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NOTE

From:	Incoming EL Presidency
To:	Law Enforcement Working Party
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA - Revised Chapters I-II and Annex 1 (second revision)

Delegations will find below the second revised text of Chapters I-II and Annex 1 prepared by the incoming EL Presidency based on the outcome of discussions on these Chapters by the LEWP on 19-20 November 2013.

Changes to the Commission proposal are marked in ***bold italics*** and ~~strikethrough~~ whereas the additional changes compared to the previous Presidency compromise text (set out in doc. 14805/13 ENFOPOL 318 CODEC 2277) are marked in underlining.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Union Agency for Cooperation between Police Authorities and other Law
Enforcement Cooperation Services [and Training] (Europol) and repealing Decision[s]
2009/371/JHA [and 2005/681/JHA]

(...)

Chapter I

GENERAL PROVISIONS AND OBJECTIVES OF EUROPOL

Article 1

Establishment of the European Union Agency for Cooperation between Police Authorities and
other Law Enforcement Cooperation Services [and Training]

1. A European Union Agency for Cooperation between Police Authorities and other Law Enforcement Cooperation Services [and Training] (Europol) is hereby established ~~to improve *support and strengthen* mutual cooperation among law enforcement authorities in the European Union, to strengthen and to support *and* their actions [as well as to deliver a coherent European training policy].~~
2. Europol, as established by this Regulation, shall replace and succeed Europol as established by Decision 2009/371/JHA[, and CEPOL as established by Decision 2005/681/JHA].

Article 2

Definitions

For the purposes of this Regulation:

- (a) ‘the competent authorities of the Member States’ means all police authorities, and other law enforcement services **and other authorities** existing¹ in ~~of~~ the Member States, which are responsible under national law for preventing and combating criminal offences;
- ~~(b) ‘analysis’ means the assembly, processing or use of data **information** with the aim of assisting criminal investigations **supporting the performance of tasks listed in Article 4**.~~
- (bb) "strategic analysis" means the entirety of methods and techniques by which information is collected, stored, processed and assessed with the aim of supporting and developing a criminal policy that makes possible an efficient and effective response to security problems;**
- (bbb) "operational analysis" means the entirety of methods and techniques by which information is collected, stored, processed and assessed with the aim of supporting criminal investigations;**
- (c) ‘Union bodies’ means institutions, ~~entities~~ **bodies**, missions, offices and agencies set up by, or on the basis of the Treaty on European Union and the Treaty on the Functioning of the European Union;
- (d) [‘law enforcement officers’ means officers of police, customs and of other relevant services, including Union bodies, responsible for preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime that affect a common interest covered by a Union policy and for civilian crisis management and international policing of major events];
- (e) ‘third countries’ means countries that are not Member States of the European Union;

¹ "Designated" is not added here because it would create significant practical implications - a considerable administrative burden and workload for both Europol and the Member States, i.e. not only the lists would have to be kept up to date but also the National Units would have to verify upon each transfer of information whether the recipient/originator of information is on the list. It would also be a considerable step back compared to the current Council Decision which does not require the designation of competent authorities.

- (f) 'international organisations' means international organisations and their subordinate bodies governed by public law or other bodies which are set up by, or on the basis of, an agreement between two or more countries;
- (g) 'private parties' means entities and bodies established under the law of a Member State or a third country, in particular companies and firms, business associations, non-profit organizations and other legal persons that do not fall under point (f);
- (h) 'private persons' means all natural persons;
- (i) ²'personal data' means any information relating to an identified or identifiable natural person hereinafter referred to as "data subject"; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;
- (j) 'processing of personal data' hereinafter referred to as 'processing' means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (k) 'recipient' means a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;
- (l) 'transfer of personal data' means the communication of personal data, actively made available, between a limited number of identified parties, with the knowledge or intention of the sender to give the recipient access to the personal data;
- (m) 'personal data filing system' hereinafter referred to as 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

² *Definitions from (i) to (o) will be reviewed in the future, possibly taking into account the ongoing negotiations on the "data protection package".*

- (n) ‘the data subject’s consent’ means any freely given specific and informed indication of his/her wishes by which the data subject signifies his/her agreement to personal data relating to him/her being processed;
- (o) ‘administrative personal data’ means all personal data processed by Europol apart from those that are processed to meet the objectives laid down in Article 3(1) and (2).

Article 3

Objectives

1. Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious³ crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, as specified in Annex 1.
2. ~~Europol shall also support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating criminal offences related to the offences referred to under point (a).~~ ***In addition to paragraph 1, Europol’s objectives shall also cover related criminal offences.*** The following offences shall be regarded as related criminal offences:
 - (a) criminal offences committed in order to procure the means of perpetrating acts in respect of which Europol is competent;
 - (b) criminal offences committed in order to facilitate or carry out acts in respect of which Europol is competent;

³ *"Organised" is not added here as this paragraph reproduces the language of Article 88 TFEU, which does not mention "organised crime" as a separate category of crime for which Europol is competent. Furthermore, under Article 83(1) TFEU, organised crime is defined as an area of particularly serious crime with a cross-border dimension (a so-called "Euro-crime"). Adding organised crime as a category of crime different from the category of "serious crimes", would not be consistent with the legal basis of Article 88 TFEU and would suggest that organised crime is not a serious crime contrary to what is provided for in Article 83(1) TFEU. Finally, from a practical standpoint, the deletion of organised crime in Article 3(1) has no impact as it is explicitly mentioned in Annex 1; so Europol is competent for such crime.*

- (c) criminal offences committed in order to ensure the impunity of acts in respect of which Europol is competent.

[3. Europol shall support, develop, deliver and coordinate training activities for law enforcement officers].

Chapter II

TASKS RELATED TO LAW ENFORCEMENT COOPERATION

Article 4

Tasks

1. ~~Europol is the European Union agency that shall perform the following tasks in accordance with this Regulation:~~

- (a) ~~to~~ collect, store, process, analyse and exchange information;
- (b) ~~to~~ notify the Member States, *via the Units established or designated according to Article 7(2) ("National Units")*, without delay of any information ~~concerning them~~ and ~~of any~~ connections between criminal offences *concerning them*;
- (c) ~~to~~ ~~coordinate~~ *and support Member States' investigations by assisting their competent authorities in coordinating*, ~~organise~~*ing* and ~~implementing~~ investigative and operational action
 - (i) carried out jointly with the ~~Member States~~² competent authorities *of the Member States*; or
 - (ii) in the context of joint investigation *tion* teams, in accordance with Article 5, where appropriate, in liaison with Eurojust;
- (d) ~~to~~ participate in joint investigation *tion* teams as well as ~~to~~ propose that they are set up in accordance with Article 5;

- (e) ~~to~~ provide information and analytical support to Member States in connection with major international events;
- (f) ~~to~~ prepare threat assessments, strategic and operational analyses and general situation reports;
- (g) ~~to~~ develop, share and promote specialist knowledge of crime prevention methods, investigative procedures and technical and forensic methods, and ~~to~~ provide advice to Member States;
- (h) ~~to provide technical and financial~~ support ~~to~~ Member States' cross-border **information exchange activities**, operations and investigations, ~~including as well as~~ joint investigation teams, **including with the provision of operational, technical and financial support**;
- [(i) ~~to~~ support, develop, deliver, coordinate and implement training for law enforcement officers in cooperation with the network of training institutes in Member States as set out in Chapter III;]
- (j) ~~to provide~~ ***cooperate with*** the Union bodies established on the basis of Title V of the Treaty and ***with*** the European Anti-Fraud Office (OLAF), ***in particular through the exchange of information and by providing them*** with ~~criminal intelligence and~~ analytical support in the areas that fall under their competence;
- (k) ~~to~~ provide information and support to EU crisis management structures, and to EU crisis management missions established on the basis of the Treaty on European Union;
- (l) ~~to~~ develop Union centres of specialised expertise for combating certain types of crime falling under Europol's objectives, in particular the European Cybercrime Centre.

2. Europol shall provide strategic analyses and threats assessments to assist the Council and the Commission in laying down strategic and operational priorities of the Union for fighting crime. Europol shall also assist in operational implementation of those priorities.

[2a. Where the Commission so requests in accordance with Article 8 of Council Regulation (EU) No 1053/2013⁴ Europol shall provide risk analyses to assist the Commission in the implementation of the evaluation and monitoring mechanism to verify the application of the Schengen acquis.]

3. ~~Europol shall provide strategic intelligence to~~ ***Europol may shall provide strategic analyses and threat assessments at the request of the Council or the Commission to contribute to the evaluation of States which are candidates for accession to the Union or to*** assist the efficient and effective use of the resources available at national and Union level for operational activities and the support of those activities.

4. Europol shall act as the Central Office for combating euro counterfeiting in accordance with Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting.⁵ Europol shall also encourage the coordination of measures carried out to fight euro counterfeiting by the competent authorities of the Member States or in the context of joint investigation teams, where appropriate in liaison with Union bodies and the authorities of third countries.

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

Article 5

Participation in joint investigation teams

1. Europol may participate in the activities of joint investigation teams dealing with crime that falls under Europol's objectives.
2. Europol may, within the limits provided by the laws of the Member States in which **a** joint investigation team is operating, assist in all activities and exchanges of information with all members of the joint investigation team. **Europol shall not apply coercive measures⁶.**

⁴ Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

⁵ OJ L 185, 16.07.2005, p. 35.

⁶ This provision is now included in Article 4.

3. Where Europol has reasons to believe that setting up a joint investigation team would add value to an investigation, it may propose this to the Member States concerned and take measures to assist them in setting up the joint investigation team.
4. ~~Europol shall not apply coercive measures.~~

Article 6

Requests by Europol for the initiation of criminal investigations

1. In specific cases where Europol considers that a criminal investigation should be initiated into a crime that falls under its objectives, ~~it shall inform Eurojust~~ ***it shall request the competent authorities of the Member States concerned via the National Units to initiate, conduct or coordinate a criminal investigation.***
2. ~~At the same time, Europol shall request the National Units of the Member States concerned established on the basis of Article 7(2) to initiate, conduct or coordinate a criminal investigation~~ ***inform Eurojust of requests made under paragraph 1.***
3. The National Units shall inform Europol without delay of the ***decision of the competent authorities of the Member States concerning Europol's request to initiate or of a criminal investigation.***
4. If the competent authorities of the Member States concerned decide not to comply with the request made by Europol ***to initiate a criminal investigation***, they shall ~~provide~~ ***inform*** Europol ***of*** with the reasons for their decision, ***without undue delay, preferably*** within one month of the request. The reasons may be withheld if giving them would:
 - (a) ~~harm essential~~ national security interests; or
 - (b) jeopardise the success of ***current*** investigations ~~under way~~ or the safety of individuals.
5. Europol shall inform Eurojust of the decision of a competent authority of a Member State ~~to initiate or refuse to initiate an ***criminal*** investigation~~ ***in respect of Europol's request.***

Article 7

~~Member States~~² Cooperation between Member States with and Europol

1. Member States *and Europol* shall cooperate with ~~Europol~~ *each other* in the fulfilment of ~~its~~ *their* tasks.
2. Each Member State shall establish or designate a National Unit which shall be the liaison body between Europol and the competent authorities ~~in~~ *of the* Member States [as well as with training institutes for law enforcement officers]. ~~Each Member State shall appoint An~~ official *shall be appointed in each Member State* as the head of the National Unit.
3. Member States shall ensure that their National Units are able to fulfil ~~the~~ *their* tasks as set out in this Regulation, in particular that they have access to *relevant* national law enforcement databases.
- 3a.⁷ *Each Member State shall define the organisation and the staff of the National Unit according to its national legislation.*
4. *Subject to conditions determined by Member States, including prior involvement of the National Unit, Member States may allow direct contacts between their competent authorities and Europol. The National Unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and the competent authorities.* ~~Europol may directly cooperate with *contact* competent authorities of the Member States in respect of individual investigations. In that case, Europol shall inform the National Unit without delay *of such contact*. *Any exchange of information between Europol and these authorities may only occur after the authorisation of the National Unit. In such case, Europol shall* and provide a copy of any information exchanged in the course of direct contacts between Europol and the respective competent authorities.~~

⁷ *Moved up from paragraph 7.*

5. Member States shall, via their National Unit or a competent authority, ~~of a Member State~~, in particular:

(a) supply Europol ~~without delay~~ with the information necessary for it to fulfil its objectives, ~~including~~. ~~This includes providing Europol without delay with information relating to crime areas that are considered a priority by the Union. It also~~ ~~*This*~~ includes, *when relevant*, providing a copy of bilateral or multilateral exchanges with another Member State or Member States in so far as the exchange refers to crime that falls under Europol's objectives;

(b) ensure effective communication and cooperation of all relevant competent authorities of the Member States [and training institutes for law enforcement officers within the Member States], with Europol];

~~⁸ [(bb) ensure that their Financial Intelligence Units established on the basis of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁹ cooperate with Europol regarding analyses carried out having a cross-border dimension and concerning at least two Member States;]~~

(c) raise awareness of Europol's activities.

5a. *Without prejudice to Member States discharging the responsibilities incumbent upon them, with regard to the maintenance of law and order and the safeguarding of internal security, Member States shall not in any particular case be obliged to supply information that would:*

(a) harm essential national security interests;

(b) jeopardise the success of a current investigation or the safety of individuals; or

⁸ *The new paragraph is suggested by the Commission based on the outcome of the financial attachés meeting of 6 December 2013, where the draft anti money laundering directive was discussed.*

⁹ OJ L 309, 25.11.2005, p. 15.

(c) disclose information relating to organisations or specific intelligence activities in the field of national security.

Information shall be supplied as soon as it no longer falls under points (a), (b) or (c) of this paragraph.

6. The heads of National Units shall meet on a regular basis, particularly to discuss and solve problems that occur in the context of their operational cooperation with Europol.
7. ~~¹⁰Each Member State shall define the organisation and the staff of the National Unit according to its national legislation.~~
8. The costs incurred by National Units ~~and of the competent authorities in Member States~~ in communications with Europol shall be borne by the Member States and, ~~apart from~~ *with the exception of* the costs of connection, shall not be charged to Europol.
- 9.¹¹ ~~Member States shall ensure a minimum level of security of all systems used to connect to Europol.~~
10. ~~Each year~~ Europol shall draw up *an annual* report on the ~~quantity and quality of~~ information provided by each Member State pursuant to paragraph 5(a) ~~and on the performance of its National Unit~~ *on the basis of the quantitative and qualitative evaluation criteria defined by the Management Board*. The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments.

Article 8

Liaison officers

1. Each National Unit shall designate at least one liaison officer to Europol. Except as otherwise laid down in this Regulation, liaison officers shall be subject to the national law of the designating Member State.

¹⁰ *Moved up as article 7(3a).*

¹¹ *This will be included into Article 38.*

2. Liaison officers shall constitute the national liaison bureaux at Europol and shall be instructed by their National Units ***to represent the interests of the latter*** within Europol in accordance with the national law of the designating Member State and the provisions applicable to the administration of Europol.
3. Liaison officers shall assist in the exchange of information between Europol and their Member States.
4. Liaison officers shall assist in the exchange of information between their Member States and the liaison officers of other Member States, ***third countries and international organisations*** in accordance with national law. Europol's infrastructure may be used, in line with national law, for such bilateral exchanges also to cover crimes outside the objectives of Europol. The Management Board shall determine the rights and obligations of liaison officers in relation to Europol.
5. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 65(2).
6. Europol shall ensure that liaison officers are fully informed of and associated with all of its activities, insofar as this is necessary for the performance of their tasks.
7. Europol shall cover the costs of providing Member States with the necessary premises in the Europol building and adequate support for liaison officers to carry out their duties. All other costs that arise in connection with the designation of liaison officers shall be borne by the designating Member State, including the costs of equipment for liaison officers, unless the budgetary authority decides otherwise on the recommendation of the Management Board.

ANNEX 1¹²

List of ~~offences with respect to forms of serious crime~~ which Europol ~~shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation~~ is competent to deal with in accordance with Article 3(1) of this Regulation

- terrorism,
- organised crime,
- ~~unlawful~~ drug trafficking,
- ~~illegal~~ money-laundering activities,
- crime connected with nuclear and radioactive substances,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- robbery ***and aggravated theft***,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud, ~~including fraud affecting the financial interests of the Union,~~
- ***crime against the financial interests of the Union,***
- ***insider dealing and financial market manipulation,***
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,

¹² *The changes in this Annex are mainly made in order to align it with the one contained in the draft Eurojust Regulation.*

- illicit trafficking in endangered plant species and varieties,
 - environmental crime, including ship source pollution,
 - illicit trafficking in hormonal substances and other growth promoters,
 - sexual abuse and sexual exploitation of women, and children, ***including child pornography and solicitation of children for sexual purposes,***
 - ***genocide, crimes against humanity and war crimes.***
-