

**From:**

[REDACTED]

**To:**

[REDACTED]

**CC:**

[REDACTED]  
DPF Data Protection Function  
<DPF@europol.europa.eu>; [REDACTED]  
[REDACTED]  
[REDACTED] European Data  
Protection Supervisor <EDPS@edps.europa.eu>; EDPS-  
Europol <EDPS-Europol@edps.europa.eu>

**Sent at:**

27/11/20 12:03:47

**Subject:**

RE: @EXT: RE: Operational support - Case 2020-0982

Dear [REDACTED]

In case **2020-0982** you requested EDPS informal advice regarding (i) the appropriate legal basis for the development and use of machine learning models in the context of a specific Joint Investigation Team and Europol's support to JIT countries and (ii) the need for a Prior Consultation under Article 39 ER in such a case.

Although the reply to the first issue raised (appropriate legal basis for the processing) will require more time on our side, we would like to already communicate our reply to the second issue.

Regardless the identification of the appropriate legal basis for the specific processing operations, it appears that a prior consultation under Article 39 ER is necessary.

Article 39 ER subjects the following processing operations to prior consultation by the EDPS:

(a) processing of special categories of personal data as referred to in Article 30(2); or  
(b) types of processing, in particular using 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.

Furthermore, according to recital 50 of the Europol Regulation: *"the prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities, such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto"*.

In the case under consideration, the processing operations described in your email of 21 October 2020 and further clarified in your email of 16 November 2020 represent a *"substantial change to the manner of processing"* large amounts of personal data by using new technologies and in particular by relying on machine learning models for identifying and prioritizing decrypted communications. Moreover, the use of machine learning models presents specific risks for the data subjects (i.e. the users of the platform under investigation). Such risks (e.g. misidentification of data subjects, mis-attribution of behaviour to data subjects) have to be clearly identified and mitigated through the Article 39 ER procedure.

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

Best regards,

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**From:** ■  
**Sent:** 16 November 2020 21:01  
**To:** ■  
**Cc:** ■  
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■  
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■  
■ European Data Protection Supervisor  
<EDPS@edps.europa.eu>; EDPS-Europol <EDPS-Europol@edps.europa.eu>  
**Subject:** @EXT: RE: Operational support

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Hope this message finds you well.

Please find inserted to the present email Europol's replies/clarifications to the questions posed.

The password to the file will be sent via the established alternative means of communication.

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

Have a good evening ahead of you.

Best regards,

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Eisenhowerlaan 73, 2517 KK The Hague  
The Netherlands  
[www.europol.europa.eu](http://www.europol.europa.eu)

 **EUROPOL**

**DPF - DATA PROTECTION FUNCTION**



**From:** [REDACTED]  
**Sent:** 23 October 2020 18:06  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] European Data Protection Supervisor  
<[EDPS@edps.europa.eu](mailto:EDPS@edps.europa.eu)>; EDPS-Europol <[EDPS-Europol@edps.europa.eu](mailto:EDPS-Europol@edps.europa.eu)>  
**Subject:** RE: @EXT: RE: @EXT: RE: Operational support

Dear [REDACTED]

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 [REDACTED] 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,

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**From:** ■  
**Sent:** 21 October 2020 14:34  
**To:** ■  
**Cc:** ■  
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■ European Data Protection Supervisor  
<[EDPS@edps.europa.eu](mailto:EDPS@edps.europa.eu)>; EDPS-Europol <[EDPS-Europol@edps.europa.eu](mailto:EDPS-Europol@edps.europa.eu)>  
**Subject:** @EXT: RE: @EXT: RE: Operational support

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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,

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**From:** [REDACTED]  
**Date:** Wednesday, 21 Oct 2020, 2:24 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] European Data Protection Supervisor  
<[EDPS@edps.europa.eu](mailto:EDPS@edps.europa.eu)>, EDPS-Europol <[EDPS-Europol@edps.europa.eu](mailto:EDPS-Europol@edps.europa.eu)>  
**Subject:** RE: @EXT: RE: Operational support

[REDACTED]

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](mailto:edps@edps.europa.eu)) and EDPS Europol team mailbox ([edps-europol@edps.europa.eu](mailto:edps-europol@edps.europa.eu)) in all future correspondence on this case.

Kind regards,

[REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED]  
**European Data Protection Supervisor**  
Postal address: Rue Wiertz 60, B-1047 Brussels  
Office address: Rue Montoyer 30, B-1000 Brussels  
[@EU\\_EDPS](https://twitter.com/EU_EDPS) [www.edps.europa.eu](http://www.edps.europa.eu)

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**From:** [REDACTED]

**Sent:** 21 October 2020 10:35

**To:** [REDACTED]

**Cc:** European Data Protection Supervisor <[EDPS@edps.europa.eu](mailto:EDPS@edps.europa.eu)>; [REDACTED]

[REDACTED] DPF Data Protection Function  
<[DPF@europol.europa.eu](mailto:DPF@europol.europa.eu)>

**Subject:** @EXT: RE: Operational support

[REDACTED]

Thank you very much for the confirmation of receipt.

Have a good day ahead of you,  
Best regards,

[REDACTED]

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**From:** [REDACTED]

**Sent:** 21 October 2020 10:32

**To:** [REDACTED] EDPS-Europol

**Cc:** European Data Protection Supervisor ; [REDACTED]  
[REDACTED] DPF Data Protection Function

**Subject:** RE: @EXT: Operational support

[REDACTED]

Thank you for your email and kind words.

I confirm that I was able to open the document.

Kind regards,

[REDACTED]

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**From:** [REDACTED]

**Sent:** 21 October 2020 10:23

**To:** [REDACTED]  
EDPS-Europol <[EDPS-Europol@edps.europa.eu](mailto:EDPS-Europol@edps.europa.eu)>

**Cc:** European Data Protection Supervisor  
<[EDPS@edps.europa.eu](mailto:EDPS@edps.europa.eu)>; [REDACTED]

[REDACTED] DPF Data Protection  
Function <[DPF@europol.europa.eu](mailto:DPF@europol.europa.eu)>

**Subject:** @EXT: Operational support

[REDACTED] 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,

[REDACTED]

[REDACTED]

Eisenhowerlaan 73, 2517 KK The Hague  
The Netherlands  
[www.europol.europa.eu](http://www.europol.europa.eu)



PLEASE REGISTER here for free (250 participants max.):  
<https://www.era.int/?129787&en>

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