Europol in accordance with Regulation (EU) 2016/794.
2. **Member States may exceptionally decide not to provide or to defer the provision of a copy to Europol if there are objective reasons to believe that such provision would:**
  - (a) be contrary to or would harm the essential interests of the national security of the Member State;**
  - (b) jeopardise an ongoing investigation of a criminal offence; or;**
  - (c) unduly harm the life or physical integrity of a person.**

## Article 13

### *Use of SIENA*

1. Member States shall ensure that, where their Single Point of Contact or their law enforcement authorities send requests for information, provide information pursuant to such requests, provide information on their own initiative or send other communications relating thereto under Chapters II and III or under Article 12, they do so through SIENA.

**1a. Member States may exceptionally decide to permit their SPOC or their law enforcement authorities not to use SIENA in the following cases:**

**(a) exchanges of information between Member States in the framework of a specific cooperation project based on a different communication channel;**

**(b) multilateral exchanges of information that also involve third countries.**

2. Member States shall ensure that their Single Point of Contact, as well as all their law enforcement authorities that may be involved in the exchange of information under this Directive, are directly connected to SIENA.

## Chapter V

### Single Point of Contact for information exchange between Member States

## Article 14

### *Establishment, tasks and capabilities*

1. Each Member State shall establish or designate one national Single Point of Contact, which shall be the central entity responsible for coordinating exchanges of information under this Directive.

2. Member States shall ensure that their Single Point of Contact is empowered to carry out at least all of the following tasks:

- (a) receive and evaluate requests for information **submitted in accordance with Article 4**;
- (b) channel requests for information to the relevant national law enforcement authority or authorities and, where necessary, coordinate among them the processing of such requests and the provision of information upon such requests;
- (c) **coordinate the** analyses and **the** **structuring of** information with a view to providing it to the Single Points of Contact and, where applicable, to the law enforcement authorities of other **requesting** Member States;
- (d) provide, upon request or upon its own initiative, information to ~~the Single Points of Contact and, where applicable, to the law enforcement authorities of other Member States~~ in accordance with Articles 5 and 7;
- (e) refuse to provide information in accordance with Article 6 and, where necessary, request clarifications in accordance with Article 6(3);
- (f) send requests for information to the Single Points of Contact of other Member States in accordance with Article 4 and, where necessary, provide clarifications in accordance with Article 6(3).

3. Member States shall ensure that:

- (a) their Single Point of Contact has access to all information available to their law enforcement authorities, insofar as necessary to carry out its tasks under this Directive;
- (b) their Single Point of Contact carries out its tasks 24 hours a day, 7 days a week;
- (c) their Single Point of Contact is provided with the staff, resources and capabilities, including for translation, necessary to carry out its tasks in an adequate and rapid manner in accordance with this Directive ~~and in particular,~~ **including, where applicable**, the time limits set out in Article 5(1);

(d) the judicial authorities competent to grant the judicial authorisations required under national law in accordance with Article 9 are available to the Single Point of Contact 24 hours a day, 7 days a week.

4. Within one month of the establishment or designation of their Single Point of Contact, Member States shall notify the Commission thereof. They shall update that information where necessary.

The Commission shall publish those notifications, as well as any updates thereof, in the Official Journal of the European Union.

#### *Article 15*

#### ***Composition***

1. Member States shall determine the organisation and the composition of ~~its~~**their** Single Point of Contact in such a manner that it can carry out its tasks under this Directive in an efficient and effective manner.
2. Member States shall ensure that their Single Point of Contact is composed of representatives of national law enforcement authorities whose involvement is necessary for the adequate and rapid exchange of information under this Directive, including at least the following insofar as the Member State concerned is bound by the relevant legislation to establish or designate such units or bureaux:
  - (a) the Europol national unit established by Article 7 of Regulation (EU) 2016/794;
  - (b) the SIRENE Bureau established by Article 7(2) of Regulation (EU) 2018/1862 of the European Parliament and of the Council<sup>1</sup>;
  - ~~(c) the passenger information unit established under Article 4 of Directive (EU) 2016/681;~~

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<sup>1</sup> Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312 7.12.2018, p. 56).

- (d) the INTERPOL National Central Bureau (NCB) established by Article 32 of Constitution of the International Criminal Police Organisation – INTERPOL.

*Article 16*

***Case Management System***

1. Member States shall ensure that their Single Point of Contact deploys and operates an electronic single Case Management System as the repository that allows the Single Point of Contact to carry out its tasks under this Directive. The Case Management System shall have at least all of the following functions and capabilities:
- (a) recording incoming and outgoing requests for information referred to in Articles 5 and 8, as well as any other communications with Single Points of Contact and, where applicable, law enforcement authorities of other Member States relating to such requests, including the information about refusals and the requests for and provision of clarifications referred to in Article 6(2) and (3) respectively;
  - (b) recording communications between the Single Point of Contact and national law enforcement authorities, pursuant to Article 15(2), point (b);
  - (c) recording provisions of information to the Single Point of Contact and, where applicable, to the law enforcement authorities of other Member States in accordance with Articles 5, 7 and 8;
  - (d) cross-checking incoming requests for information referred to in Articles 5 and 8, against information available to the Single Point of Contact, including information provided in accordance with the second subparagraph of Article 5(3) and the second subparagraph of Article 7(2) and other relevant information recorded in the Case Management System;
  - (e) ensuring adequate and rapid follow-up to incoming requests for information referred to in Article 4, in particular with a view to respecting the time limits for the provision of the requested information set out in Article 5;

- (f) be interoperable with SIENA, ensuring in particular that incoming communications through SIENA can be directly recorded in, and that outgoing communications through SIENA can be directly sent from, the Case Management System;
- (g) generating statistics in respect of exchanges of information under this Directive for evaluation and monitoring purposes, in particular for the purpose of Article 17;
- (h) logging of access and of other processing activities in relation to the information contained in the Case Management System, for accountability and cybersecurity purposes, **in accordance with Article 25 of Directive (EU) 2016/680.**
2. Member States shall take the necessary measures to ensure that all cybersecurity risks relating to the Case Management System, in particular as regards its architecture, governance and control, are managed and addressed in a prudent and effective manner and that adequate safeguards against unauthorised access and abuse are provided for.
3. Member States shall ensure that any personal data processed by their Single Point of Contact are contained in the Case Management System only for as long as is necessary and proportionate for the purposes for which the personal data are processed and are subsequently irrevocably deleted, **in accordance with Article 4(1)(e) and Article 5 of Directive (EU) 2016/680.**

## Chapter VI

### Final provisions

#### *Article 17*

#### *Statistics*

1. Member States shall provide the Commission with statistics **of the previous year** on the exchanges of information with other Member States under this Directive, by 1 March of each year.
2. The statistics shall cover, as a minimum:
  - (a) the number of requests for information submitted by their Single Point of Contact and by their law enforcement authorities;
  - (b) the number of requests for information received and replied to by the Single Point of Contact and by their law enforcement authorities, broken down by urgent and non-urgent, and broken down by the other Member States receiving the information;
  - (c) the number of requests for information refused pursuant to Article 6, broken down per requesting Member States and per grounds of refusal;
  - (d) the number of cases where the time limits referred to in Article 5(1) were deviated from due to having to obtain a judicial authorisation in accordance with Article 5(2), broken down by the Member States having submitted the requests for information concerned.

## *Article 18*

### ***Reporting***

1. The Commission shall, by [*date of entry into force + 3 years*], submit a report to the European Parliament and to the Council, assessing the implementation of this Directive.
2. The Commission shall, by [*date of entry into force + 5 years*], submit a report to the European Parliament and to the Council assessing the effectivity and effectiveness of this Directive. The Commission shall take into account the information provided by Member States and any other relevant information related to the transposition and implementation of this Directive. On the basis of this evaluation, the Commission shall decide on appropriate follow-up actions, including, if necessary, a legislative proposal.

## *Article 19*

### ***Amendments to the Convention Implementing the Schengen Agreement***

From [*the date referred to in Article 21(1), the first subparagraph*], the Convention Implementing the Schengen Agreement is amended as follows:

- (i) Article 39 is replaced by this Directive insofar as that article relates to the exchange of information for the purposes referred to in Article 1(1) of this Directive;
- (ii) Article 46 is deleted.

## *Article 20*

### ***Repeal***

Framework Decision 2006/960/JHA is repealed from [*the date referred to in Article 21(1), the first subparagraph*].

References to that Framework Decision shall be construed as references to the corresponding provisions of this Directive.

## *Article 21*

### ***Transposition***

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*date of entry into force + 2 years*]. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from that date. However, they shall apply Article 13 from [*date of entry into force + 4 years*].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## *Article 22*

### ***Entry into force***

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

## *Article 23*

### ***Addressees***

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*