

**From:** European Data Protection Supervisor  
**To:** [REDACTED]  
**CC:** EDPS-Europol <EDPS-Europol@edps.europa.eu>  
**Sent at:** 03/02/21 11:56:15  
**Subject:** Our ref.: 2021-0130 - D(2021) 0244

Dear Sir,

Please find attached a letter signed electronically by Mrs HAROU for the above mentioned subject.

Kind regards,

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**EDPS Secretariat**



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**European Data Protection Supervisor**

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SUPERVISION AND ENFORCEMENT UNIT  
Delphine HAROU  
HEAD OF UNIT

[REDACTED]

Europol  
P.O Box 908 50  
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Brussels, 3 February 2021

DH/EC/vm/ D(2021) 0244 C **2021-0130**

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**Subject: Prior consultation regarding the development of machine learning models in the context of a Joint Investigation Team (Case 2021-0130)**

Dear [REDACTED]

On 21 October 2020 Europol filed a request for informal consultation regarding (i) the appropriate legal basis for the development and use of machine learning models in the context of a specific Joint Investigation Team (JIT) and Europol's support to JIT countries and (ii) the need for a prior consultation under Article 39 ER (Case 2020-0982). In the context of this case, on 22 January 2021 you shared with the EDPS for information a draft Data Protection Impact Assessment (DPIA) which is currently being carried out by the data controller with regard to the development and use of a machine learning toolbox for operational analysis in the specific operation. The draft DPIA concludes that a prior consultation with the EDPS under Article 39 ER is not necessary.

In line with our reply to Europol's request for informal consultation communicated to the Agency on 27 November 2020, we confirm that in the case under consideration the processing operations described in Europol's initial request and further clarified in the 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 developing and relying on machine learning models for identifying and prioritising decrypted communications. Therefore, this type of processing operations is subject to prior consultation and the EDPS decided to reclassify Europol's communication of 22 January 2021 and consider it as a notification opening the Article 39 ER procedure. The new case number that should also be used for further correspondence is **2021-0130**.

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In this respect, we would like to note that the DPIA is as an iterative process and thus can be submitted for prior consultation even at an early stage of the tool/process development, in line with the principle of the data protection by design (Article 33 ER). Hence, the elements provided in Article 39(2) ER and in particular the identification and assessment of the risks to the rights and freedoms of the data subjects and the safeguards and security measures and mechanisms put in place to ensure the protection of personal data and to demonstrate compliance with the Europol Regulation could be complemented as the development state evolves. Moreover, we would like to further clarify that the focus regarding the identification and mitigation of possible new risks for the data subjects should be put on the development and use of the machine learning models as a preparatory step that facilitates the operational analysis of the data (which per se is not subject to prior consultation).

Taking into account the importance and the urgency of this file, the EDPS intends to treat it with priority and counts on Europol's collaboration to finalise it as soon as possible. To this end and in order to further clarify our expectations we are also available to hold dedicated meetings with Europol on this topic.

Yours sincerely,

*(e-signed)*

Delphine HAROU