# 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) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA

## 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) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 88 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Europol was set up by Council Decision 2009/371/JHA[(2)] as an entity of the Union funded from the general budget of the Union to support and strengthen action by competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States. Decision 2009/371/JHA replaced the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)[(3)].

(2) Article 88 of the Treaty on the Functioning of the European Union (TFEU) provides for Europol to be governed by a regulation to be adopted in accordance with the ordinary legislative procedure. It also requires the establishment of procedures for the scrutiny of Europol's activities by the European Parliament, together with national parliaments, subject to point (c) of Article 12 of the Treaty on European Union (TEU) and Article 9 of Protocol No 1 on the role of National Parliaments in the European Union, annexed to the TEU and to the TFEU (‘Protocol No 1’), in order to enhance the democratic legitimacy and accountability of Europol to the Union's citizens. Therefore, Decision 2009/371/JHA should be replaced by a regulation laying down, inter alia, rules on parliamentary scrutiny.

(3) The ‘Stockholm programme — An open and secure Europe serving and protecting citizens’[(4)] calls for Europol to evolve and become a hub for information exchange between the law enforcement authorities of the Member States, a service provider and a platform for law enforcement services. On the basis of an assessment of Europol's

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functioning, further enhancement of its operational effectiveness is needed to meet that objective.

(4) Large-scale criminal and terrorist networks pose a significant threat to the internal security of the Union and to the safety and livelihood of its citizens. Available threat assessments show that criminal groups are becoming increasingly poly-criminal and cross-border in their activities. National law enforcement authorities therefore need to cooperate more closely with their counterparts in other Member States. In this context, it is necessary to equip Europol to better support Member States in Union-wide crime prevention, analyses and investigations. This was also confirmed in the evaluation of Decision 2009/371/JHA.

(5) This Regulation aims to amend and expand the provisions of Decision 2009/371/JHA and of Council Decisions 2009/934/JHA[(5)], 2009/935/JHA[(6)], 2009/936/JHA[(7)] and 2009/968/JHA[(8)] implementing Decision 2009/371/JHA. Since the amendments to be made are of a substantial number and nature, those Decisions should, in the interests of clarity, be replaced in their entirety in relation to the Member States bound by this Regulation. Europol as established by this Regulation should replace and assume the functions of Europol as established by Decision 2009/371/JHA, which, as a consequence, should be repealed.

(6) As serious crime often occurs across internal borders, Europol should support and strengthen Member States' actions and their cooperation in preventing and combating serious crime affecting two or more Member States. Given that terrorism is one of the most significant threats to the security of the Union, Europol should assist Member States in facing common challenges in this regard. As the Union law enforcement agency, Europol should also support and strengthen actions and cooperation in tackling forms of crime that affect the interests of the Union. Among the forms of crime with which Europol is competent to deal, organised crime will continue to fall within the scope of Europol's main objectives, as, given its scale, significance and consequences, it also calls for a common approach by the Member States. Europol should also offer support in preventing and combating related criminal offences which are committed in order to procure the means of perpetrating acts in respect of which Europol is competent or to facilitate or perpetrate such acts or to ensure the impunity of committing them.

(7) Europol should provide strategic analyses and threat assessments to assist the Council and the Commission in laying down strategic and operational priorities of the Union for fighting crime and in the operational implementation of those priorities. Where the Commission so requests in accordance with Article 8 of Council Regulation (EU) No 1053/2013[(9)], Europol should also carry out risk analyses, including in respect of organised crime, insofar as the risks concerned may undermine the application of the Schengen *acquis* by the Member States. Moreover, at the request of the Council or the Commission where appropriate, Europol should provide strategic analyses and threat assessments to contribute to the evaluation of states that are candidates for accession to the Union.

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(8) Attacks against information systems affecting Union bodies or two or more Member States are a growing menace in the Union, in particular in view of their speed and impact and the difficulty in identifying their sources. When considering requests by Europol to initiate an investigation into a serious attack of suspected criminal origin against information systems affecting Union bodies or two or more Member States, Member States should respond to Europol without delay, taking into account the fact that the rapidity of the response is a key factor in successfully tackling computer crime.

(9) Given the importance of the inter-agency cooperation, Europol and Eurojust should ensure that necessary arrangements are established to optimise their operational cooperation, taking due account of their respective missions and mandates and of the interests of Member States. In particular, Europol and Eurojust should keep each other informed of any activity involving the financing of joint investigation teams.

(10) When a joint investigation team is set up, the relevant agreement should determine the conditions relating to the participation of the Europol staff in the team. Europol should keep a record of its participation in such joint investigation teams targeting criminal activities falling within the scope of its objectives.

(11) Europol should be able to request Member States to initiate, conduct or coordinate criminal investigations in specific cases where cross-border cooperation would add value. Europol should inform Eurojust of such requests.

(12) Europol should be a hub for information exchange in the Union. Information collected, stored, processed, analysed and exchanged by Europol includes criminal intelligence which relates to information about crime or criminal activities falling within the scope of Europol's objectives, obtained with a view to establishing whether concrete criminal acts have been committed or may be committed in the future.

(13) In order to ensure Europol's effectiveness as a hub for information exchange, clear obligations should be laid down requiring Member States to provide Europol with the data necessary for it to fulfil its objectives. While implementing such obligations, Member States should pay particular attention to providing data relevant to the fight against crimes considered to be strategic and operational priorities within relevant policy instruments of the Union, in particular the priorities set by the Council in the framework of the EU Policy Cycle for organised and serious international crime. Member States should also endeavour to provide Europol with a copy of bilateral and multilateral exchanges of information with other Member States on crime falling within Europol's objectives. When supplying Europol with the necessary information, Member States should also include information about any alleged cyber attacks affecting Union bodies located in their territory. At the same time, Europol should increase the level of its support to Member States, so as to enhance mutual cooperation and the sharing of information. Europol should submit an annual report to the European Parliament, to the Council, to the Commission and to national parliaments on the information provided by the individual Member States.

(14) To ensure effective cooperation between Europol and Member States, a national unit should be set up in each Member State (the ‘national unit’). The national unit should

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be the liaison link between national competent authorities and Europol, thereby having a coordinating role in respect of Member States' cooperation with Europol, and thus helping to ensure that each Member State responds to Europol requests in a uniform way. To ensure a continuous and effective exchange of information between Europol and the national units, and to facilitate their cooperation, each national unit should designate at least one liaison officer to be attached to Europol.

(15) Taking into account the decentralised structure of some Member States and the need to ensure rapid exchanges of information, Europol should be allowed to cooperate directly with competent authorities in Member States, subject to the conditions defined by Member States, while keeping the national units informed at the latter's request.

(16) The establishment of joint investigation teams should be encouraged and Europol staff should be able to participate in them. To ensure that such participation is possible in every Member State, Council Regulation (Euratom, ECSC, EEC) No 549/69[(10)] provides that Europol staff do not benefit from immunities while they are participating in joint investigation teams.

(17) It is also necessary to improve the governance of Europol, by seeking efficiency gains and streamlining procedures.

(18) The Commission and the Member States should be represented on the Management Board of Europol (the 'Management Board') to effectively supervise its work. The members and the alternate members of the Management Board should be appointed taking into account their relevant managerial, administrative and budgetary skills and knowledge of law enforcement cooperation. Alternate members should act as members in the absence of the member.

(19) All parties represented on the Management Board should make efforts to limit the turnover of their representatives, with a view to ensuring the continuity of the Management Board's work. All parties should aim to achieve a balanced representation between men and women on the Management Board.

(20) The Management Board should be able to invite non-voting observers whose opinion may be relevant for the discussion, including a representative designated by the Joint Parliamentary Scrutiny Group (JPSG).

(21) The Management Board should be given the necessary powers, in particular to set the budget, verify its execution, and adopt the appropriate financial rules and planning documents, as well as adopt rules for the prevention and management of conflicts of interest in respect of its members, establish transparent working procedures for decision-making by the Executive Director of Europol, and adopt the annual activity report. It should exercise the powers of appointing authority vis-à-vis staff of the agency, including the Executive Director.

(22) To ensure the efficient day-to-day functioning of Europol, the Executive Director should be its legal representative and manager, acting independently in the performance of his or her duties and ensuring that Europol carries out the tasks provided for by this Regulation. In particular, the Executive Director should be responsible for preparing budgetary and planning documents submitted for the decision of the Management Board

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and for implementing the multiannual programming and annual work programmes of Europol and other planning documents.

(23) For the purposes of preventing and combating crime falling within the scope of its objectives, it is necessary for Europol to have the fullest and most up-to-date information possible. Therefore, Europol should be able to process data provided to it by Member States, Union bodies, third countries, international organisations and, under stringent conditions laid down by this Regulation, private parties, as well as data coming from publicly available sources, in order to develop an understanding of criminal phenomena and trends, to gather information about criminal networks, and to detect links between different criminal offences.

(24) To improve Europol's effectiveness in providing accurate crime analyses to the competent authorities of the Member States, it should use new technologies to process data. Europol should be able to swiftly detect links between investigations and common modi operandi across different criminal groups, to check cross-matches of data and to have a clear overview of trends, while guaranteeing a high level of protection of personal data for individuals. Therefore, Europol databases should be structured in such a way as to allow Europol to choose the most efficient IT structure. Europol should also be able to act as a service provider, in particular by providing a secure network for the exchange of data, such as the secure information exchange network application (SIENA), aimed at facilitating the exchange of information between Member States, Europol, other Union bodies, third countries and international organisations. In order to ensure a high level of data protection, the purpose of processing operations and access rights as well as specific additional safeguards should be laid down. In particular, the principles of necessity and proportionality should be observed with regard to the processing of personal data.

(25) Europol should ensure that all personal data processed for operational analyses are allocated a specific purpose. Nonetheless, in order for Europol to fulfil its mission, it should be allowed to process all personal data received to identify links between multiple crime areas and investigations, and should not be limited to identifying connections only within one crime area.

(26) To respect the ownership of data and the protection of personal data, Member States, Union bodies, third countries and international organisations should be able to determine the purpose or purposes for which Europol may process the data they provide and to restrict access rights. Purpose limitation is a fundamental principle of personal data processing; in particular, it contributes to transparency, legal certainty and predictability and is particularly of high importance in the area of law enforcement cooperation, where data subjects are usually unaware when their personal data are being collected and processed and where the use of personal data may have a very significant impact on the lives and freedoms of individuals.

(27) To ensure that data are accessed only by those needing access in order to perform their tasks, this Regulation should lay down detailed rules on different degrees of right of access to data processed by Europol. Such rules should be without prejudice to restrictions on access imposed by data providers, as the principle of ownership