

BULGARIA

Bulgarian contribution to the draft Regulation amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation

General comments:

Bulgaria has always supported the strengthening of Europol's mandate so that the agency can assist Member States more effectively in countering serious crime.

As a general comment on the whole text of the draft Regulation, at the videoconference on 25 January we asked for clarification between **the terms “transmission” and “transfer” of data** and the Commission provided the explanation that “transmission” is used for providing data within the EU and “transfer” for providing data to third countries. We would like a thorough analysis of the text to be made once again in order to identify whether both terms are used properly and if there are any duplications or contradictions. We also propose a **definition of both terms to be included in Art. 2 of the Regulation**, among the other definitions.

Furthermore Bulgaria agrees in principle with the proposal **Europol to be invited to participate in the next meeting of LEWP** related to the discussion on the draft Regulation. Europol should be able to take the floor only on technical issues and after being officially invited to intervene by the Presidency or the Commission.

Comments on thematic block 1 “Enabling Europol to cooperate effectively with private parties”:

We consider positive the proposed text.

On Art. 4, para 1 (u) we would like a definition of “crisis situation” to be included in Art. 2.

On Art. 26, para 2 we propose the following wording:

“Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 for the purpose of establishing jurisdiction and in order to identify the national unit, contact point or authority concerned, referred to in paragraph 1.

Subsequently, the personal data and any relevant results from the processing of that data shall be forwarded immediately to the national unit, contact point or authority concerned and shall be deleted unless the national unit, contact point or authority concerned resubmits those personal data in accordance with Article 19(1) within four months after the transfer takes place.

Europol shall ensure by technical means that, during that period, the data in question are not accessible for processing for any other purpose.

Europol shall delete (erase¹) the data if the identification of the jurisdiction and the national units, contact points or authorities concerned is not possible.”

On Art. 26, para 4 we propose the following wording of the last sentence:

“Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the received personal data to the third country concerned.”

It should be highlighted that Europol will transfer only the personal data received and not the result of its analysis and verification of such data. Europol should not be tasked to verify personal data received from private parties as well as a question is raised how this will be done.

On Art. 26, para 5, (d)

We propose to be added that the information will be used by Europol to identify not only the national units concerned, but also the contact points and authorities concerned.

(d) the transmission or transfer of personal data is strictly necessary for Europol to inform that private party that the information received is insufficient to enable Europol to identify the national units, contact points or authorities concerned, and the following conditions are met:

(i) the transmission or transfer follows a receipt of personal data directly from a private party in accordance with paragraph 2 of this Article;

(ii) the missing information, which Europol may refer to in these notifications, has a clear link with the information previously shared by that private party;

(iii) the missing information, which Europol may refer to in these notifications, is strictly limited to what is necessary for Europol to identify the national units, contact points or authorities concerned.

On Art. 26, para 6a we have the same proposal:

“6a. Europol may request Member States, via their national units, to obtain personal data from private parties, which are established or have a legal representative in their territory, under their applicable

¹ Consultation is needed in order the correct term to be used – delete or erase.

laws, for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol with a view to identifying the national units, contact points or authorities concerned.”

On Art. 26, para 6b we have some concerns in case SIENA is meant under the term “Europol’s infrastructure” which will be used for exchanges between the competent authorities of Member States and private parties. We would like to understand **how SIENA will be directly accessed by the private party** which seems to be inappropriate. We heard the explanations of the Commission that the idea is to provide a legal possibility for communication with private parties, but we prefer the text could be amended and clarified.

Information exchange between national competent authorities and private parties within the MS (on national level) is done according the national legislation. If one MS would like to receive information from private parties which are established or have a legal representative on the territory of another MS or third country the request could be send via the existing channels for law enforcement information exchange (Interpol, Europol – SIENA, liaison officers network) to the NCA of this MS or third country and they on the ground of the received request will ask the respective private party for information according their national law.

On Art. 26a except the already mentioned proposal on including a definition of “crisis situation” we would like to be sure that **all hypotheses for receiving and transferring of personal data are really covered** in these provisions. Please see also our comments on Art. 26, para 5, (d) about national units, contact points and authorities concerned as well as - on Art. 26, para 4 about the verification of personal data.

Comments on thematic block 3 “Strengthening Europol’s role on research and innovation”:

We support in principle the proposed texts in this thematic block.

On Art. 18, para 2e and Art. 33a we propose to be analyzed the possibility to merge both, the provisions on the procedure on setting up of research and innovation projects with the similar procedure implemented for the analytical projects. It will avoid possible duplication, as **both kind of procedures could be stipulated in Art. 18.**

On Art. 33 we would like to **raise a question about the necessity to delete this provision**, since it introduces one of the main principles for personal data protection. Does the Commission envisage to propose a new version of Art. 33?

On Art. 33a we would like to be clarified **whether Member States, third countries and external contractors will participate in the research and innovation projects** and if so, these partners should also have authorized access to the personal data.