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NOTE

From:	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 V-VI and Annex 2

Delegations will find below a Presidency revised text of Chapters V-VI and Annex 2 based on the outcome of discussions on these Chapters by the LEWP on 9-10 October 2013 as well as the written drafting suggestions provided by delegations.

Changes to the Commission proposal are marked in ***bold italics*** and ~~strikethrough~~.

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 Decision[s] 2009/371/JHA [and 2005/681/JHA]**

Chapter V

PROCESSING OF INFORMATION¹

Article 23

Sources of information

1. Europol shall only process information that has been provided to it:
 - (a) by Member States ~~in accordance with their national law²~~;
 - (b) by Union bodies, third countries and international organisations in accordance with Chapter VI;
 - (c) by private parties **and private persons** in accordance with ~~Article 29(2)~~³ **Chapter VI**.
2. Europol may directly retrieve and process information, including personal data, from publicly available sources, ~~such as the media~~, including the internet and public data⁴.

¹ **FR** suggests to define how the data processing systems can be modified, deleted or created either under tasks of the MB (Art. 14) or introduce additional paragraphs under Art. 24.

² **DE** suggests to add here: "**or Article 7**".

ES suggests to replace this paragraph with: "the Member States **via their national units**, in accordance with national law **and with the provisions of this regulation**".

³ **BG, PL** suggest to add here: "**and 32**".

BG suggests to add a subparagraph (cc): "**by private persons in accordance with Article 33**".

⁴ **PL** suggests to add here: "**Such processing should be in accordance with the data protection provisions of the Regulation and especially with Article 34.**"

⁴ **PL** suggests to add here: "**Such processing should be in accordance with the data protection provisions of the Regulation and especially with Article 34.**"

SI suggests that this paragraph should clearly state that, in the event that the information from a public source that was either published or otherwise made publicly available unlawfully, Europol, if it becomes aware of that violation should no longer be able to process such information unless some other legal basis for such processing exists. No drafting suggestion.

3. *In so far as Europol is entitled under Union, international or national⁵ legal instruments to gain computerised access to data from other information systems, of national or international nature, Europol may retrieve and process information, including personal data, by such means if that is necessary for the performance of its tasks and process information, including personal data, from information systems, of a national, Union or international nature, including by means of computerised direct access, in so far as authorised by Union, international or national legal instruments. The applicable provisions of such Union, international or national legal instruments shall govern the access to and use of that information by Europol insofar as they provide for stricter rules on access and use than those of this Regulation. The access to such information systems shall be granted only to duly authorised staff of Europol as far as this is necessary for the performance of their tasks.*

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⁵ DE indicated that it does not see the need to direct access by Europol to national databases.

⁶ BG suggests to add here *Article 23a*:

"1. In so far as it is necessary for the achievement of its objectives, Europol shall process information and intelligence, including personal data, in accordance with this Regulation.

2. Europol shall establish and maintain data processing systems, including personal data, by a Management Board decision and after consulting the supervisory bodies referred to in Articles 44 and 46.

3. The Management Board decision referred to in paragraph 2 shall determine the rules, regulation and limitation governing the use, management and administration of each data processing system."

Purposes of information processing activities⁷

1. In so far as necessary for the achievement of its ~~objectives~~ **tasks** as laid down in Article ~~3(1) and (2)~~⁸ **4**, Europol ~~shall~~ **may** process information⁹, including personal data¹⁰. **Personal data may be processed** only for the purposes of¹¹:
 - (a) cross-checking aimed at identifying connections between information¹²;
 - (b) analyses of a strategic or thematic nature¹³;
 - (c) operational analyses in specific cases^{14,15};
 - (d) **executing other tasks outlined in Article 4.**

⁷ ES suggests to replace this title with: "**Information processing Systems**"

⁸ CZ, EL suggest to delete "3 (1) and (2)", ES suggests to delete: "-as laid down in Article 3(1) and (2)".

⁹ ES suggests to add here: "**and intelligence**".

¹⁰ CZ suggests to add here: "**in compliance with Article 25**".

EL suggests to add here: "**in accordance with this Regulation**".

FR suggests to replace the rest of the sentence with: "**in accordance with this Regulation**" and delete sub-points a, b and c.

¹¹ SI finds the reference to Article 3(1) and (2) too vague and suggest to limit the information processing activities of Europol to "**when absolutely necessary/ important for the purposes of personal data processing**".

DE suggests that Regulation must contain further substantial specifications (restrictions of purpose and access requirements for information analysis) (no drafting suggestion).

¹² EL suggests to add here: "**Such checks should be carried out in accordance with the necessary data protection guarantees, and should, especially, provide sufficient justification for the data request and its purpose. The necessary measures should also be taken to ensure that only those authorities that are initially responsible for collecting the data may subsequently change them**".

¹³ IT suggests to delete the possibility to process personal data for strategic or thematic analysis, unless a sound justification is given.

¹⁴ CZ suggests to add a sub-point "(cc) **providing for an information exchange through SIENA system**".

DE suggests to add here:

"(cc) **supporting the information exchange among Member States, co-operation partners (chapter VI) and Europol. Personal data must be adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed and shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not make it possible or no longer makes it possible to identify the data subject.**

1a. The Management Board shall adopt implementing rules containing additional details, in particular for the setup of analysis working groups, with regard to the access to the operational data concerned."

¹⁵ IT suggests clearly defining a specific purpose for each operational analysis case and requiring that only relevant personal data shall be processed according to the defined specific purpose.

2. Categories of personal data and categories of data subjects whose data may be collected for each specific purpose referred to under paragraph 1 are listed in Annex 2¹⁶.

¹⁶ ES suggests to replace this paragraph with the following paragraphs:

2. Europol shall manage the Europol Information System and the Analysis Work Files (AWF) for storage of all the data received for the purposes referred to in paragraph 1. The Management Board shall determine the rules on the use and access to these systems.

3. Europol may process data for the purpose of determining whether such data are relevant to its tasks and can be included in the Europol Information System, in the analysis work files or in other systems processing personal data established in accordance with paragraph 4 of this Article. The Management Board, acting on a proposal from the Director and after consulting the Joint Supervisory Body, shall determine the conditions relating to the processing of such data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data that may not exceed six months.

4. The Management Board, acting on a proposal from the Director after having taken into account the possibilities offered by existing Europol information processing systems and after consulting the Joint Supervisory Body, shall decide on the establishment of a new system processing personal data.

5. The Management Board decision shall define the purpose of the new system, access to and the use of the data, as well as time limits for the storage and deletion of the data. The Management Board decision shall ensure that the measures and principles laid down in this regulation are properly implemented."

Determination of the purpose of, and restrictions on, the processing of information processing activities by Europol¹⁷

1. ¹⁸A Member State, a Union body, a third country or an international organisation providing information to Europol¹⁹ determines the purpose for which it shall be processed as referred to in Article 24. If it has not done so, Europol shall determine *the* relevance of such information as well as the purpose for which it shall be processed^{20,21} **and shall inform the provider of the information of its decision**. Europol may process information for a different purpose than the one for which information has been provided only if authorised by the data provider *of the information*²².
2. Member States, Union bodies, third countries and international organisations may indicate, at the moment of ~~transferring~~ **providing the** information, any restriction on access or use, in general or specific terms, including as regards *transfer*, erasure or destruction. Where the need for such restrictions becomes apparent after the ~~transfer~~ **provision of information**, they shall inform Europol accordingly. Europol shall comply with such restrictions²³.
3. ²⁴Europol may assign any restriction to access or use by Member States, Union bodies, third countries and international organisations of information retrieved from publicly-available sources.

¹⁷ ES suggests to replace the title with: "**Common provisions on the processing and retrieval of information stored by Europol**"

BG suggests to replace the title with: "Determination of the purpose and *limitations* of information processing activities".

¹⁸ ES suggests to add here: "**When providing information to Europol**".

¹⁹ BG suggests to replace here and elsewhere in the text "~~Member State, a Union body, a third country or an international organisation~~" with "**the data owner**",

FR suggests to replace it with "**the data provider**".

²⁰ DE, EL, IT, HU, AT, PL suggest to delete this sentence: "~~If it has not done so, Europol shall determine relevance of such information as well as the purpose for which it shall be processed.~~"

²¹ ES suggests to add here: "**and shall inform the data provider of the system in which the information will be stored**".

²² SI suggests that information should not further processed in a way incompatible with those purposes (no drafting suggestion).

BE suggests to replace this sentence with the following new subparagraph:

"1a. Europol may process information for a different purpose than the one for which information has been provided:

(a) when the information will be used for analysis of a strategic or general nature;

(b) only if authorised by the data provider for all other purposes.

When information is used for another purpose, any restriction on access or use and the access regime according to its original purpose will remain valid".

²³ DE suggests that MS should continue to have direct access to Europol databases in order to delete data (no drafting suggestion).

²⁴ BG suggests to replace this paragraph with: " Europol may assign any restriction to access or use ~~by Member States, Union bodies, third countries and international organisations~~ of information retrieved from publicly available sources"

ES suggests to delete this paragraph.

Access by Member States² and Europol's staff to information stored by Europol²⁵

1. **The competent authorities of Member States²⁶** shall have access to and be able to search all information which has been provided for the purposes of Article 24(1)(a) and (b)²⁷, without prejudice to the right for Member States, Union bodies and third countries and international organisations to indicate restrictions on access and use of such data. ~~Member States shall designate these competent authorities allowed to perform such a search²⁸.~~
2. **The competent authorities of Member States²⁹** shall have indirect³⁰ access³¹ on the basis of a hit/no hit system to information provided for the purposes of Article 24(1)(c)³², without prejudice to any restrictions indicated by the Member States, Union bodies and third countries or international organisations providing the information, in accordance with Article 25(2). In the case of a hit, Europol shall initiate the procedure by which the information³³ that generated the hit may be shared, in accordance with the decision of ~~the Member State that provided~~ **the provider of** the information to Europol^{34,35}.

²⁵ FR suggests to replace the title with: "Access by Member States² and Europol's staff to *Europol* information stored by Europol".

²⁶ EL suggests to add here: "*justifying the need to do so*".

²⁷ ES, CY suggest to replace this part with: "~~which has been provided for the purposes of Article 24(1)(a) and (b)~~ *processed by Europol and stored in any of the systems established in compliance with the provisions laid down in this Regulation. This access shall be in accordance with the specific regulations of each of these systems*".

²⁸ IT suggests to add here: "*on the need-to-know basis and to the extent necessary to the legitimate performance of their tasks*".

²⁹ ES suggests to replace "Member States" with "*The Europol National Units*".

³⁰ PL suggests to delete "indirect".

³¹ DE suggests to add here: "*via their national unit*".

³² ES suggests to replace "for the purposes of Article 24(1)(c)" with "*to Analysis Work Files*".

FR suggests to replace "Article 24(1)(c)" with "*operational analysis in specific cases*".

³³ EL suggests to add here: "*needed to perform its duties and*".

³⁴ ES suggests to add here: "*National Units shall provide the information available to the competent authority*".

³⁵ DE suggests to add a paragraph here:

"2a. Retrieval of information pursuant to Article 26 (1) and (2) by the national units of the Member States shall be effected in accordance with the laws, regulations, administrative provisions and procedures of the accessing party, subject to any additional provisions laid down in this regulation. National intelligence Agencies shall have no access pursuant to Art. 26 (1) and (2)."

FR suggests to add a paragraph here:

"2a. Designated competent authorities of the Member States shall duly empower the staff allowed to have such accesses."

3. Europol staff duly empowered by the Executive Director³⁶ shall have access to information³⁷ processed by Europol to the extent required for the performance of their duties³⁸.

Article 27³⁹

Access by Eurojust and OLAF to ~~Europol~~ information stored by Europol for Eurojust and OLAF

1. ⁴⁰Europol shall take all appropriate measures to enable Eurojust and the European Anti-Fraud Office (OLAF)⁴¹ within their respective mandates, to have access to and be able to search all information that has been provided for the purposes of Article 24(1)(a) and (b), without prejudice to the right for Member States, Union bodies and third countries and international organisations to indicate restrictions to the access and use of such data. ***Such access shall not apply to the investigations carried out by OLAF under Article 68(3).*** Europol shall be informed where a search by Eurojust or OLAF reveals the existence of a match with information processed by Europol⁴².

³⁶ Here and elsewhere in these Chapters **BG** suggests to put "Executive Director" in square brackets [*Executive Director*], **FR** suggests to delete "~~Executive~~".

³⁷ **BG** suggests to add here: "*stored and*".

³⁸ **ES** suggests to add a paragraph here: "*Europol shall establish, in cooperation with the Member States, appropriate control mechanisms to allow the verification of the legality of retrievals and to allow Member States access to the audit logs on request. The Management Board shall decide on the details of such control mechanisms after consulting the Joint Supervisory Body*".

ES also suggests to add the following Article here:

"**26. Rules on the use of data**

1. Personal data retrieved from any of Europol's data processing files or communicated by any other appropriate means shall be transmitted or used only by the competent authorities of the Member States in order to prevent and combat crimes in respect of which Europol is competent, and to prevent and combat other serious forms of crime. Europol shall use the data only for the performance of its tasks.

2. If, in the case of certain data, the communicating Member State or the communicating third State or third body stipulates particular restrictions on use to which such data is subject in that Member State, third State or third body, such restrictions shall also be complied with by the user of the data except in the specific case where national law lays down that the restrictions on use be waived for judicial authorities, legislative bodies or any other independent body set up under the law and made responsible for supervising the national competent authorities. In such cases, the data shall be used only after consultation of the communicating Member State the interests and views of which shall be taken into account as far as possible.

3. Use of the data for other purposes or by authorities other than the national competent authorities shall be possible only after consultation of the Member State which transmitted the data in so far as the national law of that Member State permits."

³⁹ **BE, ES, PT, SE, UK** question the need/added value of (direct) access of these agencies to information stored by Europol.

DE, ES, UK (additionally) generally question all references to OLAF in this Article and **EL** suggests to delete them.

ES, FR suggest that the right of access is reciprocal between agencies.

⁴⁰ **BE, UK** suggest to delete this paragraph.

⁴¹ **DE** suggests to add here: "*for investigative purposes*".

⁴² **DE** suggests to add here: "*if Eurojust estimates it necessary for investigative purposes*".

2. ⁴³Europol shall take all appropriate measures to enable Eurojust and OLAF, within their respective mandates⁴⁴, to have indirect⁴⁵ access on the basis of a hit/no hit system to information provided for the purposes under Article 24(1)⁴⁶(c), without prejudice to any restrictions indicated by the providing Member States, Union bodies and third countries or international organisations, in accordance with Article 25(2). In case of a hit, Europol shall initiate the procedure by which the information that generated the hit may be shared, in accordance with the decision of the ~~Member State, Union body, third country or international organisation that provided~~ *provider of* the information to Europol.
3. Searches of information in accordance with paragraphs 1 and 2 shall be made only for the purpose of identifying whether information available at Eurojust or OLAF, respectively, matches with information processed at Europol.
4. Europol shall allow searches in accordance with paragraphs 1 and 2 only after obtaining from Eurojust information about which National Members, Deputies, Assistants, as well as Eurojust staff members, and from OLAF information about which staff members, have been designated as authorised to perform such searches.
5. If during Europol's information processing activities in respect of an individual investigation, Europol or a Member State identifies the necessity for coordination, cooperation or support in accordance with the mandate of Eurojust or OLAF, Europol shall notify them thereof and shall initiate the procedure for sharing the information, in accordance with the decision of the Member State providing the information. In such a case Eurojust or OLAF shall consult with Europol⁴⁷.
6. Eurojust, including the College, the National Members, Deputies, Assistants, as well as Eurojust staff members, and OLAF, shall respect any restriction to access or use, in general or specific terms, indicated by Member States, Union bodies, third countries and international organisations in accordance with Article 25(2).

⁴³ **FR** suggests that paragraph 27(2) is included in paragraph 27(1) and references to paragraph 27(2) in subsequent paragraphs 27(3) and 27(4) are deleted.

⁴⁴ **DE** suggests to add here: "and *for investigative purposes*".

⁴⁵ **PL** suggests to delete "~~indirect~~".

⁴⁶ **BE** suggests to add here: "24(1) (a) *and* (c)" (also see footnote in relation to paragraph 27(1))

⁴⁷ **DE** suggests to add here: "*if appropriate*".

FR suggests to replace this sentence with: "In such a case *Europol* ~~Eurojust or OLAF~~ shall consult with *Eurojust or OLAF* ~~Europol~~."

Duty to notify Member States

1. ⁴⁸If Europol, in accordance with its task pursuant to Article 4(1)(b), needs to inform a Member State⁴⁹ about information concerning it, and that information is subject to access restrictions pursuant to Article 25(2), that would prohibit sharing it, Europol shall consult with the data provider stipulating the access restriction and seek its authorisation for sharing.

Without such an authorisation, the information shall not be shared.

2. ⁵⁰Irrespective of any access restrictions, Europol shall inform a Member State about information concerning it if:
 - (a) this is absolutely necessary in the interest of preventing imminent danger associated with serious crime or terrorist offences⁵¹; or
 - (b) this is essential for the prevention of an immediate and serious threat to ~~public~~ **national** security of that Member State.

In such a case, Europol shall inform the data provider⁵² of sharing this information as soon as possible and justify its analysis of the situation.

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⁴⁸ ES suggests to replace this paragraph with: "*Europol shall promptly notify the national units and, if the national units so request, their liaison officers of any information concerning their Member State and of connections identified between criminal offences in respect of which Europol is competent under Article 4. Information and intelligence concerning other serious crime of which Europol becomes aware in the course of its duties may also be communicated. If such information is subject to access restrictions pursuant to Article 25, that would prohibit sharing it, Europol shall consult with the data provider stipulating the access restriction and seek its authorisation for sharing.*"

⁴⁹ PL, PT suggest to add here: "*via the National Unit*".

⁵⁰ BE, UK suggest to delete paragraph 28(2).

⁵¹ FR suggests to change "associated with serious crime or terrorist offences" to "*for the physical integrity of a person*".

⁵² PL suggests to add here "*no later than at the moment*" and delete "~~as soon as possible~~".

⁵³ BG suggests to add the following Article here:

Article 28a - Provisions on control of retrievals

Europol shall establish, in cooperation with the Member States, Eurojust and OLAF, appropriate control mechanisms to allow the verification of the legality of retrievals from any of its data processing systems and to allow Member States, Eurojust and OLAF access to the audit logs on request. The data thus collected shall be used only for the purpose of such verification by Europol and the supervisory bodies referred to in Articles 44 and 46 and shall be deleted after 3 years, unless the data are further required for ongoing control. The Management Board shall decide on the details of such control mechanisms after consulting the supervisory bodies referred to in Articles 44 and 46.

Chapter VI⁵⁴

RELATIONS⁵⁵ WITH PARTNERS

SECTION 1

COMMON PROVISIONS

Article 29

Common provisions

1. In so far as necessary for the performance of its tasks, Europol may establish and maintain cooperative relations with the Union bodies in accordance with the objectives of those bodies, the ~~law enforcement~~ authorities of⁵⁶ third countries, [law enforcement training institutes of third countries], international organisations⁵⁷ and private parties⁵⁸. ***For these purposes, Europol may conclude working arrangements with such Union bodies, authorities of third countries and international organisations, allowing in particular the exchange of information, with the exception of personal data. Those working arrangements shall not bind the Union or its Member States.***

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⁵⁴ **BE, ES, SE, UK** refer to the need of the opinion of the Legal Service on this Chapter. Without prejudice to this opinion:

- **UK** suggests that MB should remain responsible both for nominating the countries with which agreements involving the exchange of personal data and for negotiating and concluding them.
- **HR** suggests to include in Article 29 a provision which states that Europol may conclude cooperation agreements with partners.
- **ES** suggests that a paragraph should be included under Article 31 providing for the need to conclude a cooperation agreement with the third state or organization prior to exchanging information.
- **BE** suggests to add under Article 31(1)(a) a possibility for the MB via the Council and the European Parliament to ask the Commission to start assessing the “adequacy level” of the new partner. It is not clear to what extent Europol has the possibility or obligation to exchange information with a third partner that is on the “adequacy list”. BE would prefer that there is clear “decision” on that by the Management Board as is the case now.

⁵⁵ **HR, IT** suggest to replace "**Relations**" with "**Cooperation**"

⁵⁶ **BG, HR, LV** suggest to delete "~~the law enforcement authorities of~~".

⁵⁷ **SI** suggests that Europol's cooperation with international organizations could at least be narrowed down to "**organs and/or bodies of international organizations**".

⁵⁸ **ES** suggests to delete "~~private parties~~" and add here: "**provided that a cooperation agreement has been concluded with those entities**".

⁵⁹ **FR** suggests to add the following paragraph here:
"1a. Europol shall conclude working arrangements with the entities referred to in paragraph 1. Such working arrangements may concern the exchange of operational, strategic or technical information, including personal data and classified information. Any such working arrangement may be concluded only after approval by the Management Board which shall previously have obtained, as far as it concerns the exchange of personal data, the opinion of the Supervisory Body."

2. In so far as relevant to the performance of its tasks and subject to any restriction stipulated pursuant to Article 25(2) **and Article 69**, Europol may directly exchange all information, with the exception of personal data⁶⁰, with entities referred to in paragraph 1⁶¹.
3. Europol may receive and process personal data from entities referred to in paragraph 1 ~~except from private parties~~, in so far as necessary for the⁶² performance of its tasks and subject to the provisions of this Chapter⁶³.
4. Without prejudice to Article 36~~(4)~~(5), personal data shall only be transferred by Europol to Union bodies, third countries and international organisations, if this is necessary for preventing and combating crime that falls under Europol's objectives and in accordance with this ~~Chapter~~ **Regulation**⁶⁴. If the data to be transferred have been provided by a Member State, Europol shall seek that Member State's consent⁶⁵, unless:
 - (a) ~~the authorisation can be assumed as the Member State has not expressly limited the possibility of onward transfers; or~~
 - (b) the Member State has granted its prior authorisation to such onward transfer, either in general terms or⁶⁶ subject to specific conditions. Such consent may be withdrawn **at any moment**⁶⁷.
5. Onward transfers of personal data by Member States⁶⁸, Union bodies, third countries and international organisations shall be prohibited unless Europol⁶⁹ has given its explicit consent^{70,71}.

⁶⁰ BG, ES suggest to add here: "**and classified information**".

⁶¹ BG, FR suggest to add here: "**Europol shall be responsible for the legality of the transmission of data. Europol shall keep a record of all transmissions of data under this Chapter and of the grounds for such transmissions. Data shall be transmitted only if the recipient gives an undertaking that the data will be used only for the purpose for which they were transmitted.**"

⁶² PL suggests to add here: "**legitimate**".

⁶³ FR suggests to add here: "**and Article 69**".

⁶⁴ FR suggests to replace "~~Chapter~~" with "**Regulation**".

⁶⁵ DE, EL, HU, NL, PL suggest to add here: "**prior to the transfer**".

⁶⁶ DE suggests to delete "~~either in general terms or~~".

⁶⁷ FR suggests to replace this part with: "**The Member State shall be informed of this transfer and may withdraw its** ~~Such consent may be withdrawn~~ any moment."

⁶⁸ BG, FR suggest to delete "~~Member States~~".

⁶⁹ FR suggests to add here: "**and if relevant, the provider of the information**".

⁷⁰ DE suggests to add here: "**and the Member State has not expressly limited the possibility of onward transfers**".

⁷¹ EL suggests to replace this paragraph with: "**Personal data may be only transferred if third countries or international organisations commit that such data will only be used for the purpose for which they were transferred.** Onward transfers of personal data by Member States, Union bodies, third countries and international organizations shall **therefore** be prohibited unless Europol has given its explicit consent. **Europol shall ensure that transfers of personal data and the reasons for such transfers are recorded in accordance with this Regulation.**"

SECTION 2

EXCHANGES/TRANSFERS OF PERSONAL DATA

Article 30

Transfer of personal data to Union bodies

Subject to any possible restrictions stipulated pursuant to Article 25(2) or (3)⁷² Europol may directly transfer personal data to Union bodies⁷³ in so far as it is necessary for the performance of its tasks or those of the recipient Union body.

Article 31

Transfer of personal data to third countries and international organisations

1. *Subject to any possible restrictions stipulated pursuant to Article 25(2) or (3)* Europol may transfer personal data to⁷⁴ an authority of a third country or to an international organisation, in so far as this is necessary for it to perform its tasks, on the basis of:

(a) a decision of the Commission adopted in accordance with [Articles 25 and 31 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data] that that country or international organisation, or a processing sector within that third country or an international organisation ensures an adequate level of protection (adequacy decision)^{75,76}; or

⁷² BE, EL, ES, FR, IT suggest to add: "*and without prejudice to Article 27*".

⁷³ DE suggests to replace the rest of the sentence with: "*in so far as it is necessary for the performance of its tasks or those of the recipient Union body for the purposes of preventing and combating criminal offences. Any other usage of the data shall only be allowed in as far as such usage falls within the mandate of the body receiving the data, and subject to the prior authorisation of the Member State or body which provided the data.*"

⁷⁴ PL suggests to add here: "*competent public*".

⁷⁵ **The reference to Articles 25 and 31 of Directive 95/46/EC will be automatically replaced by a reference to Article 41 of the draft data protection Regulation (doc. 5853/12) when it is adopted. Alternatively, a reference to Article 34 of the draft data protection Directive in the JHA area (doc. 5833/12 and 11624/1/13 REV 1) could be added here at a later stage to replace the reference to an adequacy decision pursuant to Directive 95/46/EC if this draft Directive is to be adopted before the Europol Regulation.**

⁷⁶ FR suggests to replace this subparagraph with: "*a decision of the Management Board stating that the third State or international body concerned ensures an adequate level of protection for the intended data processing in accordance with Article 13-1(d) of the 2008/977/JHA Framework Decision*".

- (b) an international agreement concluded between the Union and that third country or international organisation pursuant to Article 218 of the Treaty adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals; or
- (c) a cooperation agreement concluded between Europol and that third country or international organisation in accordance with Article 23 of Decision 2009/371/JHA prior to the date of application of this Regulation⁷⁷.

Such transfers do not require any further authorisation⁷⁸.

Europol may conclude ~~working~~ **administrative** arrangements to implement such agreements or adequacy decisions⁷⁹.

⁷⁷ **EL, CY** suggest to add here: "*If deemed necessary, these agreements should be revised and updated to reflect this new Regulation.*"

⁷⁸ **EL, FR** propose to delete this sentence. **HR** insists on maintaining it as it is.

⁷⁹ **DE** suggests to add here: "*Europol shall publish and update a list of decisions, agreements, arrangements, or other instruments established as a legal basis for transfers of personal data according to this paragraph.*"

FR suggests to delete this sentence and replace it with: "*The Director, with the approval of the Management Board, may propose to the Council to open negotiations in view of signing agreements referred to in point b) of this Article. Where cooperation with Europol is part of the negotiation directives, it shall be associated to the negotiation team.*"

2. By way of derogation from paragraph 1, the Executive Director may⁸⁰ authorise the transfer of personal data to third countries or international organisations on a case-by-case basis if⁸¹:

- ~~(a) the transfer of the data is absolutely necessary to safeguard the essential interests of one or more Member States within the scope of Europol's objectives;~~
- ~~(b) the transfer of the data is absolutely necessary in the interests of preventing imminent danger associated with crime or terrorist offences;~~
- ~~(c) the transfer is otherwise necessary or legally required on important public interest grounds⁸², or for the establishment, exercise or defence of legal claims; or~~
- ~~(d) the transfer is necessary to protect the vital interests of the data subject or another person.~~

⁸³(aa) *the transfer is necessary in order to protect the vital interests of the data subject or another person; or*

(bb) *the transfer is necessary to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; or*

(cc) *the transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or*

(dd) *the transfer is necessary in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; or*

(ee) *the transfer is necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal penalty.*

⁸⁰ EL suggests to add here: "*whilst observing his/her obligations regarding discretion, confidentiality and proportionality*".

⁸¹ SI suggests here a strengthened obligation on the side of the recipients of personal data to respect all standards of lawful processing (no drafting suggestion).

⁸² FR suggests to add here: "*pertaining to a Member State*".

⁸³ **These sub-paragraphs will be reviewed in the future taking into account the ongoing negotiations on the data protection package.**

- 2a. Moreover the Management Board may, in agreement with⁸⁴ the European Data Protection Supervisor⁸⁵, authorise a set of transfers in conformity with points (a) to (d) above, taking into account of the existence of safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, for a period not exceeding one year, renewable.
3. The Executive Director shall inform the Management Board and the European Data Protection Supervisor of cases where he/she applied paragraph 2⁸⁶.

Article 32

Personal data⁸⁷ from private parties

1. In so far as necessary for Europol to perform its tasks, Europol may *directly receive and process*⁸⁸ personal data originating from private parties *if the national law applicable to the private party allows for direct transfer of such data to law enforcement authorities.*
- 1a. *Where the applicable national law does not provide for such a direct transfer, the personal data may only be processed* on condition that *they* are received via:
- (a) a ~~National~~ ~~Unit~~ of a Member State ~~in accordance with national law~~;
 - (b) the contact point of a third country with which Europol has concluded a cooperation agreement in accordance with Article 23 of the Decision 2009/371/JHA prior to date of application of this Regulation; or
 - (c) an authority of a third country or an international organisation with which the Union has concluded an international agreement pursuant to Article 218 of the Treaty.

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⁸⁴ DE suggests to replace "in agreement with" with "*after the opinion of*", FR suggests to replace it with: "*after consultation of*".

⁸⁵ FR suggests to replace here and elsewhere in this Article "European Data Protection Supervisor" with "Supervisory *Body*".

⁸⁶ PL suggests to add here: "*In each case, the derogation from paragraph 1 shall be duly justified and documented*".

⁸⁷ BG suggests to replace "Personal data" with "*Information*".

⁸⁸ BG suggests to add here: "*information, including*".

⁸⁹ SE suggests to add a new paragraph here: "*If Europol receive personal data directly from private parties in a Member State, Europol shall immediately inform the National Unit in that Member State. The Member State may authorise further processing by Europol.*"

BG suggests to add a new paragraph here: "*If Europol receives information, including personal data, from a private party from a third country with which there is no international agreement, either concluded on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 of the Treaty, Europol may only forward that information to a Member State or a third country concerned with which such international agreement has been concluded.*"

2. If the **personal** data received affect the interests of a Member State, Europol shall immediately inform the National Unit of the Member State concerned.
- 2a. ***Europol may not transfer personal data to private parties except where:***
- (a) ***the transfer is undoubtedly in the interests of the data subject and either the data subject has consented or circumstances are such as to allow a clear presumption of such a consent; or***
- (b) ***the transfer is absolutely necessary in the interests of preventing imminent danger associated with crime or terrorist offences.***
3. ⁹⁰Europol shall not contact private parties directly to retrieve personal data.
4. ⁹¹The Commission shall evaluate the necessity and possible impact of ~~direct exchanges~~ ***the receipt*** of personal data ~~with~~ ***from*** private parties within three years after this Regulation is applicable. Such an evaluation shall specify among others the reasons whether the exchanges of personal data with private parties is necessary for Europol.

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Article 33

Information from private persons

1. Information, ~~including personal data~~, originating from private persons may be processed by Europol. ***Personal data originating from private persons may only be processed by Europol on condition that that it is they are received via***⁹³:
- (a) a National Unit of a Member State ~~in accordance with national law~~;
- (b) the contact point of a third country with which Europol has concluded a cooperation agreement in accordance with Article 23 of the Decision 2009/371/JHA prior to the date of application of this Regulation; or

⁹⁰ PL suggests to delete this paragraph.

⁹¹ SI, SE suggest to delete this paragraph.

⁹² CZ suggests to add a new paragraph here: "***4a. Prior an exchange of personal data, Europol shall advise private parties that the nature of their cooperation is voluntary.***"

⁹³ CZ suggests to replace this paragraph with:

"Europol may directly receive information including personal data from private persons, if the national law applicable to the private person allows for direct transfer of such data to law enforcement authorities. In such case, Europol shall forward immediately any personal data to national Units concerned. Information, including personal data, where the applicable national law does not provide for a direct transfer, may only be received on condition that are received via:"

- (c) an authority of a third country or an international organisation with which the European Union has concluded an international agreement pursuant to Article 218 of the Treaty.

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2. If Europol receives information, including personal data, from a private person residing in a third country with which there is no international agreement, either concluded on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 of the Treaty, Europol may only forward that information to a Member State or a third country concerned with which such international agreements have been concluded⁹⁵.
3. Europol shall not contact private persons directly to retrieve information⁹⁶.

⁹⁴ SE suggests to add the following paragraph here: "*1a. If Europol receive personal data directly from a private person residing in a Member State, Europol shall immediately inform the National Unit in that Member State. The Member State may authorise further processing by Europol.*"

⁹⁵ FR suggests to replace this paragraph with:

"If Europol receives information, including personal data, from ~~a private person~~ *non-EU citizen* residing in a third country with which there is *neither an adequacy decision, nor an* international agreement, either concluded on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 of the Treaty, Europol may only forward that information to a Member State, *Interpol* or a third country concerned with which such international agreements have been concluded."

⁹⁶ CZ suggests to delete paragraph 33(3) and replace it with:

"3. Europol may not transfer personal data to a private person except where:

- (a) the transfer is undoubtedly in the interests of the data subject and either the data subject has consented or circumstances are such as to allow a clear presumption of such a consent; or*
(b) the transfer is absolutely necessary in the interests of preventing imminent danger associated with crime or terrorist offences.

4. The Commission shall evaluate the necessity and possible impact of direct exchanges of personal data with private parties within three years after this Regulation is applicable. Such an evaluation shall specify among others the reasons whether the exchanges of personal data with private parties is necessary for Europol.

5. Prior an exchange of personal data, Europol shall advise private parties that the nature of their cooperation is voluntary."

ANNEX 2⁹⁷

Categories of personal data and categories of data subjects whose data may be collected and processed for cross-checking purpose as referred to in Article 24(1)(a)

1. Personal data collected and processed for cross-checking purposes shall relate to:
 - (a) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent or who have been convicted of such an offence;
 - (b) persons regarding whom there are factual indications or reasonable grounds under the national law of the Member State concerned to believe that they will commit criminal offences in respect of which Europol is competent.
2. Data relating to the persons referred to in paragraph 1 may include only the following categories of personal data:
 - (a) surname, maiden name, given names and any alias or assumed name;
 - (b) date and place of birth;
 - (c) nationality;
 - (d) sex;
 - (e) place of residence, profession and whereabouts of the person concerned;

⁹⁷ **CZ, LV, SE** question the need to include Annex 2 in the Regulation.
ES suggests to reflect how the Annex 2 could be amended. **CZ** suggests (if Annex 2 is not deleted) to add a new competence of Management Board in Article 14 to edit the annex where necessary.

(f) social security numbers, driving licences, identification documents and passport data; and
(g) where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change such as dactyloscopic data and DNA profile (established from the non-coding part of DNA).

3. In addition to the data referred to in paragraph 2, following categories of personal data concerning the persons referred to in paragraph 1 may be collected and processed:

(a) criminal offences, alleged criminal offences and when, where and how they were (allegedly) committed;

(b) means which were or may be used to commit those criminal offences including information concerning legal persons;

(c) departments handling the case and their filing references;

(d) suspected membership of a criminal organisation;

(e) convictions, where they relate to criminal offences in respect of which Europol is competent;

(f) inputting party.

These data may be provided to Europol even when they do not yet contain any references to persons.

4. Additional information held by Europol or National Units concerning the persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with their national law.

5. If proceedings against the person concerned are definitively dropped or if that person is definitively acquitted, the data relating to the case in respect of which either decision has been taken shall be deleted.

Categories of personal data and categories of data subjects whose data may be collected and processed for the purpose of analyses of strategic or other general nature and for the purpose of operational analyses (as referred to in Article 24(1)(b) and (c))

1. Personal data collected and processed for the purpose of analyses of a strategic or other general nature and operational analyses shall relate to:

(a) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent or who have been convicted of such an offence;

(b) persons regarding whom there are factual indications or reasonable grounds under the national law of the Member State concerned to believe that they will commit criminal offences in respect of which Europol is competent.

(c) persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings;

(d) persons who have been the victims of one of the offences under consideration or with regard to whom certain facts give reason to believe that they could be the victims of such an offence;

(e) contacts and associates; and

(f) persons who can provide information on the criminal offences under consideration.

2. The following categories of personal data, including associated administrative data, may be processed on the categories of persons referred to in paragraph 1 point (a) and (b):

(a) Personal details:

(i) Present and former surnames;

(ii) Present and former forenames;

(iii) Maiden name;

(iv) Father's name (where necessary for the purpose of identification);

(v) Mother's name (where necessary for the purpose of identification);

(vi) Sex;

(vii) Date of birth;

(viii) Place of birth;

(ix) Nationality;

(x) Marital status;

(xi) Alias⁹⁸;

(xii) Nickname⁹⁹;

(xiii) Assumed or false name;

(xiv) Present and former residence and/or domicile;

⁹⁸ EL suggests to delete "~~(xi) Alias~~".

⁹⁹ EL suggests to delete "~~(xii) Nickname~~".

- (b) Physical description:
 - (i) Physical description;
 - (ii) Distinguishing features (marks/scars/tattoos etc.)
- (c) Identification means:
 - (i) Identity documents/driving licence;
 - (ii) National identity card/passport numbers;
 - (iii) National identification number/social security number, if applicable
 - (iv) Visual images and other information on appearance
 - (v) Forensic identification information such as fingerprints, DNA profile (established from the non-coding part of DNA), voice profile, blood group, dental information¹⁰⁰
- (d) Occupation and skills¹⁰¹:
 - (i) Present employment and occupation;
 - (ii) Former employment and occupation;
 - (iii) Education (school/university/professional);
 - (iv) Qualifications;
 - (v) Skills and other fields of knowledge (language/other)
- (e) Economic and financial information:
 - (i) Financial data (bank accounts and codes, credit cards etc.);
 - (ii) Cash assets;
 - (iii) Share holdings/other assets;
 - (iv) Property data;
 - (v) Links with companies;
 - (vi) Bank and credit contacts;
 - (vii) Tax position;
 - (viii) Other information revealing a person's management of their financial affairs

¹⁰⁰ EL suggests to add here: "*if possible and applicable by national legislation*".

¹⁰¹ EL suggests to add here: "*if possible and applicable by national legislation*".

- (f) Behavioural data¹⁰²:
- (i) Lifestyle (such as living above means) and routine;
 - (ii) Movements;
 - (iii) Places frequented;
 - (iv) Weapons and other dangerous instruments;
 - (v) Danger rating;
 - (vi) Specific risks such as escape probability, use of double agents, connections with law enforcement personnel;
 - (vii) Criminal-related traits and profiles;
 - (viii) Drug abuse;
- (g) Contacts and associates, including type and nature of the contact or association;
- (h) Means of communication used, such as telephone (static/mobile), fax, pager, electronic mail, postal addresses, Internet connection(s);
- (i) Means of transport used, such as vehicles, boats, aircraft, including information identifying these means of transport (registration numbers);
- (j) Information relating to criminal conduct:
 - (i) Previous convictions;
 - (ii) Suspected involvement in criminal activities;
 - (iii) Modi operandi;
 - (iv) Means which were or may be used to prepare and/or commit crimes;
 - (v) Membership of criminal groups/organisations and position in the group/organisation;
 - (vi) Role in the criminal organisation;
 - (vii) Geographical range of criminal activities;
 - (viii) Material gathered in the course of an investigation, such as video and photographic images

¹⁰² EL suggests to add here: "*if possible and applicable by national legislation*".

(k) References to other information systems in which information on the person is stored:

- (i) Europol;
- (ii) Police/customs agencies;
- (iii) Other enforcement agencies;
- (iv) International organisations;
- (v) Public entities;
- (vi) Private entities

(l) Information on legal persons associated with the data referred to in points (e) and (j):

- (i) Designation of the legal person;
- (ii) Location;
- (iii) Date and place of establishment;
- (iv) Administrative registration number;
- (v) Legal form;
- (vi) Capital;
- (vii) Area of activity;
- (viii) National and international subsidiaries;
- (ix) Directors;
- (x) Links with banks.

3. “Contacts and associates”, as referred to in paragraph 1 point (e), are persons through whom there is sufficient reason to believe that information, which relates to the persons referred to in paragraph 1 point (a) and (b) of this Annex and which is relevant for the analysis, can be gained, provided they are not included in one of the categories of persons referred to in paragraphs 1 (a), (b), (c), (d) and (f). “Contacts” are those persons who have sporadic contact with the persons referred to in paragraph 1 point (a) and (b). “Associates” are those persons who have regular contact with the persons referred to in paragraph 1 point (a) and (b).

In relation to contacts and associates, the data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that such data are required for the analysis of the role of such persons as contacts or associates.

In this context, the following shall be observed:

- (a) the relationship of these persons with the persons referred to in paragraph 1 point (a) and (b) shall be clarified as soon as possible;
- (b) if the assumption that a relationship exists between these persons and the persons referred to in paragraph 1 point (a) and (b) turns out to be unfounded, the data shall be deleted without delay;
- (c) if such persons are suspected of committing an offence falling under Europol's objectives, or have been convicted for such an offence, or if there are factual indications or reasonable grounds under the national law of the Member State concerned to believe that they will commit such an offence, all data pursuant to paragraph 2 may be stored;
- (d) data on contacts and associates of contacts as well as data on contacts and associates of associates shall not be stored, with the exception of data on the type and nature of their contacts or associations with the persons referred to in paragraph 1 point (a) and (b);
- (e) if a clarification pursuant to the previous points is not possible, this shall be taken into account when deciding on the need and the extent of storage for further analysis.

4. With regard to persons who, as referred to in paragraph 1 point (d), have been the victims of one of the offences under consideration or who, certain facts give reason to believe, could be the victims of such an offence, data referred to in paragraph 2 point (a) intent 'i' to paragraph 2 (c) intent 'iii' of this Annex, as well as the following categories of data, may be stored:

- (a) Victim identification data;
- (b) Reason for victimisation;
- (c) Damage (physical/financial/psychological/other);
- (d) Whether anonymity is to be guaranteed;
- (e) Whether participation in a court hearing is possible;
- (f) Crime-related information provided by or through persons referred to in paragraph 1 point 'd', including information on their relationship with other persons, where necessary, to identify the persons referred to in paragraph 1 points 'a' and 'b'

Other data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of a person's role as victim or potential victim.

Data not required for any further analysis shall be deleted.

5. With regard to persons who, as referred to in paragraph 1 (c), might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings, data referred to in paragraph 2 point (a) indent 'i' to paragraph 2 (c) indent 'iii' of this Annex as well as categories of data complying with the following criteria, may be stored:

- (a) crime-related information provided by such persons, including information on their relationship with other persons included in the analysis work file;
- (b) whether anonymity is to be guaranteed;
- (c) whether protection is to be guaranteed and by whom;
- (d) new identity;
- (e) whether participation in a court hearing is possible.

Other data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of such persons' role as witnesses.

Data not required for any further analysis shall be deleted.

6. With regard to persons who, as referred to in paragraph 1 point (f), can provide information on the criminal offences under consideration, data referred to in paragraph 2 point (a) indent 'i' to paragraph 2 (c) indent 'iii' of this Annex may be stored, as well as categories of data complying with the following criteria:

- (a) coded personal details;
- (b) type of information supplied;
- (c) whether anonymity is to be guaranteed;
- (d) whether protection is to be guaranteed and by whom;
- (e) new identity;
- (f) whether participation in court hearing is possible;
- (g) negative experiences;
- (h) rewards (financial/favours).

Other data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of such persons' role as informants.

Data not required for any further analysis shall be deleted.

7. If, at any moment during the course of an analysis, it becomes clear on the basis of serious and corroborating indications that a person should be placed under a different category of persons, as defined in this Annex, from the category in which that person was initially placed, Europol may process only the data on that person which is permitted under that new category, and all other data shall be deleted.

If, on the basis of such indications, it becomes clear that a person should be included in two or more different categories as defined in this Annex, all data allowed under such categories may be processed by Europol.
