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Following the request for written contribution on the above-mentioned proposal (CM 5841/23+COR 1), delegations will find in Annex a compilation of the replies as received by the General Secretariat.

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AUSTRIA

Hereby please find as requested the comments from Austria on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794), I kindly apologise for the short delay.

Austria welcomes the European Commission's proposal in principle.

*Enclosed please find some **comments and concerns**:*

- ***Art 4(2):** The additional tasks referred to in Art 4 (2) would mean a considerable additional workload for the liaison officers.*
- ***Art 7:** These obligations cannot be fulfilled without more human resources.*
- ***Art 7(5):** The activities described in Art 7 (5) and Art 5b (6) (amendment to Regulation (EU) 2016/794) could lead to constraints at national level.*
- ***Art 5b(7):** The direct access to national databases described in Art 5b(7) (amendment to Regulation (EU) 2016/794) would require a legislative amendment in Austria. It would also be helpful if these were Austrian officials at Europol who are familiar with these databases.*
- ***deployments for operational support:** In general, "deployments for operational support" are viewed positively, but they should be kept in moderation and there is a lack of staff at Europol HQ for the ongoing exchange with MS, so more staff is needed if more and more staff are on the road for longer periods.*

*Furthermore, Austria shares the following **general concerns** also voiced by other MS:*

- *Europol's flexibility will be restricted if a separate EU Regulation directly regulates an organisational unit of Europol (EMSC).*
- *Codification in the Europol Regulation of already existing instruments (e.g. OTF or regional task force) creates the risk of questions arising as to why these provisions had to be included, i.e. why Europol may not have been allowed to use these instruments in the past.*
- *The regulation of OTFs and the equivalent in the Europol Regulation will make it extremely difficult to change these instruments in the future.*
- *Trilogue negotiations may yield new proposals that could negatively impact the well-balanced functioning of Europol.*

CZECH REPUBLIC

Initial Comments on Proposal for a Regulation on Migrant Smuggling and Trafficking in Human Beings

- Document 2023/0438 (COD)
- 5 January 2024

In general

CZ believes that this proposal has a limited added value, as most of the activities could be (or indeed are) undertaken pursuant to the current text of the Europol Regulation. CZ believes that unequal formal treatment of various centres at Europol is difficult to understand. Most importantly, CZ believes that Member States should retain maximum control over their territory and resources, including law enforcement personnel.

Specific comments

Chapter II

Article 3

There is a fleeting mention of EC3 in Article 4(1)(l) of Europol Regulation. There is no mention of the ESOC at all in the legal instruments. It is therefore doubtful if a special legal instrument must formally establish a new specialized centre.

Article 4

As there is no specific form of governance (there are no decision-making roles for Member States, Management Board or other agencies), this provision can be much shorter to cover obligatory representatives of JHA agencies.

Articles 5 and 6

CZ appreciates clear links to the provisions of Europol Regulation setting relevant tasks of Europol. If this Regulation cannot be merged with the Europol Regulation, CZ would welcome much shorter and concise description of both kinds of tasks.

Chapter III

Article 7

CZ appreciates that a Member State can designate more than one specialised service. However, CZ believes that connection to SIENA should happen *en masse* to be meaningful. Therefore, CZ proposes to postpone the connection for **two** years (i. e. three years after the entry into force of the Regulation instead of one year). At the same time, these services should not be required to connect to SIENA Restreint (SPOC can handle such cases), but such a connection should remain optional.

The obligation to second national law enforcement to Europol is rather intrusive and may severely damage the ability of the Member State to use its specialists. Therefore, CZ proposes to enable each Member State to declare a unilateral limit on such staff available to the reserve pool. Moreover, it would be quite problematic for the Member States to ensure that their specialists are available for the immediate disposal of Europol as referred in the Article 9 (inserted Article 5b para 6). The number of national specialists is limited and they usually work on several investigations within their units throughout the year. Member States will need some time to manage their replacement at the national level to make them available. Lastly, the financing of such secondments has to be clarified.

Article 8

The duty to provide information should be limited (either to organized or serious crime) to preserve capacities of the Member States. Reference to the general conditions for provision of information to Europol (including Article 7(7) of Europol Regulation) should be made.

As far as the connection of migration liaison officers to SIENA is concerned, we consider the Article 8(5) as a minimum flexibility, and we suggest that the word “imperative” is deleted.

Chapter IV

Limits to operational and investigative actions (amendments to Article 4)

CZ supports the continuing ban on coercive measures taken by Europol.

CZ is not satisfied with the formulation “in liaison and in agreement” in Art. 4(5). CZ typically requires that foreign law enforcement officers act under instructions and responsibility of the Czech law enforcement official.

Operational Task Forces (mainly Article 5a)

The activities of these task forces could overlap with the activities of joint investigation teams. Recitals 15-17 do not provide any clues to tell these two forms apart. As the JITs are instruments of judicial cooperation, CZ proposes to clarify that evidence can be shared only through JITs, rather than through task forces, which would remain oriented to support law enforcement information exchange.

CZ believes that it should be possible to set up an operational task force even without the agreement of the Europol.

Deployment for operational support (mainly Article 5b)

CZ agrees that such deployment must be prioritized on the side of Europol but must always happen on the request and under the legal rules of the Member State to which the territory belongs.

The obligation to second national law enforcement to Europol is rather intrusive and may severely damage the ability of the Member State to use its specialists. Therefore, CZ proposes to enable each Member State to declare a unilateral limit on such staff available to the reserve pool. (See also our concerns on availability of active investigators under Article 7 above.)

The duty to provide information should be limited (either to organized or serious crime) to preserve capacities of the Member States. Reference to the general conditions for provision of information to Europol (including Article 7(7) of Europol Regulation) should be made.

The access of Europol officers and seconded experts to the national systems should remain optional and should be clarified (responsibility, role of national data protection authority etc.).

FINLAND

A few comments on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation:

Finland supports the important objective of the proposed Regulation to fight more effectively against migrant smuggling and trafficking in human beings. The proposed Regulation is important in this respect. At the same time, it is significant in terms of the obligations imposed on Member States; the proposed regulation is quite detailed in terms of how Member States should organise themselves.

Finland is still in the process of evaluation this proposal. We will get our official position in February when the Finnish Parliament starts its work. However, we have been evaluating the proposal and our findings are partly the same as those expressed by LV's colleague at the LEWP meeting in early December.

Nationally the Finnish Border Guard plays a significant operational role in the fight against migrant smuggling. The Border Guard as a pre-trial investigation authority would continue to be Finland's responsible authority towards the EMSC. However, it is somewhat unclear to us what would be the role of FRONTEX's in the future and what its relationship would be with Europol in the fight against migrant smuggling? Why should Europol's role be extended in this matter when FRONTEX is already doing something similar?

We also draw the Commission's attention to the lack of an impact assessment in supporting the proposed regulation. As a result, our experts have been somewhat cautious about how and to what extent The CFR has been properly taken into account in all relevant respects. The text mainly states that "the Charter, including the protection of personal data and privacy, has been fully taken into account, but it is difficult to assess how. It is now somewhat unclear from the text whether other fundamental rights have been assessed and how exactly the different rights have been weighed, including the necessity and proportionality of restrictions.

For example, is it clear whose privacy would be restricted (offenders or also victims of smuggling), what exactly would be exchanged - and would the biometric data of victims or only of suspects also be processed? Migrants are probably usually fingerprinted, but the registers might be different from those organised by the police on a criminal basis? How is this weighed against, for example, the

fact that smuggling compromises victims' other fundamental rights, such as the right to life? Victims of smuggling also tend to end up in poor conditions, including in jobs that may involve further violations of fundamental and human rights.

There is no doubt about the acceptability of the objective of the proposal as such, and it is clear that in this type of crime, cross-border information exchange is critical.

GERMANY

Germany's comments on the proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

- Germany enters a general scrutiny reservation as our assessment is still ongoing. We reserve the right to make more specific comments on the proposal and on the text of the Regulation.
- Europol plays a key role in the cross-border fight against crime in the EU. We therefore generally welcome the aim of the Regulation proposed by the Commission of strengthening Europol.
- However, we still have doubts as to whether the proposed amendments to the Europol Regulation are legally necessary in order to achieve this aim, especially since the Europol mandate has only recently been strengthened. The necessity and proportionality of the proposals require a very thorough examination. In particular, the potential impact on Europol's tasks and governance structures, as well as on the competences of the Member States and other EU agencies, must be examined.
- The measures to combat illegal migrant smuggling must be necessary and proportionate, but they must also be effective and should not affect the Member States' competences with regard to their national sovereignty.
- It is unlikely that the additional resources proposed will suffice to cover the additional tasks. Therefore, the Commission should explain its calculations once again. It must be ensured that the additional staff will be fully deployed to fight migrant smuggling.
- A regional (decentralised) approach to Europol's activities should only be applied with good judgement and in a few exceptional and clearly justified cases without weakening Europol's core tasks. Given that Europol does not have the necessary resources, pursuing a regional approach will most likely weaken Europol's other central functions.

- We notice that the draft regulates issues in the text of the Regulation which are not regulated at the same level of detail in other areas of crime which are also covered by Europol's mandate. This applies, for example, to the rules on the European Centre Against Migrant Smuggling in comparison with other entities referred to in Article 4 (1) (d) of the Europol Regulation. The unnecessary inclusion of organisational aspects directly in the legislative text should be avoided, not least to prevent negative repercussions on existing Europol structures in other areas of crime.
- In particular, the provisions for the Member States included in the draft Regulation must be analysed in detail with regard to their necessity and proportionality. For example, this applies to the provisions in Article 7 of the draft regarding the designation of national specialised services (especially in light of the existing provisions on the Europol national unit in Article 7 of the Europol Regulation) or the obligations to provide information in Article 8 of the draft (especially in light of the existing obligations to provide information under Article 7 (6) (a) of the Europol Regulation). We are also critical of the provisions to regulate the operational task forces (OTFs) as proposed under Article 9 of the draft (Amendments to Regulation (EU) 2016/794) in a new Article 5a and Article 2 (x) of the Europol Regulation. A definition of operational concepts at Member State level should not be enshrined in Union law because this would reduce the required level of tactical flexibility and prevent/hinder adaptations to the specific needs of the OTFs.
- A clear definition of Europol's tasks in contrast to those of Frontex is needed.
- The amendments to Article 4 (5) of the Europol Regulation proposed in Article 9 of the draft must also be analysed in detail, in particular the additions in subparagraph 2 ("Europol staff shall have the power to execute non-coercive investigative measures").

HUNGARY

**Written comments from Hungary on
Proposal for a
Regulation of the European Parliament and of the Council
on enhancing police cooperation in relation to the prevention, detection and investigation of
migrant smuggling and trafficking in human beings, and on enhancing Europol's support to
preventing and combating such crimes and amending Regulation (EU) 2016/794**

Hungary generally supports the objectives of the draft regulation.

It is welcomed that the proposal is aimed at modernising the legal framework to ensure that Member States have the necessary legal and operational tools to combat the new operating methods of human smugglers.

We also support the establishment of a pool of experts in which Member States are also represented and the competent authorities of Member States provide support to Europol to facilitate their cooperation in the field of human smuggling.

However, we do not support any modification that would also entitle Europol to an executive status in addition to its coordinating, organising and informative tasks.

The empowerment of Europol with quasi-federal police powers is not supported, so we consider it absolutely necessary to delete the provisions of the draft regulation in this regard.

Comments on the individual chapters of the Commission's proposal

Articles 1 & 2 – General provisions: Subject matter of the Regulation, Scope and Definitions

We agree with the subject, scope and definitions of the draft regulation.

Articles 3 & 4 – European Centre Against Migrant Smuggling and its composition

Hungary generally agrees with the contents of these articles.

We support the establishment of the European Centre Against Migrant Smuggling, and agree with its structure as proposed.

We also support the appointment of national liaison officers, however, it would be absolutely necessary to consider and model practical issues that precisely define the tasks and powers of the appointed persons in order to adopt the relevant provisions.

We also consider it necessary to examine the budgetary implications affecting the Member States in this subject.

Articles 5 & 6 - Strategic and Operational Tasks of the European Centre Against Migrant Smuggling

We request the deletion of Articles 5 and 6 of the draft regulation for the following reasons.

The tasks listed in a taxative manner in Articles 3 and 4 of the draft regulation do not add value in the context of the draft regulation and make the text of the regulation redundant.

In our opinion, this regulatory technique is contradictory to the provisions of Article 288 of the TFEU, as the relevant provisions intend to regulate in detail the individual tasks of the participants in addition to the basic principles and systems of the structure, operation of the European Centre Against Migrant Smuggling.

The organisational structure and complex activities of the European Centre Against Migrant Smuggling require a detailed definition of the tasks of the Member States and Europol, but the text of the draft regulation does not allow for a full coverage of that, so the regulation may be incomplete, partial, and further amendments may become necessary.

In our view it is against the EU regulatory technique to regulate such specific issues at the level of a regulation, therefore we suggest to determine the strategic and operational tasks of the European Centre Against Migrant Smuggling at a lower level of legal regulation, preferably in an internal regulation (e.g., organisational and operational rules of Europol)

Article 7 - National specialised services to prevent and combat migrant smuggling and trafficking in human beings

In general, we accept Article 7.

We already have a specialised unit at national level within our National Bureau of Investigation (NNI), so the obligations set out in Article 7 can be met by Hungary.

However, the article is texted in a vague manner in several places, including the term "appropriate number" defined in paragraph (5) since it does not provide clear guidance to the Member States on how many delegated national officials they must make available for the operational support of Europol. This is a relevant issue for the Member States so that they can assess their available capacities and prepare for the performance of the tasks related to the specific national authority set out in the article. The resources available to the Member State are limited, so it would be advisable to clarify the exact framework as soon as possible.

Article 8 - Provision of information concerning criminal offences on migrant smuggling and trafficking in human beings to Europol and the Member States

We suggest deleting Article 8 since it addresses issues that already have been regulated in Regulation (EU) 2016/794. In order to avoid unnecessary duplication, we do not support the adoption of these provisions.

Article 9 - Amendments to Regulation (EU) 2016/794

We agree with Articles 9, 5a and 5b of the draft regulation with the following modifications:

We suggest deleting the phrase "...and implement investigative" in paragraph (2) of Article 9 of the draft regulation.

We suggest deleting the last sentence of paragraph (3) of Article 5b of the draft regulation ("The decision of the Executive Director shall be based on a risk assessment").

We suggest deleting the phrase "immediate" in the second sentence of paragraph (6) of Article 5b of the draft regulation. ("The reserve pool shall constitute a reserve of experts working in their Member States that can be placed at the immediate disposal of Europol for that purpose.")

We suggest reformulating the last sentence of paragraph (6) of Article 5b of the draft regulation so that it is not mandatory, but an optional option for the Member States. ("The Member States shall ensure that their experts are available to take part, as seconded national experts, in Europol deployments for operational support at the request of Europol.")

We also suggest deleting point (a) of paragraph (7) of Article 5b of the draft regulation ("provide all relevant information without delay to Europol, where possible by making information in national databases directly accessible to the Europol staff and seconded national experts deployed in its territory in accordance with national law").

In the case that deletion is not possible, we suggest using a different wording, notably consider using "where justified" instead of "where possible".

In our opinion, the tasks and powers set out in point c) in paragraph (2) of Article 9 would grant Europol much broader powers than the Member States originally intended when the institution was established.

We continue to support Europol's efforts related to organisation and coordination, as well as its efforts to support the exchange of information related to migrant smuggling and human trafficking. However, we strongly reject Europol's role as an executive, quasi-federal police force.

In light of this, we propose deleting any provision that would grant Europol the power to implement any coercive measures or relevant criminal procedural powers, whether explicitly or not.

In this regard, we believe it would be appropriate to clearly demarcate Europol's responsibilities from the police forces of the Member States.

The concept of "risk assessment" mentioned in the last sentence of paragraph (3) of Article 5b is also not clear and does not provide clear guidance to the Member States for the performance of their tasks.

In our opinion, the last sentence of paragraph (6) of Article 5b needs to be reformulated, as the current wording would require Member States to ensure that seconded national experts are available and, if necessary, participate in Europol deployments carried out for operational support purposes.

In this regard, we believe it would be appropriate to treat the issue as optional.

ITALY

Herby the italian comments regarding the emandation to the Regulation (EU) 2016/794.

First and foremost we would like to underline the importance of strengthening the European police cooperation in this field, considering the increasing dimension of this phenomenon, and its transnational implications. In the lights of These considerations, it cannot be tackled on national level, but must be faced up on higher one.

The following points are deemed to bring about a positive improvement to the Regulation :

- 1) strengthening the cooperation among European agencies involved in the fight against the smuggling, and a better tuning with related projects (I. E. EMPACT) ;
- 2) allotting the Centre (ECAMS) the strategic analysis functions (it could provide a better and more updated overview over the situation) ;
- 3) bestowing on the Centre (ECAMS) the tasks of facilitating the cooperation among third countries, and identifying the cases in which particular data exchange procedures are required;
- 4) reinforcing Europol in the fight against the crimes related to the infringement of the EU sanctions(not encompassed in the related Annex 1 to the regulation) ;
- 5) defining the operative support that Europol personnel could provide during operations and investigations lead by Member States (Europol deployments) ;
- 6) involving the member state experts on migration deployed abroad

These other aspects, instead, may be considered to be better analyzed:

A) setting out precise rules about the (OTF) operational task force, having regards to the previsions of the article 5 a , could beget:

a1) difficulties in applying and in the interpretation of the law in different Member States (for example hardship related to providing relevant information to Europol and Member States without undue delay)

a2) possibile loopholes or tools used by defendant against the investigations or in the courts

B) the creation of a pool of experts from the member States, to be deployed in case of need, must be better examined, defining the prerogatives and the tasks allotted , how and when activate them and the burden/obligations on the State seconding them.

LATVIA

LV written comments after LEWP-P meeting on 01/12/2023

Proposal for a Regulation of the European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794 (hereinafter – draft Regulation)

LV fully agrees with the **political importance** of stepping up fight against migrant smuggling; LV also agrees that there is a need **to strengthen operational response** at the EU level and **welcomes** efforts to address this.

LV has a **general scrutiny reservation** on the draft Regulation; however, LV already at this point has the following **questions and comments**:

1. Legal basis

LV would appreciate more in-depth explanation by the COM on the **legal basis of the draft Regulation**, in particular, regarding Eurojust; LV would also very much welcome CLS analysis on this.

2. Centre (set-up)

LV wonders **why COM has treated the already existing opportunities** to further develop EMSC, as offered by Europol regulation, as insufficient (for instance, by detaching it from the European Serious and Organized Crime Centre – ES OCC) and **has opted for a completely new approach**.

LV understands that the Centre would be built on the existing EMSC; however, LV – despite the explanation provided by the COM during 01/12 LEWP-P meeting – still believes the draft regulation introduces a **new/hybrid model** for the Centre since the Centre (1) is established by a separate legal act (regulation), (2) has a specific composition and competence, and (3) has legal

basis covering not only Europol (Article 88 of TFEU), but also police cooperation (Article 87 of TFEU) and Eurojust (Article 85 of TFEU). LV also wonders **how this new/hybrid model fits into Europol structure and governing model**, and – in particular – *vis à vis* other Centres established within Europol; LV current reading is that one Centre (EMSC) *de facto* would be “more advanced” (“1st class Centre”) in comparison to other Centres. LV is also not entirely convinced that this imbalanced approach can be entirely justified by an argument that migrant smuggling has a high political significance; LV believes that also other serious crimes are of a great political importance (for instance, terrorism; the context of European Counter Terrorism Centre at Europol).

Furthermore, LV, in principle, agrees that there is a need to strengthen inter-agency cooperation but wonders **how exactly the new model** (through participation of one representative of Eurojust and one – of EBCGA) **would significantly improve information sharing among the Union agencies** (which LV sees as one of the most important current shortcomings) **in practice**.

Finally, LV also notes that in order to propose such a far-reaching proposal, there should be a proper **impact assessment** in place; good governance would require this even in a situation of high political pressure.

3. EMPACT

LV notes that the Centre, if/where appropriate, shall also be composed of one or more representatives “involved in the operational implementation of the strategic and operational priorities of the Union for combatting migrant smuggling and trafficking in human beings, in particular EMPACT”.

LV has certain reservation on this since:

- it is the **Council’s political prerogative to decide on the serious and organized crime priorities** in the framework of four years; furthermore, EMPACT is **not a static instrument**, namely, currently – within EMPACT 2022-2025 – both migrant smuggling and THB are EU’s priorities for the fight against serious and organised crime, however, in future this might not always be the case;
- EMPACT is **MS-driven instrument**; bearing this in mind, LV has conceptual reservations towards the foreseen model that the involvement of EMPACT in the

Centre should be “at the discretion of Europol and, after consultation of the Member States” (which itself also is a rather unclear method).

4. Reserve pool

Article 7 (5) states that MS shall make available an appropriate number (which is a vague reference itself) of staff members of specialized services for the reserve pool; for LV it is important that the draft regulation is **mindful of MS limited human resources** and that **more discretion and flexibility** for the MS is ensured in this regard (possibly also by foreseeing this as a voluntary clause rather than a mandatory one).

In addition, LV also finds it important to understand the implications the Europol reserve pool would make on **MS national budgets**.

5. Possible duplication of efforts

LV is aware that EBCGA would participate in the Centre; however, at this point, it remains rather unclear **how the tasks of Centre and EBCGA would be delineated** (for instance, currently EBCGA also carries out strategic tasks by providing analysis, threat assessment etc.).

6. Link to other crime areas

LV is aware that the current EMSC has competence also in trafficking in human beings (THB) (a small portion of EMSC staff deals with this); LV is also aware that migrant smuggling and THB are (closely) connected crime areas, however, migrant smuggling is also connected to a number of **other crime areas** (for instance, drugs, firearms). Bearing this in mind, LV wonders why COM has decided not to pay a greater attention also to these “other (than THB) crime areas” in the draft regulation.

7. Execution of non-coercive investigative measures

LV also observes Article 4 of Europol regulation is amended, namely, paragraph 5 is replaced with new wording stating that **Europol staff shall have power to execute non-coercive investigative measures themselves** is so requested by MS and green-lighted by Europol’s ED.

This, in LV view, might be a rather far-reaching amendment and LV in national consultation process is paying a particular attention to this.

8. Budget

LV, in principle, agrees that additional financial resources should be provided to Europol. However, LV would appreciate a more in-depth explanation whether the same result (i.e., additional financial resources) can be achieved **without proposing the draft regulation** (including, amendments to Europol regulation) and if – yes, LV would also appreciate to receive more detailed explanation on these other legal options.

LITHUANIA

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

Document no.16204/23

Hereby we provide with the general remarks on a/m Proposal. The text is still analysed by the experts in the capital.

Lithuania welcomes the European Commission's proposal, with the main objective - to combat and prevent the smuggling of migrants and human trafficking.

In Lithuania and throughout our region, there are two types of migration: classical or conventional migration, carried out by organised criminal groups, and the new phenomenon of another state engaging in this activity to influence and achieve its own political objectives. Illegal migration, as the events of the last few years have shown, continues to be a tool used by the neighbouring Belarusian regime in a hybrid attack that directly threatens and endangers the internal security of Lithuania, but also poses threats to the whole Union, as well as to the usual functioning of the asylum system in the EU.

The phenomenon of the instrumentalisation of migration and the Russian military aggression against Ukraine, which has further increased the manifestation of the drivers of international migration, have led to an intensification of the activities of international criminal groups involved in the smuggling of migrants from third countries through Belarus to the EU in the period 2022-2023. For example, In 2022 in Lithuania the highest number of smugglers (231) was apprehended and the highest number of pre-trial investigations (168) were carried out for smuggling of persons across the state border.

Lithuania remains a transit country for irregular migrants, and the illegal crossing of the Lithuanian state border is in the vast majority of cases combined with an illegal secondary movement - migrants use the services of smugglers to travel to Poland and then onwards to their countries of destination (mostly Germany).

For the above reasons, **we support the Commission's proposal** to strengthen the fight against smuggling and to expand Europol's activities in this area. It would lead to a more coordinated efforts within Member States to combat these crimes. In that sense the appropriate financial and human resources have to be allocated to Europol in order to proceed with the new activities in the best way.

We note that for some Member States it will be a challenge to find respective experts to be delegated to the European Centre Against Migrant Smuggling due to the lack of personnel and financial restraints at national level within the institutions, accordingly **we would like to suggest to amend the Article 4(1)(a)** of the Regulation by stating that Member States shall nominate representatives to the European Centre for Combating the Smuggling of Migrants on the basis of the availability and possibility of each Member State, i.e. the wording could be as follows : "*a representative of each Member State, from a national specialised service, upon the availability and possibility, and as referred to in Article 7*". Therefore the Article 7 should be corrected accordingly.

POLAND

We would like to kindly inform you that PL supports:

1. **Strengthen inter-agency cooperation in combating migrant smuggling and human trafficking** - with a central role for Europol and its European Center for Against Migrant Smuggling, assuming a corresponding strengthening of staff resources and further deepening the involvement of Eurojust and Frontex in joint activities in the area of coordinated combating smuggling and human trafficking.
2. **Strengthen steering and coordination in countering migrant smuggling and human trafficking at the EU level** - with an emphasis on the need to increase funding in a way that is adequate to the ever-growing operational needs.
3. Further optimization of the exchange of information on the smuggling of migrants and trafficking in human beings - in particular, in terms of further expansion of the SIENA network, as well as the appropriate feeding of Europol databases by the MS with data on ongoing operational cases.

4. Strengthen MS resources to effectively prevent and combat migrant smuggling and trafficking.

The obligation to send a liaison officer to Europol dedicated to combating illegal migration and human trafficking is very questionable. This is a transfer of the costs of the proposed changes in this regard entirely to the MS. In PL's opinion, a more reasonable mechanism would be for Europol to co-finance such positions, i.e. they should be SNE positions - one for each MS.

Big doubts are caused, by the provisions for the planned reserve pool. The draft provisions stipulate that the MS will ensure the availability of an adequate number of its experts. However, it should be noted that, according to PL regulations, officers can be deployed for service outside the country only with their consent. Which, in practice, means that during the selection of the pool of experts in question, a voluntary recruitment would have to be carried out, allowing experts to decide whether they want to be in such a pool. It should also be clarified what is meant by an appropriate number - the vague term makes it difficult to evaluate such a proposal. Who will decide what number is appropriate? Another issue concerning the pool of experts in question is the need to ensure the availability of experts within 72 hours of the request for secondment. Currently, according to Polish legislation, any officer scheduled for secondment or extended secondment must undergo the appropriate verification procedure, which takes a minimum of 14 days. There is no legal possibility that allows officers to be seconded with the omission of this procedure.

At present, PL has doubts about the plans to revise the Europol Regulation because, there has not yet been an evaluation of the effectiveness of Europol's activities after strengthening its mandate under the latest amendment to the Regulation. With this in mind, it is difficult to reasonably assess to what extent the potential of the introduced changes is used in the daily work of law enforcement agencies, including those specializing in combating human smuggling and trafficking. At this stage, it is not possible to formulate a binding position supporting or rejecting such changes, without a sound assessment of national resources in the above-mentioned scope.

In order to make such an assessment, it would also be helpful if the project's authors could answer the questions that arose during its analysis:

1. Is it the intention of the draft regulation to separate the EMSC from the ESOCC and put it on an equal footing with it in the Europol structure with other centers of expertise such as EC3, ECTC, as well as ESOCC? This is PL's understanding of the proposal to replace Article 4(1)(L) of Regulation (EU) 2016/794 EAMSC read in the context of strengthening the full-time and financial ECAMS.
2. Is the intention of the amendments to Article 4(1)(c) of Regulation (EU) 2016/794 to shift the responsibility of organizing OTF meetings to ECAMS: including their financing and

- administrative support? In the context of the above, how is the term "codification" of OTFs to be understood? Does Europol intend to group OTFs into well-defined categories and what will such codification mean in practice?
3. How to understand the proposals of the draft regulation on ECAMS personnel reinforcement and the issues of financing this reinforcement, in particular:
 - a. What is the planned size of the reserve pool referred to in Article 7 (5) and Article 9 (3) (new Article 5b (6, 9)) of the draft? The draft indicates that the size of the pool will be determined by the Management Board in accordance with Article 5b of Regulation (EU) 2016/794, but does not present any estimate as to the planned size of the pool?
 - b. For what specific purposes does it expect to use the SNE - is it exclusively for OTF, or also for "permanent" posting to ECAMS?
 - c. Whether the pool of highly qualified experts referred to in para. 19 of the preamble will be selected from the pool of experts referred to in para. 17 of the preamble?
 - d. Will the cost of the SNE's posting whether under the OTF, the reserve pool, or the ECAMS posting be borne by Europol? What funds will be used for each posting?
 - e. Does the Draft Regulation include Europol's participation in the costs of posting a migration liaison officer from Member States to ECAMS, as mentioned in Article 4 of the Draft Regulation? In PL's view, such funding would be justified, as the requirement to have a migration liaison officer in ECAMS is imposed on MS by the draft regulation without indicating the source of funding for such posting.
 - f. How are the issues of ECAMS staffing reinforcement to be understood in the context of the Frontex staff reductions mentioned, among others, in footnote 44 (on page 23) of the draft regulation? Does the Commission intend to transfer a specific number of positions and funding to ECAMS while introducing a reduction in Frontex posts and budget of a specific Frontex Department, if so, where will such a reduction occur?
 4. Since migrant smuggling can be accompanied by a number of other crimes such as such as arms smuggling or terrorism, we would appreciate information on how Europol intends to organize the exchange of information, in case such accompanying crimes are identified. Will ECAMS pursue the entire case because of the connection to migration or human trafficking or will it refer such a case to another Center (ECTC, ESOC)?

5. In the context of para. 1.5.5 titled "Evaluation of various available financing options, including the possibility of reallocating funds" of the draft regulation the provision: "The budgetary impact of additional financial resources will be made available in part through a combination of and budget offsets with the BMVI and ISF programs," should be understood as the possible financing of operational activities by MNCs from additional financial resources under the IZGW and FBW? Or will the funds mentioned above be allocated to financial support for ECAMS? Despite the increased budget for ECAMS, will the disbursement of funds continue to be the responsibility of the countries, or does Europol also envisage logistical support in this regard, e.g., through greater use of the Europol cell responsible for responsible for organizing meetings?
6. Do the funds indicated in the draft regulation to support EMPACT activities apply to all priorities or only to illegal migration? The question arose in connection with the planned amount specified as 2 million euros?
7. Article 4 point 1 indicates that ECAMS meetings will be held a minimum of 2 times a year. According to PL, the composition of participants in the planned meetings overlaps with participants in the EMPACT Illegal Migration Priority. What will be the thematic scope of these meetings, and has the Commission considered combining these meetings with the strategy meetings organized under EMPACT?

With the above in mind, we kindly ask you to answer the questions posed, in order to allow further analysis of the project presented.

I would like to kindly inform you that the document will be further analyzed following the answers to the questions raised and the discussion held at the Europol Management Board meeting on December 12-13, 2023.

PORTUGAL

Please, find enclosed the Portugal contribution, regarding “Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol’s support to preventing and combating such crimes and amending Regulation (EU) 2016/794”, hoping that it could be useful:

1. Without prejudice to the arguments put forward in Point 3 of the Explanatory Memorandum (pages 8 and 9), we believe that, for a properly robust analysis, the Commission should undertake an Impact Assessment of the implementation of the legal instrument under development.
2. With regard to Article 6(a) (page 23) of the regulation, we suggest do add:

a) **Up on Member States request**, “*coordinating, organising and implementing investigative and operational actions to support and strengthen actions by the competent authorities of the Member States in preventing and combating migrant smuggling and trafficking in human beings, including when these crimes are facilitated, promoted or committed using the internet, including social media, and including in the context of Europol deployments for operational support, in accordance with Article 4(1), points (c) and (m), of Regulation (EU) 2016/794;*”

3. Regarding article 5b, paragraph 6 (page 29), we suggest the following wording:
4. “6. Europol shall set up a reserve pool of Member States’ experts for the purpose of Europol deployments for operational support”, **being directly responsible for the due administrative, logistical and financial tasks of the deployments**. “The reserve pool shall constitute a reserve of experts working in their Member States that can be placed at the” **immediate** “disposal of Europol for that purpose. The Member States shall ensure that their experts are available to take part, as seconded national experts, in Europol deployments for operational support at the” **timely mannered** “request of Europol”.
5. In view of Article 8(2) (page 25), the following wording is proposed:

“2. Each Member State shall provide the information referred to in paragraph 1 of this Article to Europol in a timely manner”, **but no later than 24 hours after the Member State becomes aware of the information**.

ROMANIA

Romanian initial written comments

on Proposal for a Regulation of the European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

In our opinion, the creation of a pool of experts and their temporary deployment in EU countries where risk situations are identified is a welcome approach. However, it requires a careful analysis in terms of shortage of personnel and financial resources at the national level.

Also, the temporary deployment of experts, as provided in the document, should be prior subject to a strict analysis of the opportunity, based on clearly defined criteria, carried out by EUROPOL experts, similar to the activity currently carried out for the creation of Operational Task Force, as their focus should be on documented targets of high interest.

In mentioning the tasks of the Migration Center (Operational Tasks of ECAMS), the terms used are cases of *migrant trafficking* and *human trafficking*, creating confusion regarding the purpose of initiating this Migration Center. Our opinion is that the terminology used should be *cases of smuggling of migrants* and *cases of THB associated with the main smuggling case*.

Regarding the connection of MS's immigration liaison officers to SIENA, one should bear in mind that ILOs are already logged in to the EMS-IES platform, so they are currently able to communicate and transmit the relevant data (also, Europol has access to the platform). Thus, clarifications are needed In order to avoid additional expenses and duplication of efforts.

SPAIN

Comments from Spain to the COM proposal on Migrant Smuggling

In regard to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794,

Spain considers the specific objectives pursued by the proposal, and described in the document, to be adequate in the field of trafficking in human beings and migrant smuggling. In fact, these two crimes are tightly linked. We consider that increasing the capabilities of the EMSC will directly and positively affect the efficacy of the investigation units of Member States, if these capabilities are effectively used to support the investigations of the MS and are useful for these investigators, for example to release them of some tasks.

Specifically:

- It would be of great value that the EMSC work in supporting investigations of trafficking in human beings with agile financing of operative meetings, expenses of transportation in the framework of investigations, specific technical resources that could be necessary in certain moments, and also financing for collaborators.
- It is also considered necessary to increase technical and human capacities in order to autonomously make OSINT reports for ongoing investigations, when requested by a MS. Currently these reports are requested by the EMSC to IRU (Internal Referral Unit), which is in fact focused on terrorism reports.
- To increase the capacity of the EMSC to analyze large quantities of information through specific applications designed to process large volumes of data extracted from storage devices.
- To improve the capacities in financial investigation and asset recovery related to migrant smuggling and trafficking in human beings.
- Increase "ciberpatrolling" capacities, to detect webpages and social network channels related to these crimes.
- It would also be desirable that EMSC worked as a knowledge sharing platform to help MS work according to best practices in massive data analysis.

Leaving aside the investigations, we believe the document itself would benefit from including the following ideas:

- Expanding the scope of the document to include strategies that address the underlying causes of migrant smuggling and human trafficking, such as economic development and political stability in regions of origin.
- Increasing collaboration with NGOs can provide valuable perspectives and resources. Likewise, protection and assistance measures for victims must be strengthened, ensuring their access to essential services and protecting them from retaliation.
- Including specific programs to train law enforcement agents to develop a special focus on the recognition and proper treatment of victims. Regarding what is described on page 39 of the document, about increasing the number of investigative specialists and data analysts, we consider important to conduct training to encourage the use of advanced technologies, and also improve the detection and tracking of criminal networks, while respecting privacy and fundamental rights. Besides, it is significant to highlight the importance of increasing OSINT/Social Network Monitoring Specialists to provide social network monitoring and open source, social network analysis, as online recruitment is one of the most used and most difficult modus operandi to detect.
- It is considered relevant as well, to procure a new automated fingerprint identification system to support migrant smuggling and THB initiative (in addition to EU Interoperability) as a way of control.

Finally, in relation to the international level, it would be positive to highlight the importance of deepening the cooperation with countries outside the EU, especially those that are key points in trafficking and smuggling routes, and in this way develop the exchange of information between the Member States, Europol, other EU agencies as well as third countries.

SWEDEN

Thank you for the opportunity to provide comments on the Commission proposal COM(2023) 754. We would first like to underline that we are still analysing the proposal internally and have not yet had the chance to consult our parliament. Therefore, we would like to come back with a general assessment of the proposal and more concrete comments at a later stage. Below are nonetheless a few questions and remarks, primarily directed at the Commission, that we find important to clarify for the coming process.

- Despite acknowledging the seriousness of migrant smuggling, what motivates **regulating how Europol and MS work within this particular crime area**, when other, also prioritized, crime areas are not regulated in such detail? What is the Commission's assessment of the consequences of this type of governance for the work of Europol and MS, where priorities are normally set within the organization and within MS law enforcement agencies, based on for instance continuous threat assessments?

- We regret the fact that no assessment of the consequences has been carried out. Alternatives to legislative means, such as adopting Council Conclusions (as was done in 2015 before EMCS was established), could have been explored.

- Regarding the **EMCS** and given that the centre exists already today and seem to offer both strategic and operational support, we would like the Commission to elaborate on whether there is anything not functioning well today that led to the suggestion to reinforce the centre and establish it in law? What Frontex already does within this area should also be taken into account to avoid overlap or inefficiencies.

- Regarding the suggested introduction of **national specialized services** (art 7), we do not nationally govern our law enforcement agency in terms of what units they set up. We would therefore like to ask for an elaborated assessment of the proportionality in this suggestion, as well as how it corresponds to the current division of competence between the EU and MS. Further, the suggestion does not seem to consider that the situation is different in different MS, and therefore how much resources is proportional to place.

- Could it be clarified what “non-coercive investigative measures” entails, in the suggested revision of art. 4.5 in the Europol regulation (art. 9 in the proposal)?

In addition, we would be happy to hear more about the ongoing work in this area from Europol, including specifically EMCS, Frontex and Eurojust in forthcoming LEWP meetings.
