

The Hague, 2 June 2021

EXECUTIVE DIRECTOR

Mr Wojciech Rafał Wiewiórowski
European Data Protection Supervisor
Brussels
Via email

**EDPS Decision on the own initiative inquiry on Europol's 'Big Data challenge'
– Reply to your letter of 19 April 2021**

Dear Mr Wiewiórowski,

With reference to your letter of 19 April 2021 (Ref: WW/JP/amp/ D(2021) 0882 C 2019-0370), I would like to seize the opportunity to thank you for the positive response to the Progress Report sent to you on 17 March 2021.

I appreciate our close cooperation on this topic and regarding your request for further clarification, below our response to your questions are listed in line with the Actions of the Progress Report.

Action 1 - Flagging of contributions in SIENA

Concerning your request for information on the state-of-play regarding the review and adjustment of the criteria to accept/reject incoming messages (and the corresponding contributions), Europol confirms that the review of criteria to accept/reject incoming messages has been done and the necessary adjustments are being made (detailed below).

On your request for clarification as to whether the secondary assessment by Europol staff upon receipt of a message without a DSC will form part of the acceptance/rejection process or will be performed on datasets only once they have been accepted by Europol, Europol confirms that this will be done as part of the acceptance process, which includes the secondary assessment on the indication given by the sender in each SIENA message (please refer to Annex 1 of the Progress Report of 17 March 2021).

In practice, the following process, setting out the criteria for accepting messages (including the contributions), will be performed:

1. When a SIENA contribution is sent to Europol, it will be flagged by the sender to indicate whether the DSC is *COMPLETED*, *NOT COMPLETED* or *NOT APPLICABLE*.
2. Upon receipt, Europol will assess to see if the contribution is in line with Europol's mandate. Those messages which are not in line with the mandate or cannot be processed for a maximum period of six months in order to determine relevance to Europol's tasks (Article 18(6) of the Europol Regulation) will be immediately rejected.

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3. Messages which are in line with Europol's mandate will then undergo the second DSC assessment. The same three options, i.e. *COMPLETED*, *NOT COMPLETED* or *NOT APPLICABLE*, will apply.
4. After the second assessment, the following steps will be performed:
 - a) All messages which are accepted with a second assessment of DSC *COMPLETED*, will be accepted into the data environment for further processing.
 - b) All messages which are accepted with a second assessment of DSC *NOT COMPLETED*, will be accepted into the data environment but with limited access rights given (please refer to Chapter 3.3. of the Progress Report of 17 March 2021).
 - c) All messages which are accepted with a second assessment of DSC *NOT APPLICABLE*, will be accepted into the data environment if relevant for case management purposes. These messages do not contain personal data. An example of such a message is an invitation for an operational meeting.

In conclusion, data sent to Europol is assessed at national level and upon arrival at Europol (acceptance phase). This is being reflected in the Europol intake process. The deployment of the flagging feature in SIENA 4.10 is underway (as per Chapter 3.1 of the Progress Report of 17 March 2021).

Action 2 - Labelling of data files (complex and large datasets) in Europol's data environment

As detailed in the Progress Report of 17 March 2021 (Chapter 3.3), with the full implementation of the future data environment, Europol will ensure that data (concerning which the DSC is not completed) will be automatically labelled after being forwarded via SIENA into the data environment. The timeline for implementation for Counter Terrorism (CT) related data is Q3 of 2021 (linked to the replacement of ██████████) and for Serious and Organised Crime (SOC) data is 2022 (when ██████████ will be replaced).

In the new data environment, which will fully replace ██████████ in Q3 of 2021 and fully replace ██████████ in 2022, all accepted SIENA contributions where the DSC is not completed will be automatically labelled and these labels will be visible on the contributions as a file property. All data in the data environment will be accessed via the new Data Management Portal (DMP) and the labelling will be clearly visible to those accessing the data.

The DMP is a user interface which will be used to access and manage the data within the new data environment. Access rights will be given according to the assigned role and tasks of the individual. Whilst the process of the handling will remain the same, the DMP will provide more possibilities to restrict access rights upon acceptance. For the DSC non-completed data, access rights will be limited as per Action 3 of the Action Plan (and Progress Report of 17 March 2021) and will only be visible to those who have the task of assessing the content to identify the DSC.

It must be borne in mind that the DSC is already a mandatory data field for person data entries, in both ██████████ and ██████████, at the present moment, which is part of the continuous data review (Chapter 3.4 of the Progress Report of 17 March 2021).

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Considering the effort and cost required, beyond the continuous data review actions, it is not feasible to implement (automated) technical labelling for existing large and complex datasets, currently stored in the technical environment for CT and SOC data (beyond SIENA labelling), i.e. before Q3 2021 and 2022 respectively. However, as per your request, Europol has explored the possibility for an interim solution for the automatic labelling of SOC data and the means for putting in place automatic labelling in the current technical environment for the data intake. Europol has found an interim solution which is being put in place.

In the interim, although the further processing of SOC data where the DSC is completed will continue to be done in █████ until 2022, all new SOC contributions, where the DSC is not completed, will be automatically labelled and will not be accepted into █████. Instead, they will be accepted in the data environment and accessed via the DMP only by those with the task of identifying the DSC. Once the DSC is completed, the data will be further processed in █████.

In [Annex 1](#), there is a description, with diagrams, of the interim solution, as well as a description of the current way of working and a description of the changes which will take place once both █████ and █████ are replaced.

On your request for Europol to implement a maximum retention period for datasets without a defined a DSC, Europol confirms that data without a DSC is not kept by default for a period of three years.

Europol reconfirms that data sets for which the DSC has not been completed will be subject to an increased review in order to ensure that the data is not kept longer than needed, in order to ascertain:

- The necessity and proportionality to keep the data for the purpose of the ongoing investigation;
- The time required to determine the DSC when MS request Europol to assist them in determining the DSC.

In addition, data for which the DSC is not completed has limited access rights.

Once the data is not any longer needed for the purpose of an ongoing investigation or for the purpose of determining the DSC, the data is deleted, as soon as that is identified (thus, before the default time period of three years). Given that the necessity and proportionality is subject to an assessment on the merits of the individual contribution, a default retention period (e.g. 12 months) is not considered appropriate to fulfil Europol's core business and would hamper the success of live investigations. Should you have a different viewpoint regarding this matter, I suggest we discuss this aspect before you would arrive at a conclusion under your duties of Article 43 of the Europol Regulation.

Action 3 - Restricted access rights to 'raw data'

Regarding the application of a separate, secure environment for the storage of data without a defined DSC, with the stronger and more limited access controls envisaged in the New Forensic Environment (NFE), Europol can confirm that data without a DSC will not be further processed for analysis, nor will it be included in a Europol analysis product, or be subject to a general search against new information received by Europol, or be shared with a Member State or a third party.

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From a data protection perspective, it should be noted that the NFE will be a more controlled environment, delivering additional data protection safeguards and improving data management capabilities. Europol is still in the process of evaluating if and in how far the numerous types of processing operations can best be described in a single Data Protection Impact Assessment (DPIA), taking into account also the most recent requirements put forward by the EDPS such as “a data flow diagram for each purpose of the processing to fully clarify the legal framework in which it operates”. The EDPS will be informed about progress achieved in due course. For the time being, Europol has not identified any new data processing operation under Article 39 of the Europol Regulation which would be implemented in the NFE (compared to the processing operations in the current CFN which commenced prior to the entry into force of the Europol Regulation).

Action 4 - Increase of frequency of reviews of complex and large datasets

In relation to datasets stored to preserve the chain of evidence, this data will remain stored in the same place with the same limited access rights and will continue to be periodically reviewed. As the data will be labelled and the access rights will be limited, the data will not be at risk of being further processed in the data environment. In practice, only the analysts/specialists that have worked on the investigation will have access. The data will not be available for any other activity such as searching or analysis.

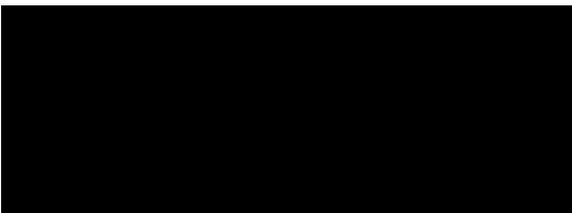
Action 5 - Data Quality Control Coordinator

Regarding your request to align the Europol [REDACTED] to ensure that the new labelling can be audited appropriately by the Europol Data Protection Function (DPF) and to inform you of its ICT planning, Europol can confirm that the new labelling can be audited by the Europol DPF. The deployment of the new environment to replace [REDACTED] will be in pre-production end of June 2021 with the involvement of DPF in the process.

I hope that the above further clarifies the measures taken by Europol to mitigate the risks in relation to large data sets and data subject categorisation. Europol is on track with the planning and implementation of the measures, in line with the established timeline. We are looking forward to showing you and your colleagues the technical and practical measures which are being implemented.

A copy of the letter will be provided to the Chair of the Management Board (MB), for updating the delegates of the MB on the developments.

Yours sincerely,

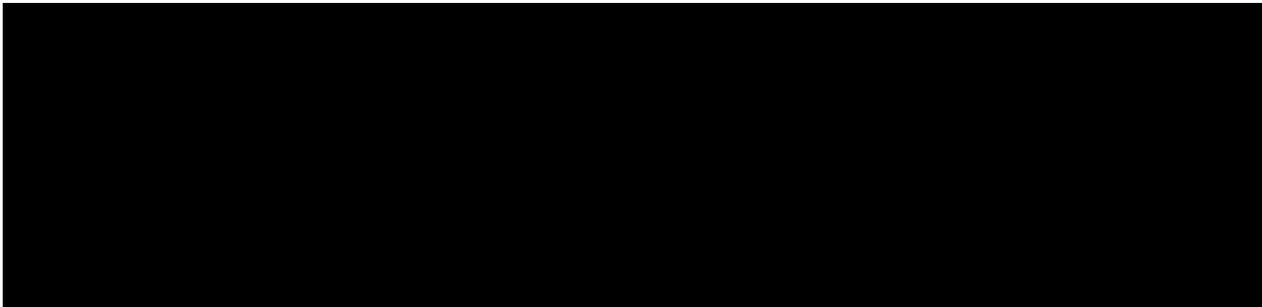


Catherine De Bolle
Executive Director

The Labelling of Non-Forensic Datasets in Europol's Data Environment

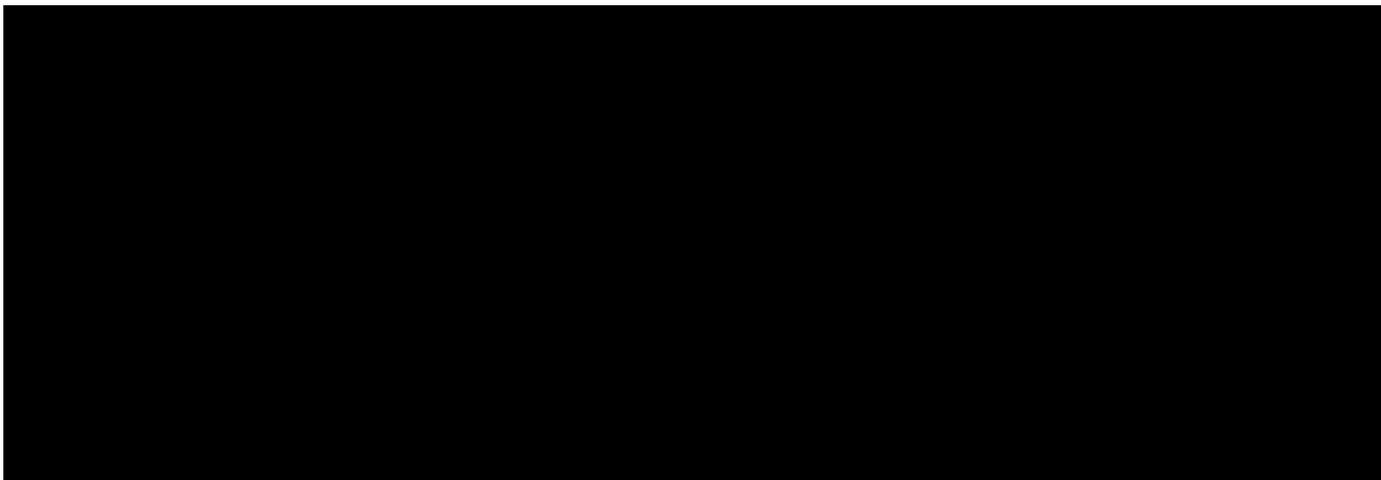
1. Current way of working

- All accepted SIENA contributions are pushed to either [REDACTED] (for CT data) or [REDACTED] (for SOC data).



2. The new way of working (once both [REDACTED] and [REDACTED] are replaced):

- All SIENA contributions sent to Europol will be flagged by the sender to indicate whether the DSC is COMPLETED, NOT COMPLETED or NOT APPLICABLE.
- During the acceptance stage, the second assessment will be done by Europol for all accepted messages.
- Once accepted and the second assessment has been done, all SIENA contributions where the DSC is not completed will be automatically labelled. These labels will be a property in the contribution file and will be visible on the contribution as such.
- All accepted SIENA contributions will then be pushed into the new data environment and will be visible via the new Data Management Portal (DMP). The property labelling the files where the DSC is not completed will be clearly visible and the access rights will be limited for these files as per Action 3 of the Action Plan.



3. The interim way of working (after [REDACTED] has been replaced but before [REDACTED] has been replaced):

- All SIENA contributions sent to Europol will be flagged by the sender to indicate whether the DSC is COMPLETED, NOT COMPLETED or NOT APPLICABLE.

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- During the acceptance stage, the second assessment will be done by Europol for all messages.
 - Once accepted and the second assessment has been done, all SIENA contributions where the DSC is not completed will be automatically labelled. These labels will be a property in the contribution file and will be visible on the contribution as such.
 - All accepted SIENA contributions will then be pushed into the new data environment and will be visible via the new Data Management Portal (DMP) as per above, with the property labelling the files where the DSC is not completed visible and the access rights limited for those files.
 - As █████ will not yet be fully migrated to the new data environment, SOC data where the DSC is completed will be pushed there for further processing, whilst SOC data where the DSC is not completed will remain in the new data environment.
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