From:	████████████████████
To:	████████████████████
	████████████████████
	DPF Data Protection Function <DPF@europol.europa.eu>; COUDERT Fanny
CC:	████████████████████
	████████████████ European Data Protection Supervisor <EDPS@edps.europa.eu>; EDPS-Europol <EDPS-Europol@edps.europa.eu>
Sent at:	23/10/20 18:06:14
Subject:	RE: @EXT: RE: @EXT: RE: Operational support

Dear ██████,

Regarding **case 2020-0982** (development of machine learning models and need for PCo) we would welcome your answers/clarifications to the following questions.

It is our understanding that operational data stored in ███████████ and initially collected by Europol to provide support in criminal investigations, are going to be processed for the development/training and testing of the machine learning models described in your email of 21 October 2020. Afterwards, these models are going to be used in order to extract entities to be stored in the same and/or in other APs.

§ Could you **confirm that our understanding is correct**? Furthermore, could you
  (A) define which set of operational data is going to be used for the abovementioned purposes (development/training and testing of machine learning models) and the criteria that will be used to select them;
  (B) inform us on whether, and if so which, existing algorithms and programs will be incorporated into this new project.

§ In the context of the inquiry regarding the use of production data by Europol for "data science" purposes (Case 2019-0264), Europol has implicitly argued in its letter of 6 August 2019 that the appropriate legal basis for this kind of processing operations is Article 28(1)(b)ER. Could you **please explain/clarify why you consider Article 18(2)(c) ER** (operational analysis) **as the appropriate legal basis for the use of operational data, initially collected for purposes of operational analysis, for purposes of development/training and testing of the machine learning models** described in your email of 21 October 2020? What is the **distinctive difference** between the projects described in your letter of 6 August 2019 and of the current project?

§ In order to facilitate the comprehensive analysis of your questions, could you please further:
  (A) describe the methods to be used for the development of the machine learning models;
  (B) describe the methodological and ethical standards to be applied for the development of these models;
  (C) inform us on whether the conclusion and the reasoning of the research

activities are going to be transparent and open to criticism and to which extent and audience;

§ Could you please **further explain** to what extent the **produced results** (through the machine learning models) **will contain special categories of personal data**, whose processing will be in line with Europol Regulation.

§ Could you explain **why you consider** that **the development of machine learning models with the use of operational data does not qualify** as "*new technologies, mechanisms or procedures, presenting specific risks for the fundamental rights and freedoms, and in particular the protection of personal data, of data subjects*" that would be subject to a prior consultation under Article 39 ER? In particular, in the light of the EDPS opinion issued on Case 2019-0850 where the EDPS reiterated its concerns with regard to the development of machine learning tools, which may involve the use of production data for training purposes and asked Europol to ensure that the development of the envisaged in that case machine learning process is dependent on a specific DPIA to act as a roadmap for Europol to identify and control the risks to rights and freedoms of data subjects. **Is there any substantial difference between these two projects**? Wouldn't the development of these machine learning models result in the use of new technologies (machine learning models) and **substantially change the way of processing large amounts of data**?

Please do not hesitate to contact me should you need any clarifications.
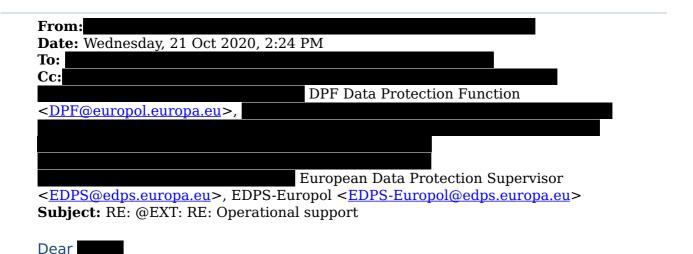
Have a nice weekend.

Best regards,

███

From: ████████████████████████████████
Sent: 21 October 2020 14:34
To: ████████████████████████████████
Cc: ██
████████████████████████ DPF Data Protection Function <DPF@europol.europa.eu>; ████████████████████████████
██
██████████████████████████████████████
██████████████████████ European Data Protection Supervisor <EDPS@edps.europa.eu>; EDPS-Europol <EDPS-Europol@edps.europa.eu>
Subject: @EXT: RE: @EXT: RE: Operational support

Dear ███

Thank you very much for the provided information as well as your kind consideration.

We are looking forward to hearing back from you in the context of this informal consultation.

Please do not hesitate to contact me in case you need any additional information from our side.

Best regards,

████

Dear ██████

The EDPS decided to treat the issues raised in your email regarding (i) the appropriate legal basis for the development and use of machine learning models for the support of ongoing investigations by Member States and (ii) the need for this type of processing operations to be subject to a prior consultation under Article 39 ER as an informal consultation.

We will examine it and will contact you if we need any additional information.

Please note that our reply will be informal advice at staff level and does not prejudice any position the EDPS might take in a formal consultation.

For further correspondence, please note that the case number for this matter is **2020-0982**. Please use the EDPS functional mailbox (edps@edps.europa.eu) and EDPS Europol team mailbox (edps-europol@edps.europa.eu) in all future correspondence on this case.

Kind regards,

██

████████████████████████████
████████████████████

✉ ████████████████████
European Data Protection Supervisor
Postal address: Rue Wiertz 60, B-1047 Brussels
Office address: Rue Montoyer 30, B-1000 Brussels
🐦 @EU_EDPS 🌐 www.edps.europa.eu

From: ███████████████████████████████████ EDPS-Europol <EDPS-Europol@edps.europa.eu>
Sent: 21 October 2020 10:35
To: ██████████████████████████████████ EDPS-Europol <EDPS-Europol@edps.europa.eu>
Cc: European Data Protection Supervisor <EDPS@edps.europa.eu>; ██████
██ DPF Data Protection Function
<DPF@europol.europa.eu>
Subject: @EXT: RE: Operational support

Dear ████████

Thank you very much for the confirmation of receipt.

Have a good day ahead of you,
Best regards,

████████

From: ███████████████████
Sent: 21 October 2020 10:32
To: ███████████████████ ; EDPS-Europol
Cc: European Data Protection Supervisor ; Drewer, Daniel ; ████████████
████ ; DPF Data Protection Function
Subject: RE: @EXT: Operational support

Dear ████████

Thank you for your email and kind words.

I confirm that I was able to open the document.

Kind regards,

████████

From: ██████████████████
███████████████████████████████████
Sent: 21 October 2020 10:23
To: █████████████████████████████████ EDPS-
Europol <EDPS-Europol@edps.europa.eu>
Cc: European Data Protection Supervisor
<EDPS@edps.europa.eu>; ████████████
██████████████████████████████████
███████████████████████████ DPF Data Protection
Function <DPF@europol.europa.eu>
Subject: @EXT: Operational support

Dear ████████ Dear Colleagues,

Hope this message finds you well and healthy.

Please find inserted below a document for your information and kind consideration:

The password to the document will be sent to you via the established alternative means.

Please do not hesitate to contact me should you require additional information from our side.

Thank you,

Best regards,

██████

██████████████
████████████████████

Eisenhowerlaan 73, 2517 KK The Hague
The Netherlands
www.europol.europa.eu

EUROPOL

DPF · DATA PROTECTION FUNCTION

EUROPOL DATA PROTECTION EXPERTS NETWORK

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