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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft 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 **(first reading)** - Adoption of the legislative act = Statements

Statement by Austria

Austria agrees to the Regulation amending Regulation (EU) 2016/794 on Europol in view of Europol's important role in the fight against crime and the support provided to Member States in this regard.

However, Austria also notes that the Regulation – the product of a political compromise – does not sufficiently address Austria's major data protection concerns and also falls short of the data protection standards called for by the European Data Protection Supervisor. These concerns relate in particular to the long retention periods in connection with the processing of uncategorised personal data (Article 18(6a)), the fact that data processing may begin before the consultation period has expired (Article 39(3)) and the long retention periods provided for in the transitional arrangements (Articles 74a and 74b).

Statement by Luxembourg

Luxembourg will vote in favour of the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation.

Since the beginning of the negotiations, we have worked to strike a balance between Europol's operational needs on the one hand and personal data protection requirements on the other.

It is in light of this principled position that Luxembourg regrets the long retention periods for uncategorised data provided for in Articles 18(6a), 74a and 74b.

Statements by the Commission

Commission statement on the implementation of the mechanism for Europol to propose the issuing of alerts in the Schengen Information System

As part of the evaluation that the Commission will carry out under Article 68(3) of Regulation (EU) 2016/794, three years after the entry into force of this Regulation amending Regulation (EU) 2016/794, the Commission will report on the operational impact of the new mechanism established in Article 4(1)(r) of Regulation (EU) 2016/794. Under this mechanism, Europol may propose to Member States, based on data that Europol received from third countries or international organisations, to enter information alerts in the interest of the Union into the Schengen Information System on persons involved in terrorism or in serious and organised crime. The Commission will carry out this evaluation on the basis of reports that Europol will provide on the proposals made for alerts in the Schengen Information System and on the subsequent alerts inserted by Member States in the Schengen Information System.

Commission statement on the relations between Europol and the European Public Prosecutor's Office

In the Commission's view, the provisions on the relations between Europol and the European Public Prosecutor's Office ('the EPPO'), as set out in Article 20a of Regulation (EU) 2016/794, cannot limit the obligations on Europol stemming from Article 24(1) of Council Regulation (EU) 2017/1939, and shall therefore be interpreted and applied in accordance with the latter Article.

Commission statement on the provisions for Europol's cooperation with third countries

As regards rules for Europol's cooperation with third countries, the Commission notes that any transfer of personal data from Europol to a third country on the basis of a "legally binding instrument" requires an international agreement under Article 218 of the Treaty, as already provided for in Article 25(1)(b) of Regulation (EU) 2016/794. The Commission also notes that any transfer of personal data from Europol to a third country on the basis of an assessment of appropriate safeguards by Europol must meet the requirements as set by the case law[1] of the Court of Justice of the European Union, thus requiring Europol to conclude that the level of data protection in the third country provides essential equivalence in terms of data protection. Allowing for data transfers based on such an assessment without the need for prior agreement by the European Data Protection Supervisor as provided for in Article 25(6) of Regulation (EU) 2016/794 will create risks of subsequent intervention by the European Data Protection Supervisor based on a divergent assessment of the data protection safeguards and might thus negatively affect law enforcement cooperation.

[1] Opinion 1/15, *EU-Canada PNR Agreement*, EU:C:2017:592 (26.7.2017); judgment of 6 October 2015, *Schrems*, C- 362/14, EU:C:2015:650; judgement of 16 July 2020, C- 311/18, *Schrems II*, EU:C:2020:559.

Commission statement on the strengthening of Europol-Interpol cooperation

The Commission recalls that in the on-going negotiations for a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL), and in line with the negotiating directives given by the Council[2], the Commission seeks to strengthen cooperation between Europol and Interpol, taking into account the latest developments in combating terrorism, cross-border and transnational serious organised crime, as well as current operational needs and Europol's mandate. The Commission seeks to ensure, in line with the negotiating directives given by the Council[3], that the agreement provides the legal basis for authorising Europol to access relevant Interpol databases for the performance of its tasks.

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[2] Council Decision (EU) 2021/1312 of 19 July 2021 authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL).

[3] Council Decision (EU) 2021/1312 of 19 July 2021 authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL).