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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

*“Remarks at the LIBE meeting on the
follow-up to the EDPS admonishment of
Europol”*

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Thank you for the invitation and for your interest in the EDPS' supervisory activities. I would like to **briefly report on the state of play** since Europol's admonishment was issued (17 September 2020), and answer any questions you might have in this context.

Let me start by saying that the EDPS' assessment of the measures put in place by Europol is, for the time being, **mixed**. We are **satisfied with most of the measures** proposed to mitigate the risks of this processing, some of which have already been put in place; implementation of others is being monitored. However, there is one **major area of concern** which remains to be resolved, namely the **retention period of large datasets**, which I will come to in a moment.

As you know, our decision was a result of concerns that Europol's **processing of large datasets** and their continued storage throughout the course of investigations without verifying that they conform with the restrictions laid down in the Europol Regulation **was raising major compliance issues**.

Since the EDPS issued its admonishment, **the EDPS and Europol have been in close contact** regarding the set of measures Europol is putting in place to reduce the risk for individuals' fundamental rights and secure Europol's operational capabilities. These measures were set out in Europol's Action Plan of November last year.

In March, Europol provided the EDPS with a Progress Report on this Action Plan, which was followed by the EDPS with a request for further clarifications. We received the answers earlier this month.

To start with the positive news, the EDPS welcomes the application of a **separate secure environment for storing large datasets**. This is coupled with stronger access controls to designated Europol staff. It is a strong requirement from the EDPS and a key safeguard to ensure compliance with purpose limitation: such processing is a derogation to the general rule and the data must not be made available to other criminal analysts than the ones doing the filtering.

The EDPS also welcomes the technical updates being put in place to improve the **flagging and labelling** of large datasets as a means to clearly demarcate and separate this data from the moment of its receipt.

The EDPS is reassured that these controls will help to ensure that large datasets that have not been assessed for their compliance with the Europol Regulation will not be processed for analysis, searched against new information, or shared with a Member State or third party. In this regard, **the EDPS appreciates Europol's efforts** and its cooperation over the last months.

However, the EDPS continues to have **concerns related to the possibility for Europol to prolong storage of large datasets** without assessing its compliance with the restrictions contained in the Europol Regulation. The EDPS' request (of 4 December 2020) for a more **restrictive maximum time limit** for storing such data files, a stricter **review process** and clear criteria for assessing the necessity and proportionality of continued storage of raw datasets **have not been taken up**.

Without these safeguards, the risk for prolonged retention of datasets in breach of the Europol Regulation **remains high**. It also means that Europol's measures to strengthen data quality monitoring, such as increasing the frequency of data reviews to check the need for continued storage, cannot be truly effective.



Finally, the EDPS draws attention to the setting up of the dedicated new technical platform that will provide additional features and improvements to Europol's IT environment for handling large datasets. While this is a positive step, the EDPS is concerned that it has not received assurance from Europol that the necessary **data protection assessment** has been carried out prior to its entry into operation. The EDPS underlines the importance of such assessments as well as the obligation to prior consult the EDPS, in line with Article 39 of the Europol Regulation where necessary.

To conclude, let me stress that the EDPS' role is to monitor and ensure compliance with the existing, applicable legal framework. While we are aware of the ongoing works on the Europol Regulation recast, we are convinced this should not interfere with the implementation of the recommendations that the EDPS issued as part of the admonishment follow-up.

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