



Council of the
European Union

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NOTE

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| From: | Presidency |
| To: | Delegations |
| No. prev. doc.: | 12858/2/19 REV 2 |
| Subject: | Draft Council conclusions on Europol's cooperation with Private Parties |

Delegations will find attached the finalised text of the draft Council conclusions on Europol's cooperation with Private Parties.

Draft Council conclusions on Europol's cooperation with Private Parties

HAVING REGARD to the Treaty on the Functioning of the European Union (TFEU), especially Articles 87 and 88 thereof on police cooperation and the missions of Europol, as well as to Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol);

NOTING that according to the above instruments, Europol shall support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime; in this context, Europol should enhance its role as an EU criminal information hub within the limits provided by the Treaty;

BEARING IN MIND the ever faster developments of modern technologies, and the ensuing increase in serious criminal offences committed online, in the dark web or with the help of those technologies;

MINDFUL that Europol may more effectively fulfil its role enshrined in the above instruments if it is able to quickly gather and process available data in today's rapidly evolving online environment, including data requested and obtained directly from private parties, notwithstanding Europol's obligation to notify the relevant national competent authorities of the Member States as soon as these are identified;

CONSIDERING that private parties play a growing role in preventing and countering cyber-enabled crimes as they are often in possession of significant amounts of personal data relevant for law enforcement operations and therefore need legal certainty if they are to transfer personal data to Europol;

POINTING OUT that the current legislative framework, especially Articles 17 and 26 of Regulation (EU) 2016/794, restrict the ability of Europol to process data obtained from private parties on the substance, insofar as they require the prior submission of the data by other channels¹, which can cause considerable delays and ultimately render such data obsolete or no longer relevant for investigation or analysis;

ADDING in this respect that the current legislative framework may also cause a complete loss of relevant information, for instance where a Member State considers data obtained from a private party as irrelevant and therefore neither opens its own investigation nor establishes a ground for submission of that data to Europol, whereas Europol might have been able to establish, in accordance with its mandate, a link to one or more Member States if the data had been transmitted to it directly by the private party;

RECALLING that based on recent discussions on possible avenues to address this limitation, which took place in the Law Enforcement Working Party (LEWP) on 11 July² and 16 September³ 2019, Member States acknowledged operational needs and expressed support to the need of providing Europol with tools that are necessary to fulfil its missions;

BEARING IN MIND however that any regime governing direct transmission of data by private parties to Europol should be based on a procedure of consent from the Member States which could take the form of a list proposed by Europol consisting of private parties from which Europol would need to receive personal data. The list would be decided upon at intervals by the Europol Management Board, representing the national authorities;

¹ That is from a national unit or a contact point of a third country or an international organisation, as further specified in Article 26(1)(a) - (c) of the Europol Regulation

² 10494/19.

³ 11832/19.

UNDERSTANDING that any such regime should also be voluntary and in full compliance with fundamental rights and applicable legislation, in particular Regulation (EU) 2016/679 (the General Data Protection Regulation), which, especially as regards the protection of personal data, should also provide for a sufficient legal basis for the transmission of personal data by private parties to Europol, while maintaining the supportive role of Europol fully in line with the abovementioned legislation; and

TAKING INTO ACCOUNT that the current regime of Memoranda of Understanding to regulate strategic cooperation with private actors might require a revision in order to introduce a better defined framework for a direct exchange of personal data, including a stronger role for the Management Board of Europol;

POINTING OUT that any Member State concerned by the data transmitted to Europol by a private party must be informed through its Europol National Unit (ENU) as soon as possible;

RECALLING that private parties agreeing to transmit data to Europol are not state actors, and thus should not expect any feedback on the use of that data or the ability to impose handling restrictions with regard to the data they have transmitted;

THE COUNCIL OF THE EUROPEAN UNION:

- acknowledges the urgent operational need for Europol to request and receive data directly from private parties, while respecting the supporting role of Europol with regard to the actions carried out by the competent authorities of the Member States;
- agrees that reflection on possible modalities for such a transmission shall continue at all appropriate levels, on the understanding that the abovementioned fundamental rights such as the protection of personal data and the principles of consent by the Member States, voluntary transmission and absence of feedback, are to be respected;
- agrees to include in the future discussion on the possibility for Europol to receive personal data from private parties the opinion of the European Data Protection Supervisor.
- calls on the COMMISSION:
 - to take the present Council Conclusions into account in the framework of its review of the implementation of Regulation (EU) 2016/794, when examining the practice of direct exchange of personal data with private parties;
 - to consider adapting the schedule for the above review as necessary, especially in view of the need for European law enforcement to address ongoing technological developments.
