



EUROPEAN DATA PROTECTION SUPERVISOR

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Subject: Implementation of the EDPS Opinion on Europol's guidelines further specifying the procedures for processing of information in accordance with Article 18 of the Europol Regulation (Case 2017-0469)

Dear Mr Pärkna,

We refer to:

- your letter of 30 November 2017 to the European Data Protection Supervisor, enclosing a revised version (v34) of the Integrated Data Management Concept (IDMC) Guidelines (“the revised version of the Guidelines”)¹;
- the following documents provided by Europol during a meeting that took place at staff level in Brussels on 7 November 2017 to discuss the revised version of the Guidelines:
 - Integrated Data Management Concept - Ingredients for the procedure on the transmission and acceptance of information in analysis projects²;
 - Integrated Data Management Concept - Further elaboration on processing purposes³;

¹ EDOC#822397v34.

² EDOC #922620v3, dated 16 October 2017.

³ EDOC #922865v3, dated 16 October 2017.

- Integrated Data Management Concept - Quick wins and urgent requirements⁴.

The revised version of the Guidelines and the above-mentioned documents have been elaborated to implement the recommendations made by the EDPS in his Opinion of 6 July 2017 on a previous version of the Guidelines provisionally adopted by the Management Board of Europol on 1 May 2017⁵.

We have assessed this revised version and our analysis is as follows. We can confirm you that the latter implements the EDPS recommendations.

Recommendation 1 - Scope of the Guidelines

The EDPS **recommended** that Europol:

- a. Delete both Articles 19(4) and (5); and moving Article 1(2) into a specific Article (as revised Article 2).
- b. Reword Article 3: for example, “*Europol may process personal data in so far as it is necessary for the achievements of its objectives and in accordance with the provisions of the Regulation, for which this Decision lays down operational guidance*”.
- c. Delete Article 4(3), or specify what is meant by “individual and systematic” searches by Member States and how this is linked to Article 18 of the Europol Regulation.
- d. Either remove “*and criminal intelligence operations*” from Article 6(1) or further explain the meaning of this concept and how it falls within the scope of application of Article 2(c) of the Europol Regulation.
- e. Specify the applicable legal basis for the “single search facility” under Article 15(5) and how this basis is linked to Article 18 of the Europol Regulation.

In the **revised version** of the Guidelines:

- a. The provisions in former Article 19(5) have been deleted; Article 20(4) [former Article 19(4)] specifies the object of the procedure for the merging and de-confliction; [former] Article 1(2) forms the object of a specific new Article 2, Adherence to the Europol Regulation.
- b. Article 4 [former Article 3] has been reworded as suggested.
- c. Former Article 4(3) has been deleted.
- d. The reference to “criminal intelligence operations” has been further clarified under Article 7(1) [former Article 6(1)].
- e. The reference to the “single search facility” under Article 16(5) has also been specified, together with the applicable conditions and restrictions.

⁴ EDOC #922958v3, dated 16 October 2017.

⁵ This Opinion was adopted pursuant to Article 43(2)(d), 18(7) and 18(6) of 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, OJ L 135, 24.5.2016, p. 53-114 (the ‘Europol Regulation’).

Recommendation 2 - Differentiation between the purposes of the data processing indicated under Article 18(2) of the Europol Regulation

The EDPS **recommended** further specifying the differentiation between processing performed for the purposes of “operational analysis”; "strategic" or "thematic" analysis; “cross-checking”.

In the **revised version** of the Guidelines, the above-mentioned purposes are further described under new Articles 5(3) (“cross-checking”), 6(1) (“strategic analysis”) and 6(2) (“thematic analysis”), together with a specification on the possible use of personal data in the context of “strategic” and “thematic” analysis under new Article 6(4) and for “operational analysis” under new Article 7(1) and (2).

Moreover, Europol has provided the EDPS with the policy document “Integrated Data Management Concept: further elaboration of the processing purposes”⁶ which further specifies the difference between operational analysis compared to cross-checking and to strategic and thematic analysis and streamlines the respective procedures and products.

Recommendation 3 - Specification of the purpose and dual purposes

The EDPS **recommended** that Europol:

- a.** Add in Article 6(13) that data providers should be specifically informed of the “by default” dual purposes at the moment of the transmission of the data to Europol.
- b.** Delete Article 10(7);
- c.** Delete the wording “where possible” and “where feasible” in Article 6(13)(a) and in Article 10(3), and adding the wording: “...*the contributor shall indicate for which operational analysis project or projects the information is intended. If it has not done so, Europol, in agreement with the provider of the information concerned, shall process the information for an operational analysis project identified by Europol. In such case, Europol shall request the data owner to grant permission for processing the data for the applicable operational analysis project.*”
- d.** Clarify why reference is made to ‘data owner’ rather than (as under other Articles of the Guidelines) to ‘data provider’; how ‘data owner’ and ‘data provider’ are defined, in which case/article of the Guidelines reference should be made to the first or to the other term, and ensure a consistent use of these terms in the Guidelines.

In the **revised version** of the Guidelines:

- a.** Article 7(13)(c) [former Article 6(13)(c)] has kept the possibility for data owners to opt out (rather than “opt in”) to the dual purposes. Nonetheless, specific further explanation on the *rationale* for this system has been provided by Europol. Moreover, the issue of the ‘dual purposes’ has been further detailed (with reference to the possibility for the data owner to opt out from the dual purposes; to the fact that the data owner would be informed about the

⁶ EDOC#922865v3.

purposes via an explicit indication in the SIENA message form or in the EIS entry form) under the policy document provided to the EDPS “Integrated Data Management Concept: quick wins and urgent requirements”⁷ (at point 3, Indication and recording of processing purposes).

- b. Article 10(7) [now Article 11(7)] has been partly deleted (deletion of: “*until such time as a technical solution is in place to accommodate for a more specified differentiation by the data owner*”) and an addition has been made specifying that “*Data owners will be specifically informed by Europol by appropriate means in order to decide whether or not they wish to object to the dual purposes*”.
- c. The words “*where possible*” and “*where feasible*”, respectively in Article 6(13)(a) [now Article 7(13)(a)] and in Article 10(3) [now Article 11(3)], have been deleted. Both Articles have been integrated by the specification that “*where the data owner has not indicated this explicitly, Europol shall determine the appropriate destination in consultation with the data owner concerned.*”
- d. The reference to “*data provider*” has been consistently replaced through the all text of the Guidelines with “*data owner*”.

Recommendation 4 - Processing for the purpose of facilitation of information exchange

The EDPS **recommended** adding specific references to the need for information security, the responsibilities of all parties (Europol, Member States, Union bodies, third countries and international organisations) and the means to enforce security in Article 7 of the Guidelines.

The **revised version** of the Guidelines contains such reference under Article 8(5).

Recommendation 5 - Consistency of the title of Chapter V of the Guidelines

The EDPS **recommended** replacing the title of Chapter IV “Data Protection” with, for instance: “*Data protection by design, auditing of data processing and data review*”.

This is the title of Chapter IV of the **revised version** of the Guidelines.

Recommendation 6 - Data protection by design

The EDPS **recommended** indicating in Article 19 (data protection by design) that an independent responsible party needs to ensure that the anonymisation/pseudonymisation techniques are appropriate and correctly implemented.

This indication is now specified in Article 20(3) of the **revised version** of the Guidelines.

⁷ EDOC 922958v3 dated 16 October 2017.

Recommendation 7 - Auditing tools

The EDPS **recommended** including in Article 20 a clear statement that proper auditing tools will be implemented.

This is contained in Article 21(4) of the **revised version** of the Guidelines.

Recommendation 8 - Documentation

The EDPS **recommended** that Europol document the analysis made to assess the relevance of personal data collected for an operational analysis project *for another* operational analysis project.

The last sentence of Article 7(8) of the **revised version** of the Guidelines has incorporated this safeguard.

Recommendation 9 - Follow up action vis-à-vis providers of incorrect, inaccurate or no longer up to date data

The EDPS **recommended** specifying the follow up action to be taken towards the data provider (in case of incorrect, inaccurate, not updated data), by adding: *“including restricting the processing of the personal data deemed incorrect, inaccurate or no longer up to date ensuring that they can no longer be processed with the exception of storage”*.

The **revised version** of the Guidelines includes this specification in Article 7(13)(e).

Recommendation 10 - Procedure for the transmission and acceptance of information in operational analysis projects

The EDPS **recommended** that Europol lay down the procedure envisaged under Article 6(13) and have it implemented at the same date of first implementation of the Guidelines. The EDPS also asked to be promptly informed about the aforesaid procedure.

In this regard, Europol has provided the EDPS, as preliminary policy for the aforesaid procedure, with the document “Integrated data management concept: ingredients for the procedure on the transmission and acceptance of information in analysis projects”⁸, which further details the “data intake” procedure for Operational Analysis Projects. During the meeting of 7 November 2017 referred to above, Europol committed to promptly informing the

⁸ EDOC#922620v3.

EDPS about any development and implementation referring to the aforesaid policy document (including possible amendments to Europol policy document “Integrated Data management Concept”, Specification of the envisaged application of the IDMC as per May 2017⁹).

Recommendation 11 - Differentiation between “deletion” and “destruction” of data

The EDPS **recommended** specifying the meaning and the implications of the terms ‘deletion’ and ‘destruction’ under Article 8(7) and when (to which cases) each applies.

Article 9(6) of the **revised version** of the Guidelines, by deleting the terms “deleted or”, clarifies that the personal data will be ‘destroyed’ (that is, not “soft deleted”). Consistently, the same term “destruction” has replaced “deletion” also under Article 22(2) and (2), on “data review”, of the Guidelines.

Recommendations 12-16 - Role of the EDPS

The EDPS **recommended**:

- referring to the terminology of Article 18(3)(a) of the Europol Regulation in Articles 6(3) and 6(5) of the Guidelines, using the wording “*the EDPS shall be fully **informed** of (...)*”;
- stating in Article 6(7) of the Guidelines that Europol shall implement without undue delay any recommendations made by the EDPS in relation to the opening, closure or amendment of an operational analysis project;
- mentioning the requirement of Article 39 of the Europol Regulation, for example in Article 19 of the Guidelines;
- mentioning the obligation for Europol to inform or ask the prior authorisation of the EDPS according respectively to Articles 25(6) and (7) of the Europol Regulation;
- mentioning the obligation for Europol to inform the EDPS according to Articles 30(6) and 31(3) of the Europol Regulation.

The **revised version** of the Guidelines have been implemented these recommendations.

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In the light of all of the above, we conclude that **the revised version** of the Guidelines submitted by the Management Board of Europol to the EDPS on 30 November 2017 (v34) **implements the recommendations** provided in his Opinion of 6 July 2017 and that, therefore, the EDPS has no objections to their final adoption by the Management Board of Europol, following this consultation, pursuant to Article 11(1)(q) of the Europol Regulation.

⁹ EDOC#888329v2, dated 24 March 2017, provided to the EDPS at an earlier stage.

We ask Europol to **provide** us with the final version of the Guidelines once adopted by the Management Board.

In addition, we also ask Europol to **inform** us about any further developments on:

- technical adjustments referred to in the document “Integrated Data Management Concept - Quick wins and urgent requirements” (Section 3. Indication and recording of processing purposes), which are intended to ensure that data providers are duly informed about dual purposes and have the actual possibility to opt out (**follow up to recommendation 3**);
- the procedure on the transmission and acceptance of information in analysis projects referred to in Article 7(13) of the Guidelines, as soon as it is adopted (**follow up to recommendation 10**).

We thank you for your fruitful cooperation.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Mr Robert WAINWRIGHT, Executive Director, Europol
Mr Daniel DREWER, Data Protection Officer, Europol