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**NOTE**

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| From: | Presidency |
| To: | Delegations |
| No. Cion doc.: | COM(2020) 796 final |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation<br>– Presidency compromise suggestion regarding thematic bloc 4: Enabling Europol to enter data into the SIS |

## Introduction

Since the beginning of the negotiations in January 2021, significant progress has been achieved on a number of thematic blocs, such as Europol's cooperation with private parties and third countries or innovation. That said, there are diverging views on how to approach thematic bloc 4 - *enabling Europol to enter data into the Schengen Information System* - despite a number of meetings where this issue has been addressed. The Presidency has therefore decided to suggest a compromise solution that it considers balanced towards all the Member States who took a position, to be discussed during the informal videoconference of the LEWP on 16 April 2021.

**State of play**

Since most of the provisions relating to thematic bloc 4 are set out in the connected proposal for an amendment of the SIS Regulation, the Presidency decided to conduct this part of the negotiations in the IXIM Working Party, with a first meeting on 3 February 2021. However, during that meeting and in subsequent written contributions, a number of delegations indicated their wish to first discuss the actual scope of the possibility for Europol to create SIS alerts in the LEWP, before reverting to the more technical aspects in IXIM.

Subsequent discussions in LEWP meetings of 22 February and 8 and 16 March 2021 have shown that while some delegations have substantial reservations as to the possibility for Europol to enter alerts into the SIS, others support the Commission proposal or might be able to support it with some amendments. Delegations also raised a number of specific questions during those meetings, to which the Commission replied in writing on 19 March 2021[1].

Following a call by the Presidency on those who opposed the Commission proposal to suggest alternative solutions, the French delegation together with Greece presented a non paper[2] explaining their views on why Europol should not be entitled to create SIS alerts, and making reference to alternative solutions such as the informal protocol agreed in TWP/COSI in November 2020[3], better use on Interpol data, implementation of the Interoperability Regulations or the use of QUEST.

In reaction to the document presented by France and Greece, the delegations of Austria, Czechia and Slovakia presented a joint compromise suggestion[4] based on the Commission proposal, with possible openings to reservations expressed by other Member States during the meetings, such as by limiting the scope of the proposal to terrorism or to the so-called trusted third countries.

The above document has been distributed to delegations together with a new suggestion by the French delegation[5], consisting in the creation of a mechanism in which Europol would support the Member States in the processing of third country information they should enter into the SIS, with subsequent reporting to Europol regarding action taken. This mechanism would not cover terrorism which shall remain governed by a protocol agreed amongst Member States.

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1 WK 3974/21 REV 1 (revised with additions on 5 April 2021).
2 Distributed by email on 6 March 2021
3 13037/20
4 Distributed by email on 26 March 2021 and set out in Annex 1 to this note
5 Distributed by email on 26 March 2021 and set out in Annex 1 to this note

As a follow-up to the LEWP meeting of 16 March, the Presidency addressed a set of questions for written replies to the Member States, regarding their support to the Commission proposal and specific wording suggestions for potential alternatives. The replies received from the Member States are set out in the Annex 2 to this note. The Presidency notes that besides Austria, Czechia, Finland, Slovakia and Slovenia, a number of delegations have now also voiced their support to the Commission proposal (Poland, Lithuania) or otherwise expressed openness to the idea of Europol alerts in the SIS (Italy, Bulgaria, Germany with modifications primarily in the SIS Regulation, Malta with limitation to trusted third countries).



**Compromise suggestion**

Based on the above, the Presidency would like to suggest a compromise solution based on the Commission proposal and featuring the possibility for Europol - under strict conditions - to enter alerts into the SIS. The Presidency believes that it has the potential of addressing the concerns expressed by the delegations and gathering the necessary qualified majority. The compromise could include the following parameters:

1. Europol would only enter an alert in the SIS upon request by at least one Member State (in comparison to the Commission proposal which provides for a "no objection" clause)
2. the scope of offences on which a SIS alert can be entered by Europol could be limited to terrorist offences as defined in Article 3 of Directive (EU) 2017/541;
3. the scope of third countries from which information could serve as a basis for a Europol alert could be limited to the so-called trusted third countries, that is third countries referred to in Article 25(1) of the Regulation with which there is an agreement on operational cooperation o which are subject to an adequacy decision.

The resulting text of Article 4(1)(r) could therefore read as follows:

> **r) support Member States and, [*1* - upon request by at least one Member State], insert personal data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council, on the suspected involvement of a third country national in [*2a* - a terrorist offence as defined in Article 3 of Directive (EU) 2017/541] / [*2b* - an offence in respect of which Europol is competent] and of which it is aware on the basis of information received from third countries [*3* - referred to in Article 25(1) of this Regulation] or international organisations within the meaning of Article 17(1)(b);**

The above wording would be accompanied by the corresponding recital (8), amended as follows:

> **(8) The Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council, is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from [3 - trusted] third countries and international organisations on persons suspected to be involved in [2a - terrorist offences] / [2b - crimes falling within the scope of Europol's mandate]. Following a request by at least one Member State, Europol should be able to enter data on these persons in the SIS in order to make it available directly and in real-time to SIS end-users, thus making the data part of the interoperable architecture and making full use of the benefits of the interoperability of EU information systems.**

The Presidency calls on the delegations to reply to the following question during the meeting on 16 April 2021:

- **In the spirit of compromise, could you support the wording proposed by the Presidency, and if so, could you indicate which of the square brackets should be used/left out?**

**ANNEX 1**

**Joint position by Austria, Czech Republic and Slovakia**

**Reaction by Austria, the Czech Republic and Slovakia to the non-paper of the French and Greek delegations on the creation of alerts in the SIS[1].**

In response to the document presented by the delegations of France and Greece and supported by other Member States, we would like to explain why we see the situation differently, both in terms of the operational need that we perceive as urgent, and of the proposed alternatives that we don't consider viable to address that urgent need. As a way forward, we are suggesting elements for a compromise solution in the last part of this document.

As a preliminary remark, it should be noted that this particular amendments to the SIS and Europol Regulations proposed by the Commission do not turn Europol into an investigative authority or enlarge its powers on Member States. For Europol, the essential task will be to better use information concerning non-EU citizens posing risk of terrorism, which it is already now receiving from third countries (often exclusively), by making them, where appropriate and after thorough verification including obligatory consultation with Member States, effectively available via SIS for all law enforcement authorities in Member States and providing corresponding analysis when hits on this alerts are received to enhance the protection against terrorist attacks.

## 1 NEED TO ACT

In their document, the French and Greek delegations refer to the voluntary protocol agreed in November 2020 as a satisfactory solution to the information gap in preventing and fighting against terrorism that most of us perceive as very real - it is after all for that reason that we had all engaged in the negotiation of that protocol. We should not forget that the December 2020 European Council, called on Member States to step up their efforts to make full use of European databases and information systems, in particular as regards entering in the databases relevant data on persons who are assessed by individual Member States as posing a serious terrorist or violent extremist threat, including foreign terrorist fighters.

[1] As distributed on 6 March 2021 within the LEWP community

There seems to be wide agreement that the most urgent operational need relates to the dangers posed by foreign terrorist fighters, and less so to other forms of serious and organised crime. Our compromise suggestion takes this into account.

Building on the protocol as a step in the right direction, we see the Commission proposal as an opportunity to devise an effective and sustainable mechanism where the preliminary analysis and verification, the decision to enter an alert and the entries themselves, and any follow-up actions remain under the full control of Member States. At the same time, this mechanism will enable us to make best use of the support that Europol offers as an information hub. It will help us solve the substantial backlog in the processing of information that is already available to us from reliable third country partners and deciding on the need to enter it in the SIS including the related workload and responsibilities of the SIS alert issuing country. We also see a clear advantage of having a specific permanent legal framework for this mechanism.

As we are facing security threats together, we need to join forces to close the information gap and provide for a European solution. Making use of Europol as a support tool would be an efficient way of doing so, with the advantage of keeping the resources needed visible and transparent to all of us, putting us in front of an informed decision as to how much we are collectively ready to dedicate to this support role. In the absence of support by Europol, a lack of resources at national level might lead to the work not being done or having no clear overview as to what has been done and what is still needed.

We also consider that without the support of Europol, the workload of the SIRENE Bureaux could be higher. For example, the hit reporting to a Member State that entered the alert only because there was no other solution is not efficient as this Member State would then carry out additional work concerning the follow up of a case with the additional workload this entails. Of course, any enhancement of sharing information means workload, but anyway the Member States have to deal with this if we want to fight the terrorism and the proposed solution mitigates at least half of the workload of the Member States by brining all the tasks of the issuing authority from them to Europol .

Concerning the points on measures in case of hit, it must also be made clear that the action to be taken by the end user in the event of a hit in the proposal represents a reduced form of information transmission, which is already carried out in relation to a hit according to Art. 36 of the SIS II Decision, and therefore does not represent a new transmission measure and practice showed, that it works. Any further measures by the hit executing Member State are of course possible as envisaged in the proposal but are fully kept in hands of the concerned Member State.



## 2 POTENTIAL ALTERNATIVES

Many of us have said during the Working Party meetings that we do consider the SIS as the best system to address the above operational need. In our opinion, the alternative solutions mentioned in the non-paper are either insufficient to achieving our goal or would require even more adaptations than the SIS due to their original architecture and purpose. The information gap, and the security concerns it raises, is too important to settle for incomplete and insufficient solutions.

### 2.1 Interpol

Interpol cannot solve the information gap in the EU. We are convinced that appropriate use of Interpol databases can complement, but not replace the intended goal of systematically equipping frontline officers with EU-verified third country information.

Some delegations criticised the potential misuse of Europol alerts for political goals by non-democratic third countries: Not only can this be addressed by limiting the Commission proposal to trusted third countries - another component of our compromise suggestion - but it seems to expose an argumentation paradox: we are not ready to engage on information verified by our own Agency, but we would like to replace that information by Interpol databases where entries escape any scrutiny by EU Member States?

Moreover, the use of TDAWN, as proposed in the non-paper, is prone to circumvention by criminals via exchange (and not even necessarily falsification) of their travel/identity documents.

SLTD, which is also mentioned in the non-paper, only contains stolen and lost travel documents and is already systematically checked at external borders. It does not contain information on persons but on their travel documents, so it does not address the problem.

Finally, it should also be mentioned that the scope of information provided by third countries to the EU is broader than what actually finds is way into Interpol databases, hence another potential increase in the information gap under discussion.



### 2.2 ETIAS

The pre-screening of Europol data that will be done in the context of ETIAS is not sufficient to address the problem. ETIAS will not replace the need to check the SIS at the borders. A third-country national with a valid travel authorization can still have an alert in the SIS to be noticed anytime crossing the border or inland. So, it is still needed to use the SIS.

The ETIAS watch-list will contain only some minimal information to identify a person and other information relevant for the ETIAS verification, but no specific information for real-time checks, such as biometrics (fingerprints and photographs), action to be taken, warning markers and type of offence, which is available in the SIS. The ETIAS watchlist will only be used for pre-screening of ETIAS (and visa application). The system will not be available to frontline officers.

### 2.3 QUEST

Here, one aspect is similar to the use of Interpol databases: providing frontline officers with access to the EIS via Quest could often be a welcome complement, but cannot replace actionable information in the SIS - the database is primarily intended for investigations where officers have the possibility to analyse significant amounts of information. In other words, QUEST is not designed as a system for frontline officers and the information in it would not be suitable for use during a border or a police check.

Moreover, the system would require substantial modifications in terms of prior consultation and control by the Member States in order to offer the same safeguards as the ones foreseen for the SIS in the current proposal. It should also be noted that this system doesn't require any reporting upon hit and entries are not subject to prior scrutiny by the Member States that would be comparable to the mechanism proposed for the SIS.

Under its current design, Quest won't be available to all intended end users and doesn't require any notification upon hit: also, these issues would have to be addressed.



## 3 CONCLUSION

Based on the above, and mindful of the concerns raised by a significant number of delegations, we would like to suggest components of a compromise solution that would meet the most pressing operational needs while addressing the concerns raised by several delegations.

The compromise solution could be based on the current Commission proposal, however limited to information relating to terrorism, as opposed to all forms of crime falling within the mandate of Europol. Moreover, in order to reduce the risk of undue processing of irrelevant or ill-intentioned information, the mechanism could be limited to information from the so-called trusted third countries, that is countries with an agreement on operational cooperation with Europol. As a further safeguard and step forward towards other delegations, we could discuss how to ensure that Europol alerts only constitute an option of last resort, such as in situations in which we would request Europol to issue alerts on behalf of Member States.

We stand ready to engage in a constructive discussion on such a compromise solution in order to close the information gap and enhance our collective security.

**NOTE OF COMMENTS BY THE FRENCH AUTHORITIES**



Following the LEWP meeting on 8 March, which focused, inter alia, on the examination of Block 4 (Europol's capacity to create alerts in the SIS), the French authorities propose to amend the proposals for the revision of the Europol and SIS Regulations as follows:

**A/ Proposal to revise the Europol Regulation**

The French authorities propose to :

– amend recital 8 of the initial proposal for a Europol Regulation ;

– amend Article 4(r) which, in the initial proposal, provides for the possibility for Europol to insert data into the SIS ;

– delete Article 51 (3h), which in the initial proposal implies a reporting mechanism on the amount of data inserted by Europol ;

– above all, create an Article 22a in Chapter IV on data processing just after Article 22.

***Recital 8 of the initial proposal (proposed changes in bold)***

*"The Schengen Information System (SIS), established in the field of police and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council, is an essential tool for maintaining a high level of security in the area of freedom, security and justice.*

*Europol, as a platform for information exchange in the Union, receives and holds valuable information from third countries and international organisations about persons suspected of being involved in crime falling within its mandate.* ***Some of this information can be usefully exploited through police cooperation tools, notably by creating alerts in the SIS.***

***In the framework of its mandate and its task of supporting Member States' investigations, Europol may support Member States in processing and entering such data into the Schengen Information System in order to make it available to SIS end-users directly and in real time.***

***To ensure the processing of data received and the insertion of alerts into the SIS in the fight against terrorism, Member States may adopt a detailed protocol such as the one decided in November 2020 in the EU Council fora. "***

**Therefore, the following sentence should be deleted:** *« ~~Following consultation with the Member States, Europol should be able to enter data on these persons in the SIS in order to make it available directly and in real time to SIS end-users~~ ».*

**Article 4(r) (amendment of the initial proposal)**

***(r) Europol shall support Member States in processing and entering personal data transmitted to Europol by third States and international organisations into the Schengen Information System in accordance with Regulation (EU) 2018/1862 of the European Parliament and the Council.***

**Article 22a (proposed new article)**

***1. Europol shall support Member States in the processing of data transmitted by third States or international organisations about non-EU suspects and criminals, for inclusion in the Schengen Information System in accordance with Regulation 2018/1862, and in accordance with their national legal framework.***

***2. For the purposes of paragraph 1, Europol shall analyse the information received and cross-check it with information already held in its databases to confirm its accuracy and supplement it with other data.***

***3. Europol shall communicate all the information transmitted by the entities mentioned in paragraph 1 in connection with the personal data received and the result of its analysis to the national units of the Member States. Europol shall in particular provide the following analysis elements:***

***(a) an analysis of the data transmitted confirming the reliability of the information source and the accuracy of the information on the person concerned, enabling Europol to determine that the person falls within its mandate where appropriate, after exchanging further information with the data provider in accordance with Article 25 of this Regulation***

***(b) a search in the SIS, carried out in accordance with Article 48 of Regulation 2018/1862, has not revealed the existence of an alert on the person concerned***

***(c) any relevant information facilitating the processing of the information by the Member States.***

***4. After receiving the result of Europol's analyses, the National Units of the Member States, in conjunction with the relevant competent authorities identified by them, shall distribute between Member States the processing and inclusion of the personal data transmitted in the SIS in accordance with their national legal framework. Europol may be involved in the allocated mechanism if necessary.***

***5. In strict compliance with their national legal framework and with Regulation 2018/1862, the competent authorities of the Member States shall be responsible for the processing of the data thus inserted in the SIS.***

***6. Within one year of the transmission of the data, the national units of the Member States, in conjunction with the competent authorities, shall inform Europol of the action taken on the data communicated under this Article.***

***7. The third State which transmitted the data may be informed by Europol of the inclusion of data in the SIS by a Member State.***

***8. By way of derogation from paragraphs 2 to 4 and 6 and 7 of this Article in the fight against terrorism, Member States may adopt a detailed protocol for the processing of data from third States or international organisations on non-EU suspects and criminals for inclusion in the Schengen Information System. In the framework of this protocol, Europol's support in the processing of data, as referred to in point 1, shall be carried out where appropriate at the request of a Member State.***

**Proposal to delete Article 51 (3h) in the initial proposal on information for the JPSG (joint parliamentary scrutiny group)**

~~**(h) annual information about the number of cases in which Europol issued alerts in the Schengen Information System in accordance with Article 4(1)(r), and the number of 'hits' these alerts generated, including specific examples of cases demonstrating why these alerts were necessary for Europol to fulfil its objectives and tasks;**~~

***B/ Proposal to revise the SIS "Police" Regulation***

As regards the SIS-Police Regulation, the French authorities cannot accept the initial proposal. Therefore, the French authorities ask for the withdrawal of Articles 37a and 37b.

However, in order to contribute constructively, the French authorities propose the establishment of a "post-hit" procedure by creating a point 10 of Article 48 of the SIS-Police Regulation, largely inspired by point 8 on the "post-hit" procedure for alerts related to terrorist offences.

**Article 48**

**Insertion of a point 10 in Article 48 of the SIS Police Regulation (2018/1862)**

***10. Member States shall inform Europol, by way of exchange of supplementary information, of any hits on alerts relating to data received by Europol from third States or international organisations and concerning nationals of third States. Exceptionally, Member States may not inform Europol if the transmission of such information would cause a possible prejudice to ongoing investigations or to the safety of someone, or would be contrary to the essential security interests of the issuing Member State.***

**ANNEX 2**

Member States replies to questions of the Presidency following the LEWP meeting on 16 March 2021:



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**BELGIUM**

**Written contribution BELGIUM concerning article 4.1 (r) Europol Regulation**

- Belgium has carefully read and studied the written replies from the Commission on our specific questions. We remain however not convinced on the operational added value of the proposed possibility for Europol to enter alerts in the SIS. There was too little evidence presented by the Commission on the so-called "information gap" and we are certainly not convinced (for our specific situation) with regard to the duplication of the Interpol alerts.
- Following the Presidency's request to take a stand on the proposal of the Commission with regard to article 4.1 (r) of the draft Europol Regulation, we have principally decided to propose to delete the possibility for Europol to enter alerts in the SIS. As such, there would be no need to change Regulation (EU) 2018/1862 as proposed by the European Commission. Belgium thus proposes to delete the proposed articles 37a and 37b.
- However, we want to try to be constructive in allowing for Europol to be able to inform the Member States about relevant information on the basis of which MS might want to consider entering a SIS alert themselves. Europol would be able to request MS to consider a SIS alert based upon a careful analysis of the data by Europol. The SIS alert to be entered would depend on the choice and possibilities of the relevant MS and would only concern already existing SIS alert categories.
- As previously stated, we find it important to have clarity on the criteria which will be used by Europol when they assess the necessity to consider to enter an alert in the SIS. That is why Belgium proposes that the MB, acting on a proposal from the Executive Director, would adopt a decision on the criteria to be used by Europol when requesting a MS to consider to enter an alert into the SIS.
- Taking into account the above explanations, our proposal would be to adapt article 4.1 (r) as follows:

***Article 4 1 (r)***

***"support Member Stated by informing the Member States*** *in accordance with article 7 of this Regulation of the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries or international organisations within the meaning of Article 17(1)(b),* ***and by requesting the Member States to consider*** *enter****ing alerts*** *into the Schengen Information System, in accordance with Regulation****s*** *(EU) 2018/1862* ***and 2018/1861 while specifying the reasons for which Europol issues such a request. The Management Board, acting on a proposal from the Executive Director, shall further specify the criteria on the basis of which Europol issues such requests.****"***

- As the Europol Regulation does not contain a definition of "a third country national", it might be considered to add the definition foreseen by the Commission in Regulation 2018/1862 ( " *third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU, with the exception of persons who are beneficiaries of the right of free movement within the Union in accordance with Directive 2004/38/EC or with an agreement between the Union or the Union and its Members States on the one hand, and a third country on the other hand;')* in article 2 of the Europol Regulation.

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**BULGARIA**

**Bulgarian contribution to thematic block 4**

**of the draft Regulation amending Regulation (EU) 2016/794 as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation**

Further to the request of the Presidency, aiming to move forward the discussions on thematic block 4 (the possibility of Europol to enter data into the SIS), Bulgaria would like to support the following approach.

We believe that **the provision of Art. 4, 1, r) should be revised and re-formulated** in order to allow an effective implementation of this tool.

Therefore we propose some amendments in Art. 4, 1, r) as well as in some other related provisions of the draft Regulation:

**Recital (8)**

(8) The Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council, is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from third countries and international organisations on persons suspected to be involved in **terrorism related offences** ~~crimes falling within the scope of Europol's mandate~~. Following the consultation **in accordance with Regulation (EU) 2018/1862** ~~with the Member States~~, Europol should be able to enter **verified and analysed** data on these persons in the SIS in order to make it available directly and in real-time to SIS end-users.

**Art. 4, 1, r)**

r) enter data into the Schengen Information System, ~~in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council,~~ following consultation **in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council**, ~~with the Member States in accordance with Article 7 of this Regulation~~, and under authorisation by the Europol Executive Director, on the suspected involvement of a third country national in a **terrorism related** offence in respect of which Europol is ~~competent and of which it is~~ aware on the basis of information received from third countries or international organisations within the meaning of Article 17(1)(b) **and in accordance of Art.25**;

**By [dd.mm.2023] the Commission shall carry out an evaluation assessing the effectiveness and efficiency of this provision in order to address the possible need to delete or modify it.**

**Art. 51, 3, h)**

(h) annual information about the number of ~~cases in which Europol issued~~ **alerts entered by Europol** in the Schengen Information System in accordance with Article 4(1)(r), and the number of 'hits' these alerts generated, including specific examples of cases demonstrating why these alerts were necessary for Europol to fulfil its objectives and tasks;

We consider that all other issues, procedures and etc. concerning enabling Europol to enter alerts in SIS should be stipulated in the Regulation (EU) 2018/1862 for example:

- ✓ the consultation procedure (it should be done via SIRENE Bureaus thus all MS and Schengen associated countries will be involved),
- ✓ the type of alert that Europol will be able to enter
- ✓ actions that should be executed by MS following hit on Europol alert
- ✓ actions that should be taken by Europol following the information received by executing MS – *(see our written contribution to Block 4 – quoting "we suggest in the post-hit procedure to be added that Europol shall carry out additional checks in its databases after the Agency has been notified for a hit on its alert. The summarized/ analysed information should be shared with the competent authorities of the MS where the hit is identified. If other Member States are identified during the subsequent processing of the hit information, they should also be notified")*

**CROATIA**

with regard to the Presidency Summary Conclusions after the LEWP meeting of March 16 and the questions for delegations mentioned therein, below you can find the answers from Croatian experts:

- Regarding the **Revision of the EUROPOL Regulation**, *Croatia* ***totally agrees with the Commission's proposal (Art. 4, 1, r);***

**CZECH REPUBLIC**

CZ supports the text of Article 4(1)(r) as it stands now but is ready to accept that Article 4(1)(r) will be modified in order to find a compromise solution, such as:

a. to provide that the entry into SIS is done upon request of Member States; and/or

b. to limit the scope explicitly only to terrorism rather than to all offences in respect of which the Europol is competent; and/or

c. to specify that the basis of information received is limited to third countries or international organizations to which Article 25(1) applies.

**FINLAND**

With reference to the questions posed by the Presidency to the MS as regards to Block 4 of the revision of the Europol regulation (the possibility of EUROPOL entering data into the SIS).

Unfortunately, Finland is not in a position to provide you with concrete answers to the posed questions, as we are waiting for the Finnish Parliament to confirm the position proposed by the Government on this matter. Handling of the matter has been delayed due to the processing of urgent legislative proposals addressing the impact of the COVID19 epidemic in Finland.

At this point it can be shared, that we have approached this matter from a more pragmatic point of view and the proposed position would allow us to scrutinise the proposals as they are now proposed by the Commission and to address any issues detected during the normal negotiation procedure. However, I must stress the fact that our national position is only final, when it has been discussed with and confirmed by the Parliament.

**GERMANY**

Please find below Germany's answers to the Presidency's questions regarding the Commission's proposal (Art. 4, 1, r) that were included in the Presidency summary of the discussions of the LEWP meeting of 16 March 2021.



- **Do you totally agree with the legal text of article 4, 1, r)?**

  The aims underlying the Commission proposal raise various legal and practical aspects. As already mentioned by DE in the Council Working Party, a number of questions need to be addressed when discussing the original Commission proposal or any other alternative proposal. Accordingly, DE submitted a number of questions to the Commission some of which have not yet been answered.

  But if the Commission and the Presidency adhere to the general approach of Art. 4 (1) (r) of the Europol Regulation, in our view, the conditions for entering SIS-alerts by Europol proposed by the Commission need further requirements aiming at striking a more proportionate balance between the rights of the person affected and the aims of the alert.

  This does not necessarily lead to amendments to Article 4 (1) (r) of the Europol Regulation, but could also be achieved by amendments to the „Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol".

  Notwithstanding these general remarks, we have to enter a scrutiny reservation concerning further details of the provisions.

- **Should this article 4, 1, r) have a more general and/or revised formulation? The MS that think so, please send us written text proposals (wording) to this article 4, 1, r).**

  In our view, the necessary adjustments can primarily be covered in the further process to amend SIS Regulation 2018/1862.

- **Should we include new article(s) with alternative solutions?**

  No.

- **Do you think that this article 4, 1, r) should be deleted?**

  No.

**GREECE**

As regards **Block 4 and the proposed provision of Article 4,1,r** Greece insists in its initial position suggesting deletion of the article on the justification basis given in our comments. Nevertheless, in a more moderate approach, should we exert efforts in identifying alternatives, we would align with and support the French proposal, as already submitted to the Presidency and circulated, that amends the article as follows:

***"(r) Europol shall support Member States in processing and entering personal data transmitted to Europol by third States and international organisations into the Schengen Information System in accordance with Regulation (EU) 2018/1862 of the European Parliament and the Council."***

**HUNGARY**

**Hungary's position on the possibility of placing a special SIS alert**

As our reply to the questions set out in the PRES flash document of LEWP 16 of March, as a general answer, we would like to highlight that we see the added value the purpose of the proposed procedure, however we still don't understand how would this be implemented in practice, as the front-line officers will only be aware of the fact that the Europol has information on the person concerned. Our biggest concern regarding the proposal is related to ***what will be the following step in practice and how would a front-line officer decide what next steps are required***.

Taking into account the feedback provided by the Commission during the last LEWP meeting and after it in written form, we do not see the answer to this question yet, as according to the Commission the purpose of these alerts would be primarily to provide information to front-line officers/end users, which is new, as in case of discreet/specific checks requiring immediate action, the aim is not to inform the end-user, but to inform immediately the owner of the alert (in this case it would be Europol). Although, according to the provisions of the new draft regulation regarding the alert placed by Europol the aim is to inform immediately the owner of the alert, but this is not in line with the Commission's latest explanation and our problem is still existing, and it is not clear what will be the steps after the end-user/frontline officer will see this type of hit in the system (without having legal basis for carrying out any concrete measures). Therefore we maintain our idea regarding the Commission to organize a simulation in order to clarify these steps and to see the real added value of using this type of alert.

**ITALY**



ITALIAN WRITTEN COMMENTS

FOLLOW UP DISCUSSION LEWP MEETING 16 MARCH 2021

EUROPOL RECAST Block 4 (the possibility of EUROPOL entering data into the SIS)

1. ***Do you totally agree with the legal text of article 4, 1, r)?***

No.

2. ***Should this article 4, 1, r) have a more general and/or revised formulation? The MS that think so, please send us written text proposals (wording) to this article 4, 1, r).***

Recalling what said in the written contributions following the LEWP meeting of 22.2.2021, Italy believes that the wording of article 4 par. 1 r) is too general and gives to Europol the possibility to enter into the SIS all information regarding crimes falling within its mandate (Annex I).

However, Italy believes that the information gap that needs to be addressed quickly concerns notably reliable third country information in the field of CT.

In light of these considerations, we propose the following rewording of art. 4 par. 1 r) (in red amended parts):

*[Europol shall perform the following tasks in order to achieve the objectives set out in Article 3:]*

*…*

*r)enter data into the Schengen Information System for information exchange purposes only, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council, following consultation and cooperation with the Member States in accordance with Article 7 of this Regulation, and under authorization by the Europol Executive Director, on the suspected involvement of a third country national in an offence related to terrorism of which it is aware, on the basis of information received from reliable third countries or international organisations within the meaning of Article 17(1)(b); any alert entered by Europol into the SIS shall be issued following a reasoned formal Decision, shared with all Member States, and be in accordance with the general principles set out in art. 29 of this Regulation for Member States.*

Furthermore, Italy believes that the following principles should guide the upcoming discussions on the Proposal concerning Reg. 1862/2018 (doc. 13882/20):

• to minimize the impact of the new powers of Europol to enter data into the SIS in order to preserve the current balance between a formal and reasoned Decision before the entry of an alert and the measure(s), the executing member State is obliged to take;

• To limit Europol's power to issue alerts in the SIS to data from reliable third countries;

• to limit the alerts issued by Europol in the SIS to data relating to terrorism only, and not to all crimes covered by Europol's mandate;

• In case of a hit of Europol's alert, to provide only information-based actions for the tracing State, eliminating any reference to further actions to be taken by the States according to national law, which could entail differentiated and non-homogeneous actions by the tracing States and operational uncertainties for the front line officers;

• to define in the text of the Proposal rigorous verification procedures, before and in support of the Europol Decision ( according to the wording Proposal of Art. 4 par. 1 r in the answer to the Question N. 2) - notably of qualitative nature - on the data of third States to be issued in the SIS by Europol;

• To recall that legislative and technical initiatives for ensuring the interconnection between ETIAS-Watch List database and SIS shall be the privileged and essential way for sharing information falling within the mandate of Europol with frontline officers;

***3. Should we include new article(s) with alternative solutions?***

Italy believes that involving Europol in the implementation of the SIS is currently the best option to address effectively and promptly the information gap on the field of CT, making information readily and promptly available to the frontline officers.
This is why Italy supports the continuation of the discussions on the Proposal of the Commission.
Nevertheless, some further considerations require to be addressed within this Working Group.
Italy acknowledges that the SIS is currently the only system that can be queried by Law Enforcement Officers carrying out a Police or a Border check, however we believe that a long-term structural solution should be find considering that the information to be entered by Europol in the SIS and in Etias Watch list would relate to the same fields ( CT and OC).
The current physical database separation of the two systems ( SIS and Etias) is a consequence of the different legal system purposes, this is why we deem that the best structural solution of the information gap would be to merge data of the two systems allowing access to all the Authorities that according to both Regulations[1]need to consult such records.
In light of above, we propose the two following solutions whose require amending the current legal framework:

1) To create a new SIS alert "Etias WL" where Europol and MS can enter data according to Etias Article 37.

This solution gives to MS and Europol the possibility to enter data and to fulfil the information gap related to the current discussions.
According to such proposal, Europol could enter alert on TCN and Member States could enter data other than those entered according Article 36[2].

[1] Namely: Reg (UE) 1862/20218 SIS for Police and Judicial Cooperation and Reg (UE) 1240/2018 for Etias puroposes.
[2] The Etias alert should be different form Article 36: the action would be only an information point similar to the Europol alert (proposed 37A) provision.

2) To enable the SIS users who carry out Police or Border checks to query the Etias Watch list:

This second proposal would solve the issue of the risk of entering twice the same record in the two different databases and it would allow SIS-users to have access to terrorism information when carrying out police or border checks.
We believe that under a technical point of view, a solution can be easily founded.
Italy is available to further explain the two mentioned solutions if needed.

***4. Do you think that this article 4, 1, r) should be deleted?***

No, we do believe that it should be modified according to the wording proposal submitted in response to question number 2.

**LITHUANIA**

LT replies to the questions below:

It is important, now, to know whether the Members States totally agree with the Commission's proposal (Art. 4, 1, r) or, instead, submit concrete alternative solutions to this specific proposal.

**In this regard, Presidency asks all the delegations the following:**

- ✓ *Do you totally agree with the legal text of article 4, 1, r)?* ***YES***
- ✓ *Should this article 4, 1, r) have a more general and/or revised formulation? The MS that think so, please send us written text proposals (wording) to this article 4, 1, r).* ***NO***
- ✓ *Should we include new article(s) with alternative solutions?* ***NO***
- ✓ *Do you think that this article 4, 1, r) should be deleted.* ***NO***

**MALTA**

**Malta's Written Comments following the meeting of the**

**Law Enforcement Working Party, held on 16 March 2021**

**d) Europol Recast – Thematic Bloc 4: enabling Europol to enter data on the Schengen Information System**

Additional clarification was required on the operational usefulness and effectiveness of the legislative proposals. In this regard, the responses made in the Commission services non-paper have clarified Malta's concerns. In terms of the notification process by which a Member State informs Europol of a hit – it remains uncertain on how a Member State should respond following the notification process. Therefore, specific, and clear post-hit procedures with regards to the measures taken by state authorities are required. Malta supports France, Greece, and other Member States in requesting further clarifications, however, Malta does not align itself fully with the alternative proposals in the Franco-Greek non-paper.

*Do you totally agree with the legal text of article 4, 1, r)?*

No.

*Should this article 4, 1, r) have a more general and/or revised formulation? The MS that think so, please send us written text proposals (wording) to this article 4, 1, r).*

The word ‘trusted’ should be added before third countries in the legal text of article 4(1)(r). As is indicated in the Explanatory Memorandum to Doc 2020/0349 (COD), a ‘trusted third country’ would be a:

> *“A third country with which there is an agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA in accordance with point (c) of Article 25(1) of Regulation (EU) 2016/794 or on the basis of Article 218 TFEU in accordance with point (b) of Article 25(1) of Regulation (EU) 2016/794, or which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of Regulation (EU) 2016/794.”*

*Should we include new article(s) with alternative solutions?*

Rather than alternative solutions, Malta mirrors the European Data Protection Supervisor who recommends that

> *“if Europol is authorised to issue and enter “information alerts” in SIS, then the respective legal framework should provide for specific and clear guidance with regard to the measures which could be taken by Member States’ authorities in case of a “hit”.*

*Do you think that this article 4, 1, r) should be deleted?*

No.

**NETHERLANDS**

Following the informal LEWP of 8 March 2021 and in reply to the request of the Presidency I can inform you that in the view of the Netherlands the initial text proposal of article 4, 1, r in which Europol would be enabled to issue information alerts in SIS is not proportionate and should therefore be deleted. As already mentioned by the Netherlands during several meetings we are not convinced that the possibility for Europol to enter alerts on suspected third-country nationals in SIS is the right solution. This would be a fundamental change to the SIS system and to Europol's tasks. The core tasks of Europol are information exchange, analysis and operational support and should not go beyond that. We hope our point of view can be taken into account.

**POLAND**

Poland generally supports the direction of changes proposed in the SIS in relation to Europol. The extension of the SIS to a new category of alerts by Europol is in line with EU efforts to date to redesign the architecture of large-scale EU information systems to support the security of Member States' citizens. In addition, Europol's role in expanding cooperation with third countries to fight crime and terrorism, in line with other EU external policies and tools, has already been mentioned in the European Union Security Union strategy.

At the same time, we believe that a balanced approach to SIS changes is necessary, emphasizing in particular the need to maintain the supportive role of Europol and the need to assess the added value that these changes can bring in terms of the costs generated and the practical implications for SIS end-users. We consider it crucial to effectively verify the credibility of information obtained from third countries, to precisely define the follow-up to a hit, and to properly coordinate the implemented changes with the SIS transformation projects already carried out by eu-LISA and the implementation of interoperability of large-scale systems.

Given the above, we support the amendment proposal to allow Europol to enter alerts in the SIS in the current wording of Article 4, 1, r. We believe that this solution offers a chance to fill the identified information gap and provide information on potential threats to EU security for frontline officers. At the same time, we believe that the technical details of the proposal should be included in the text of the revision of the SIS Regulation, as is the case for the details of other categories of alerts, including the purposes and conditions for entering alerts, performing an action based on an alert or data quality in the SIS.

In addition, we would like to point out that we are open to discussion on possible concrete proposals for alternative tools to effectively fill the existing information gaps in the area of security.

**ROMANIA**

**Revision of the Europol Regulation**
**Article no.4, paragraph no.1, letter r**
(Block 4)
**-Romanian answers-**



**1. Do you totally agree with the legal text of Article no.4, paragraph no.1, letter r?**

We do not support the proposal that will allow Europol to enter alerts in the SIS and, therefore, we do not agree with the legal text of Article no.4, paragraph no.1, letter r.

Our position is based on the following:

- The introduction of alerts in SIS by Europol could lead to interference with the current distribution of tasks between MS' competent authorities and the Agency that is based on the provisions of EU Treaties.
- Thus, on CT matters, a procedure for entering non-EU FTFs in SIS was agreed in November 2020, allowing MS only to enter alerts (where appropriate), while Europol has solely a supporting role.
- Furthermore, if other types of SIS alerts triggers a series of checks (specific, discrete checks, vetting interview), the alert proposal Europol is supposed to implement will not require similar actions - thus, potentially impacting on both the operational efforts and the likely measures to be taken in relation to the third-country nationals.
- Therefore, the proposal is not likely to provide, per se, added value to the MS' efforts, as the alerts entered by Europol will only serve to identify the presence of third-country nationals on the European territory at a certain point.
- Nevertheless, the proposal might generate supplementary efforts for the national competent authorities, with impact also upon the information exchange among MS (post-HIT information).

**2. Should article 4, 1, r have a more general and/or revised formulation? The MS that think so, please send us written text proposals (wording) to this article 4, 1, r).**

As we support the preservation of the current status quo - namely MS are solely responsible to enter alerts in the SIS - we do not think that a more general and/or revised formulation at the article 4, 1, r could efficiently address this issue.

**3. Should we include new article(s) with alternative solutions?**

As mentioned before, on CT matters we already have in place a procedure for entering non-EU FTFs. The French non-paper (supported by RO) provides several options / alternatives (on short, mid and long term). As many of those options function effectively (following different approvals or based on other legal frameworks), their (re)inclusion in the Europol Regulation is not necessary going to bring added value.

**4. Do you think that this article 4, 1, r, should be deleted?**

Based on the previous arguments, we support the deletion of article 4, 1, r.

**SPAIN**

**Follow-up comments to the last LEWP meeting (16/03/2021)**

**SPANISH POINT OF VIEW REGARDING THE NEXT QUESTIONS:**

***Do you totally agree with the legal text of article 4, 1, r)?***

***Should this article 4, 1, r) have a more general and/or revised formulation? The MS that think so, please send us written text proposals (wording) to this article 4, 1, r).***

***Should we include new article(s) with alternative solutions?***

***Do you think that this article 4, 1, r) should be deleted?***

Spain would like some more time before a decision can be made. The issue is being studied thoroughly here and the matter will be put forward to national level, an answer can be expected next week. It is considered more appropriate to use the INTEROPERABILITY alternative or the possibility of delete the article.