

From:

[REDACTED]
ZERDICK Thomas <thomas.zerdick@edps.europa.eu>;

To:

[REDACTED]
EDPS-Europol <EDPS-Europol@edps.europa.eu>;
European Data Protection Supervisor
<EDPS@edps.europa.eu>; SUPERVISION
<supervision@edps.europa.eu>; [REDACTED]

CC:

[REDACTED] DPF Data
Protection Function <DPF@europol.europa.eu>; [REDACTED]

[REDACTED] MB Secretariat

<mbs@europol.europa.eu>

Sent at:

12/04/22 20:11:35

Subject:

@EXT: Draft MB decisions on processing of data

WARNING: This EMAIL contains one (or more) encrypted attachment(s). If you were not expecting to receive it, please consider the possibility that this e-mail could be malicious. In case of doubt, verify with the sender or contact your IT support service before opening it. Remember, any encrypted element, which also includes a password in the same email, should be considered as malicious.

Dear Colleagues,

Please find below a message from [REDACTED]
[REDACTED] to the European Data Protection Supervisor, Mr Wiewiórowski.

The related encrypted attachments are inserted to the present email:
The password to the attached files will be sent to you via the established
alternative means of communication.

Best regards,

[REDACTED]
[REDACTED]
Eisenhowerlaan 73, 2517 KK The Hague
The Netherlands

Dear Mr Wiewiórowski,

As anticipated to your Services during our bi-monthly meeting held on 1 April in Brussels I am hereby pleased, on behalf of the Management Board (MB) of Europol, to launch a consultation with you on four draft MB Decisions on the conditions related to the processing of personal data on the basis of Articles

18(2), 18(6), 18(6a) and 18a of the amended Europol Regulation.

Please note that, providing that the amended Europol Regulation will be applicable by then, the MB intends to adopt the enclosed Decisions at its 28-29 June 2022 meeting.

In this context, and in accordance with the relevant provisions of the draft amended Regulation, the Board wishes to seek your observations as early as possible and kindly asked me to effect this transmission while, in parallel, the Board's Working Groups on Corporate Matters and on Information Management are being consulted on these very drafts with a view to a joint meeting that they will hold on 18 May. Please rest assured that any possible amendment following the referred meeting will be promptly brought to your attention.

While Europol trusts that the enclosed draft MB Decisions reflect the recommendations and guidance provided by the EDPS with respect to 'Europol's Big Data Challenge', which were addressed in Europol's corresponding Action Plan, Europol looks forward to submit to you any additional information or clarification that you may require in assessing these draft rules.

On behalf of the MB Chairperson, Mr Jérôme Bonet, let me please express the Board's gratitude for your advice on these draft rules, in particular regarding their compliance and consistency with the amended Europol Regulation from a data protection perspective. The MB will be most grateful if you would submit your possible observations within two months, i.e., by 13 June 2022. This would provide MB members with documents on time for their deliberations. Should this not prove feasible, the adoption by the MB of the referred four Decisions on 28-29 June will be without prejudice to the Board's determination, as it is always the case, to carefully consider any observation you may wish to make at any further point in time and, where appropriate, to revise its Decisions accordingly.

Kind regards,

A large black rectangular redaction box covering the signature and name of the sender.

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EDOC-#1224957-v5-Cover_Note_for_the_MB_Decision_on_Article_18(2)_of_the_Regulation.DOCX

EDOC-#1226443-v1-Draft_MB_decision_on_the_conditions_related_to_the_processing_of_data_on_the_basis_of_Article_18(6)_of_the_Europol_Regulation.DOCX

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Cover Note

Draft Management Board Decisions on the conditions related to the processing of personal data on the basis of Article 18(6), 18(6a) and 18a of the Europol Regulation

1. Introduction

The entry into force of the amended Europol Regulation (“the Regulation”), currently expected on 28 June 2022, requires the adoption of several implementing instruments. The Management Board (“MB”) was informed about this requirement in its meeting on 15-16 March 2022.

In line with the prioritisation, decided by the MB, four draft implementing instruments have been prepared in relation to the processing of personal data. Two of them relate specifically to the conditions for Europol to process personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation (“non-DSC data”), as foreseen in Articles 18(6a) and 18a of the Regulation.

The legal regime of processing personal data for the purpose of determining whether such data are relevant to Europol tasks under Article 18(6) of the Regulation remains unchanged and is subject to a specific MB Decision.

The novelties introduced in the new Article 18(6a) of the Regulation allow for a ‘pre-analysis’ of non-DSC data, in a separate legal environment, for the purpose of determining the data subject categories for the personal data provided. This processing is to be distinguished from the legal regime to process non-DSC data in the context of a specific ongoing criminal investigation on the basis of the new Article 18a. The personal data is considered as investigative data provided in the context of an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.

As part of the adoption process for this MB Decision, the Regulation foresees in Article 18(7) the consultation of the European Data Protection Supervisor (“EDPS”) is consulted as agreed by the MB on 15-16 March 2022, Europol will initiate the consultation with the EDPS on the basis of the attached draft document.

2. General Outline of the MB Decisions

The attached draft MB Decisions (EDOC #1226443, EDOC #1226445 and EDOC #1226447) are construed around the same concept and outline. An important feature is the **‘one system of entry’** implemented by means of indication and verification mechanism supplemented with the additional data protection safeguards. This outline reflects also all key EDPS recommendations of the Europol Action Plan addressing the risks raised in the EDPS Decision on “Europol’s Big Data challenge”, which have been implemented by Europol for the interim period. For instance, the ‘entry’ of data consisting of two steps, indication by the data provider of the type of data and the verification by Europol, codifies the current practice implemented for the “interim solution” and follows the EDPS recommendations. This two-tier approach, ensures that non-DSC data is correctly identified as such and hence appropriately handled at Europol.

During the **indication phase**, when sending the data to Europol, the providers have to indicate whether the data are “DSC not completed” - i.e. the categories of the data

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subjects as listed in Annex II of the Regulation are not yet identified. In addition, the EU MSs, European Public Prosecutor's Office, Eurojust and third countries also have to indicate whether the data provided are in the context of "an ongoing criminal investigation in one or more Member States"

In the **verification phase**, Europol will verify the status of the data subjects' identification for the personal data provided/retrieved based on the indication by the provider and the information received. This will allow to identify the legally appropriate and correct legal basis to further process the data, i.e. either in accordance with Article 18(6a), Article 18a or Article 18(2). If required and necessary, personal data can be processed in accordance with Article 18(6), prior to the processing pursuant to Articles 18a, 18(6a) and Article 18(2) of the Regulation.

In addition to this one system of entry, other safeguards are contained in the draft MB Decisions.

First, the personal data for which the categories of data subjects are not (yet) identified, irrespective of whether these data are being processed in accordance with Article 18(6a) or Article 18a, **will be kept functionally separated** from other data in Europol's IT systems. This will be implemented by a clearly visible labelling of the data as "DSC not completed".

In addition, the Decisions provide for a specific **access regime**: only trained and duly authorised Europol staff members can have access to the personal data and will only have access to the data which they need to know for the performance of their duties.

The purposes for which the data can be processed and **use of the data** are further specified in the draft MB Decisions, which also contain a strict prohibition of onward transfer of non-DSC personal data to Member States, Union bodies, third countries, international organisations or private parties or private persons. An exception to this regime exists as regards investigative data provided and processed under Article 18a, where it is strictly necessary for the support of the specific investigation for which these data were provided.

The draft MB Decisions implement furthermore the **strict time limits** contained in the law. In the case of Article 18(6), the personal data can be processed for a maximum of 6 months. As regards Article 18(6a), the personal data can be processed for an initial period of 18 months, which may be extended in justified cases, whereas the total processing period cannot exceed three years. Europol will inform the EDPS of any such extension. In line with Article 18a, Europol may process investigative data for as long as it supports the ongoing specific criminal investigation for which the data was provided. To enable Europol to determine when its support ends, the provider of the investigative data will notify Europol in line with Article 18a(1a) of the Regulation once its authorisation to process that data in the specific criminal investigation in accordance with national procedural requirements and safeguards has ceased to exist.

The draft MB decision on Article 18(6) specifies that Europol must **delete** the personal data at the expiry of the time limit if during this period it was not established that the data is relevant for Europol's tasks. As regards Article 18(6a), Europol will delete the data in case no data subject category could be identified, or upon expiry of the applicable time limits. In the case of Article 18a, Europol will delete the investigative data as soon as it stops supporting the specific criminal investigation for which the data was provided and where, after having processed and used the data as described above, it concludes that the data does not comply with the requirements of Article 18(5) of the Regulation. An exception to the obligation to delete is made if Europol is requested to store the data for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process (see below).

3. Specific aspects for the draft MB Decision implementing Article 18(6a)

The draft implementing MB Decision on Article 18(6a) provides that Europol may temporarily process personal data for **the sole purpose of determining whether**

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such data complies with the requirements of Article 18(5) of the Europol Regulation. The processing under this MB Decision may include checking the personal data with all other data processed by Europol to identify whether personal data matches with such data and which already complies with Article 18(5).

To the extent that the categories of the data subject are identified in the personal data provided, these data will be processed in accordance with the full legal regime of Article 18, paragraphs 2 to 5, of the Regulation.

4. Specific aspects for the draft MB Decision implementing Article 18a

As a first **additional safeguard** and in accordance with Article 18a(1)(b) of the Regulation, Europol is to assess whether it would be possible to support the investigation without processing non-DSC data. In case this assessment is negative, i.e. that non-DSC data will have to be processed to be able to provide the fully-fledged Europol support, the agency will record the assessment and send it to the EDPS for information at a later stage, i.e. once Europol ceases to support the related specific criminal investigation.

In **terms of use**, Europol may process investigative data received under Article 18a only for the purpose of supporting the ongoing specific criminal investigation for which it was provided, using the full toolbox of Article 18(2), in line with Article 18a(2).

If, as a result of personal data processing in line Article 18a of the Regulation, some categories of data subjects could be identified, Europol will process such data further in accordance with paragraphs 2 to 5 of Article 18 of the Regulation, including the requirement to assign the data to the appropriate analysis projects.

Some additional safeguards apply in case a **third country**¹ provides investigative data to Europol under Article 18a of the Regulation. In those cases, the Data Protection Officer may, where relevant, notify the EDPS. Third countries must also indicate that they acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under their national criminal law. Upon receipt, Europol will then verify that the amount of personal data provided by the third country is not manifestly disproportionate in relation to the specific investigation that Europol supports. Where Europol concludes that there is an indication that such data is manifestly disproportionate or was collected in obvious violation of fundamental rights, Europol will not process it further and delete it.

Before deleting investigative data upon expiry of the relevant time limits, Europol may store such data and the outcome of its processing beyond the processing period determined by such time limits, **for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process**, upon request by the provider of the investigative data or by a Member States in which judicial proceedings concerning related criminal investigations are ongoing.

5. Way forward

These draft MB Decisions are presented to the Management Board in view of the consultation with the EDPS and of their discussion and further elaboration.

¹ With which Europol is allowed to exchange personal data with on the basis of Article 25(1) ER;

Cover Note

Draft Management Board Decision on the conditions related to the processing of personal data on the basis of 18(2) of the Europol Regulation

1. Introduction

The entry into force of the amended Europol Regulation (“the Regulation”), currently expected on 28 June 2022, requires the adoption of several implementing instruments, of which the Management Board (“MB”) was informed in its meeting on 15-16 March 2022.

In line with the prioritisation, decided by the MB, four draft implementing instruments have been prepared in relation to the processing of personal data. One of these implementing instruments to be adopted by the MB as foreseen in Articles 11(1)(q) and 18(7) of the Regulation relates to the conditions for Europol to process personal data in accordance with Article 18(2) of the Regulation.

The MB adopted in its meeting of 13 December 2017 the “*Management Board Decision adopting the guidelines further specifying the procedures for processing of information for the European Law Enforcement Agency in accordance with Article 18 of the Europol Regulation*”¹ (“IDMC Guidelines”) on the basis of the abovementioned provisions of the Regulation. However, the changes brought to Europol’s legal framework as a result of the legislative process require the adoption of a new MB Decision in order to implement the novelties and amendments introduced. This MB Decision will therefore replace the existing IDMC Guidelines.

The purposes of processing under Article 18(2) of the Regulation have been amended by:

- the inclusion of the wording “*private parties*” in Article 18(2)(d), in order to **update the legal basis for Europol’s communication networks**. This amendment will increase Europol’s possibilities, as a service provider, for the exchange of information where also private parties are involved and will remedy certain limitations of the current legal regime;
- the introduction of a **new legal basis for Europol to process personal data for the purpose of research and innovation projects** (“R&I”) in Article 18(2)(e);
- the introduction of a **specific legal basis** to process personal data to support Member States (“MS”) **in informing the public about wanted suspects or convicted individuals** in Article 18(2)(f)².

As part of the adoption process for this MB Decision, the Regulation foresees in Article 18(7) the consultation of the European Data Protection Supervisor (“EDPS”) is consulted as agreed by the MB on 15-16 March 2022, Europol will initiate the consultation with the EDPS on the basis of the attached draft document.

¹ EDOC #832397v36.

² Providing for the legal certainty for the processing of personal data in the context of Europe’s Most Wanted List (EUMWL).

2. The draft MB Decision

The attached draft MB Decision (EDOC #1226444) reflects the changes brought by the amended Europol Regulation in Article 18(2) and incorporates mainly the wording and provisions of the current IDMC Guidelines. At the same time, the new MB Decision is also construed around the same concept and outline of the new draft MB Decisions on 18(6), 18(6a) and 18a. This outline reflect all key EDPS recommendations of the Europol Action Plan addressing the risks raised in the EDPS Decision on “Europol’s Big Data challenge”, which have been implemented by Europol for the interim period.

The draft MB Decision for Article 18(2) provides for the precise description of which personal data processing would fall under its scope, i.e. processing personal data with assigned categories of data subjects in the sense of Annex II of the Regulation, where required for the purposes listed in Article 18(2) of the Regulation.

This Decision follows the same approach of the **‘one system of entry’** implemented by means of indication and verification mechanism supplemented with the additional data protection safeguards. This two-tier approach is further explained in the cover note for the draft Management Board Decisions on the conditions related to the processing of personal data on the basis of Article 18(6), 18(6a) and 18a of the Europol Regulation.

The indication and verification mechanism will allow Europol to identify the personal data that will be processed in accordance with the full legal regime of Article 18(2) of the Regulation, which is the scope of this draft MB Decision.

The purposes for processing of personal data in accordance with **indents (a), (b) and (c) of Article 18(2) of the Regulation** remain unchanged in the amended Europol Regulation. The draft text of these articles draws to a large extent on the existing wording of the IDMC Guidelines, however, in the case of the processing pursuant to Article 18(2)(b) of the Regulation, the provisions have been simplified due to the introduction of the *“joint operational analysis”* in the new Article 20(2a) of the Regulation. There is therefore no need any more for the regime currently outlined in Article 6 of the IDMC Guidelines.

The provision concerning the legal basis for Europol’s communication networks, in line with **indent (d) of Article 18(2) of the Regulation**, is based on the wording in the IDMC Guidelines but is amended to reflect the introduction of private parties in Europol’s communications network and provides for the necessity to ensure the security of such exchanges.

A new article is introduced to reflect the new possibility for Europol to process personal data for the purpose of R&I projects in accordance with **indent (e) of Article 18(2) of the Regulation**. This processing is to be carried out by means of research and innovation projects with clearly defined purposes and objectives, where those projects are also subject to the additional safeguards provided for in Article 33a of the Regulation.

A new article in this MB Decision implements the new **indent (f) of Article 18(2) of the Regulation**, which provides for the specific legal basis to process personal data to support Member States in informing the public about wanted suspects or convicted individuals. It is foreseen that a policy document is to be adopted which will specify further the conditions as regards the processing of personal data under this new legal basis.

The draft implementing MB Decision provide furthermore for a specific **access regime** to personal data processed in accordance with Article 18(2), where only trained and duly authorised Europol staff members can have access to the personal data processed under the implementing decision. Furthermore, such staff members will only have access to the data which they need to know for the performance of their duties. The **time limits** for the processing under Article 18(2) are in accordance with Article 31 of the Regulation.

3. Way forward

These draft MB Decisions are presented to the Management Board in view of the consultation with the EDPS and of their discussion and further elaboration.



Management Board

The Hague, 7 April 2022

EDOC #1226443v1

DRAFT

Management Board Decision on the conditions related to the processing of data on the basis of Article 18(6) of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/.... and Regulation 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), hereafter "the Regulation", and in particular, Article 18(6) thereof,

Having regard to Regulation 2018/1725, and in particular Article 71 thereof,

Whereas the European Data Protection Supervisor was consulted on the draft decision on...

HAS DECIDED AS FOLLOWS:

**Article 1
Scope**

This Decision shall apply to the processing of personal data received or retrieved by Europol under Articles 17(1) and 17(2) of the Regulation for the purpose of determining whether such data are relevant to Europol's tasks. This processing shall occur, if necessary, prior to the processing pursuant to Articles 18a, 18(6a) and Article 18(2) of the Regulation.

**Article 2
Access to data**

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(6) of the Regulation and this Decision. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

**Article 3
Use of the data**

1. Without prejudice to Article 22 of the Regulation, personal data processed by Europol under this Decision shall only be used for the sole purposes of determining whether such data are relevant for Europol's tasks, and if so, for which of the purposes referred to in Article 18(2) of the Regulation.
2. Where Europol determines that the personal data are relevant to its tasks and can be processed pursuant to Articles 18a, 18(6a) or pursuant to one or more of the purposes referred to in Article 18(2) of the Regulation, Europol shall inform the provider of the data about the allocation of the identified purpose(s).

**Article 4
Time limit for the processing**

1. A decision on the use of personal data in accordance with Article 3(2) shall be taken as soon as possible and in any case no later than six months after such data were received or retrieved by Europol.
2. In the absence of a decision mentioned in paragraph 1, upon expiry of the six-month period, Europol shall delete such personal data.
3. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the deletion.

**Article 5
Entry into force**

This Decision shall enter into force on [date].

Done at Lille, on [date].

For Europol,

Chairperson of the Management Board



The Hague, 7 April 2022

EDOC #1226444v1

DRAFT

Management Board Decision on the conditions related to the processing of personal data on the basis of 18(2) of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/... and Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), as amended, hereafter referred to as "the Regulation", and in particular, Articles 11(1)(q) and 18 thereof;

Having regard to Regulation 2018/1725, and in particular Article 71 thereof;

Whereas this Decision aims to replace the Management Board Decision adopting the guidelines further specifying the procedures for processing of information in accordance with Article 18 of the Europol Regulation of 13 December 2017, which as a consequence should be repealed;

Whereas the European Data Protection Supervisor was consulted on the draft decision on...;

HAS DECIDED AS FOLLOWS:

**Article 1
Scope**

This Decision shall apply to the processing of personal data for the purposes listed in Article 18(2) of the Regulation.

**Article 2
Personal data provided by the Member States, Unions bodies and third countries**

1. When providing personal data to Europol, Member States, third countries and, where applicable, Union bodies, shall indicate, where required for the purposes listed in Article 18(2) of the Regulation, whether the contribution contains personal data for which the categories of data subjects are not yet identified on the basis of the information provided. Member States, Eurojust, European Public Prosecutor's Office and third countries shall also indicate whether the data is provided in order to support an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.
2. Upon receipt of personal data Europol shall verify, on the basis of this indication and the information provided, whether the categories of data subjects as listed in Annex II of the Regulation for the personal data provided are identified. Personal data for which the categories of data subjects are identified shall be processed in accordance with Article 18(2) of the Regulation and this Decision.
3. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 2, shall be processed in accordance with Articles 18(6a) or 18a of the Regulation and their respective implementing Management Board Decisions.

**Article 3
Personal data provided by international organisations, private parties, private persons or retrieved directly by Europol from publicly available sources**

1. When receiving personal data from international organisations, private parties, private persons, or when personal data is retrieved directly by Europol from publicly available sources, including the internet and public data, Europol shall verify, where required for the purposes listed in Article 18(2) of the Regulation, whether the categories of data subjects as listed in Annex II of the Regulation are identified, on the basis of the information provided or retrieved.
2. Personal data received by Europol from international organisation, private parties, private persons or when personal data is retrieved directly by Europol from publicly available sources, including the internet and public data, for which the categories of data subjects are identified in accordance with Annex II of the Regulation, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(2) of the Regulation and this Decision.
3. Personal data for which the categories of the data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Articles 18(6a) or 18a of the Regulation and their respective implementing Management Board Decisions.

Article 4
Processing for the purpose of cross-checking

(bold and underlined text in Articles 4, 5, 6 and 7 is new text in comparison to the text of the current IDMC Guidelines)

1. **Europol may process personal data for the purpose of cross-checking in accordance with Article 18(2)(a) of the Regulation, with the aim** to identify connections or relevant links between information related to:
 - a) persons who are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who have been convicted of such an offence,
 - b) persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences in respect of which Europol is competent.
2. Personal data submitted for cross-checking in accordance with Art. 18.2a ER is ~~stored~~ **processed** with a view to enabling the comparison against other data sets. This can be by means of systematic, automated checks by the system, for instance against data that is submitted to an operational analysis project. The personal data received for the purpose of cross-checking is, subject to any restrictions and conditions imposed by the data owner thereof, also made available for searching in accordance with Art. 20-21 ER which facilitates the identification of possible links with other data.

Article 5
Processing for the purpose of analyses of a strategic or thematic nature

1. **Europol may process personal data for the purpose of analyses of a strategic or thematic nature in accordance with Article 18(2)(b) of the Regulation. Such processing shall aim** to give an insight and better understanding of crime and criminal trends in general **and also** should enable decisions at a strategic level to influence the criminal developments in question.
2. Even though personal data may be used for processing for the purpose of strategic and thematic analysis, the results of such analysis **in principle** do not contain any references to concrete data subjects.

Article 6
Processing for the purpose of operational analyses

1. **Europol may process personal data for the purpose of operational analysis in accordance with Article 18(2)(c) of the Regulation. Such processing shall aim** to support criminal investigations and criminal intelligence operations through all methods and techniques by which information is collected, stored, processed and assessed.
2. The processing for operational analysis shall only take place within the context of operational analysis projects. An operational analysis project is a platform in which operational analysis can be conducted to support international criminal investigations and criminal intelligence operations against specific targets. The scope of such a platform can, in particular, be a crime area covering one or more

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- types of crime; it can relate to a geographical dimension, or it can focus on particular crime structures, phenomena or incidents that due to their size, complexity or impact require a dedicated approach.
3. Operational analysis projects shall be created by a Decision of the Executive Director, which may **be delegated** to the responsible Deputy Executive Director. The Management Board and the European Data Protection Supervisor shall be informed of the Decision opening such an operational analysis project.
 4. The Decision opening an operational analysis project shall specify:
 - a) The specific purpose for which it is set up;
 - b) The categories of personal data which may be processed, and where it concerns personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and processing of genetic data or data concerning a person's health or sex life, the reason why the inclusion of such data is considered to be strictly necessary and proportionate for the purposes of the project concerned;
 - c) The categories of data subjects which may be processed, and where it concerns victims, witnesses or minors, the reason why the inclusion of such data is considered to be strictly necessary and proportionate for the purposes of the project concerned;
 - d) The participating Member States and associated third parties of the operational analysis project;
 - e) Specific conditions for storage, access, transfer and use of the personal data, where these are stricter than the generally applicable provisions to the processing of personal data in general under the Regulation or this Decision.
 5. The Executive Director, and by delegation the responsible Deputy Executive Director, may decide to close an operational analysis project, or amend the decision opening the project, including the changing of categories, its purpose, its scope, its members or its extension. The Management Board and the EDPS shall be informed of any such Decision to amend or close a project.
 6. The Management Board may instruct the Executive Director to modify the Decision opening or amending an operational analysis project. The Management Board may also instruct the Executive Director to close a project.
 7. The EDPS may address any comment on the opening, closure or amendment of an operational analysis project it deems necessary to Europol as controller of the data processing. Europol shall promptly inform the Management Board of any such comments received from the EDPS and seek without any undue delay to implement, in consultation with the Management Board any recommendations made by the EDPS in relation to the opening, closure or amendment of an operational analysis project.
 8. Where it becomes apparent that personal data provided for operational analysis in one operational analysis project may be relevant for another operational analysis project, Europol may use it in that other project; however, further processing of that personal data shall only be permitted in so far as such further processing is necessary and proportionate, and the personal data are compatible with the conditions applicable to the other operational analysis project. In such cases, Europol shall inform the data owner without undue delay of its decision to use it in

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the other operational analysis project.¹ The justification for such use in another operational analysis project shall be duly documented.

9. All Member States shall be invited to participate in an operational analysis project at the moment of setting up the project. Member States can inform Europol of their intention to participate at the moment of setting up the project or at a later stage.
10. Union bodies, third countries and international organisations, with whom the exchange of personal data is permitted under any of the provisions of Chapter V of the Regulation, may be invited to be associated to a certain operational analysis project if the purpose of the project is relevant to them or if the data processed in the project concerns them and if agreed by all participating Member States. Notwithstanding the possibilities to exchange personal data with private parties under Article 26 of the Regulation, private parties and private persons may not be associated to an operational analysis project.
11. Europol shall develop and implement, in close collaboration with the Management Board and the HENUs, a procedure for the transmission and acceptance of information in operational analysis projects. This procedure shall specify:
 - a) that contributions shall indicate for which operational analysis project or projects the information is intended. Where the data owner has not indicated this explicitly, Europol shall determine the appropriate destination in consultation with the data owner concerned.
 - b) that contributions shall be in accordance with the categories of personal data and data subjects as specified in the decision opening the operational analysis project.
 - c) that, unless explicitly stated otherwise, all contributions to a specific operational analysis project shall be deemed to be submitted for the purpose of operational analysis
 - d) that if Europol believes, after appraisal, that personal data provided by Member States, Union bodies, third countries and international organisations for an operational analysis project is incorrect, inaccurate, no longer up to date or should not have been transmitted, it shall without undue delay inform the data owner, which shall provide its position on the matter, and take appropriate action, including restricting the processing of the personal data deemed incorrect, inaccurate or no longer up to date ensuring they can no longer be processed with the exception of storage.
12. Prior to the closure of an operational analysis project Europol and the **owners providers** of the information therein contained within it shall agree on the further retention and, where needed, appropriate reallocation of purpose or allocation to different operational analysis project(s), or destruction of said information. Where no agreement on individual contributions of personal data can be found, the personal data shall be deleted by Europol.

Article 7 Processing for the purpose of facilitating the exchange of information

¹ In the event that the data owner does not agree with the use of the data in the other operational analysis project, then it can restrict its use in accordance with Article 19.2 of the Regulation and inform Europol of such restriction.

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1. **Europol may process personal data for the purpose of facilitating the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties in accordance with Article 18(2)(d) of the Regulation.** Europol may enable the use of its infrastructure for **that purpose.**
2. Where these exchanges exclude Europol, they shall take place under the responsibility of the entities concerned and in accordance with their law. This applies in particular to those exchanges of information that fall outside of Europol's mandate. **The security of such exchanges shall be ensured in accordance with Article 91 of Regulation (EU) 2018/1725.**
3. Paragraphs 1 and 2 of this Article may also include automated processes.
4. The exchange of information under this Article shall be without prejudice to the role and responsibilities of the Europol national units as prescribed in Article 7 of the Regulation.
5. Europol, the Member States, Union Bodies, third countries, international organisations **and private parties** shall each take up their respective responsibilities in terms of information security and take appropriate measures to enforce it.
6. Europol shall follow its operational priorities, in consultation with the Management Board, when deciding which third country, international organisation, other Union bodies **or private party** shall receive access to Europol's infrastructure for this purpose.

Article 8

Processing for the purpose of research and innovation projects

1. Europol may process personal data for the purpose of research and innovation projects regarding matters covered by the Regulation for the development, training, testing and validation of algorithms for the development of specific tools, and other specific research and innovation projects relevant to achieve the objectives set out in Article 3 of the Regulation, in accordance with Article 18(2) (e) of the Regulation.
2. Where necessary to achieve the objectives of Europol's research and innovation projects, processing of personal data for the purpose of research and innovation, as referred to in paragraph 1, shall be carried out only by means of research and innovation projects with clearly defined purposes and objectives. These projects will be subject to the additional safeguards provided for in Article 33a of the Regulation.
3. In accordance with the procedure outlined in 33a(2)(b), the Management Board shall be consulted prior to the launch of those research and innovation projects which are not included in the binding general scope for the research and innovation projects of Europol decided by the Management Board in accordance with paragraph 4 of this Article. For research and innovation projects within that scope, the Management Board shall only be informed.
4. The Management Board shall define, at regular intervals, the general scope for the research and innovation projects that Europol can establish in accordance with Article 33a of the Regulation.

Article 9

Processing for the purpose of supporting Member States, upon their request, in informing the public about wanted suspects or convicted individuals

1. Europol may process personal data for the purpose of supporting the Member States, upon their request, in informing the public about suspects or convicted individuals who are wanted, based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitating the provision of information, to the Member States and Europol, by the public on these individuals in accordance with Article 18(2)(f) of the Regulation.
2. Europol shall further specify the conditions for the processing of personal data according to this article in a policy document. The policy shall at least specify the technical means used to inform the public, the access management as well as the content management, including criteria for the selection of suspects or convicted individuals and for data quality as well as data retention requirements.

Article 10

Access to the data

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(2) of the Regulation. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data which they need to know for the performance of their duties and without prejudice to security requirements in accordance with Article 67 of the Regulation.

Article 11

Time limits for processing

Europol may store personal data processed under this Decision only for as long as is necessary and proportionate for the purposes for which the data are processed as outlined in Articles 4 to 9 of this Decision and in accordance with the time limits and conditions as set out in Article 31 of the Regulation.

Article 12

Replacement and repeal

The Management Board Decision adopting the guidelines further specifying the procedures for processing of information for the European Law Enforcement Agency in accordance with Article 18 of the Europol Regulation of 13 December 2017² is hereby replaced and repealed with effect from the date of entry into force of this Decision.

² EDOC #832397v36.

**Article 13
Entry into force**

This Decision shall enter into force on the day of its adoption.

Done at Lille, on [date].

For Europol,

Chairperson of the Management Board



The Hague, 7 April 2022

EDOC #1226445v1

DRAFT

Management Board Decision on the conditions related to the processing of personal data on the basis of Article 18(6a) of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/.... and Regulation 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), as amended, hereafter referred to as "the Regulation", and in particular, Article 18(6a) and 18(6b) thereof;

Having regard to Regulation 2018/1725, and in particular Article 71 thereof;

Whereas Europol may receive personal data, without the request for support for a specific criminal investigation, that might not fall into the categories of data subjects set out in Annex II of the Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects;

Whereas the European Data Protection Supervisor was consulted on the draft decision on...;

HAS DECIDED AS FOLLOWS:

**Article 1
Scope**

This Decision shall apply to the processing of personal data, received or retrieved by Europol pursuant to paragraphs 1 or 2 of Article 17 of the Regulation, for which the categories of the data subjects are not yet identified in accordance with Annex II of the Regulation, as referred to in Article 18(6a) of the Regulation.

Article 2

Personal data provided by the Member States, Union bodies and third countries

1. When providing personal data to Europol, Member States, third countries and, where applicable, Union bodies, shall indicate whether the contribution contains personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. Member States, Eurojust, the European Public Prosecutor's Office and third countries shall also indicate whether the data are provided in the context of an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.
2. Upon receipt of personal data, Europol shall verify, on the basis of this indication and the information provided, whether the categories of data subjects as listed in Annex II of the Regulation for the personal data provided are identified or not.
3. In case Europol considers, following the verification mentioned in paragraph 2, that for personal data the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
4. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 2, shall be processed in accordance with Article 18(6a) of the Regulation and this Decision. They shall be functionally separated from other data by being labelled as "DSC not completed". These data shall only be accessible in accordance with Article 4 and the labelling shall be clearly visible to those having access to the data.

Article 3

Personal data provided by international organisations, private parties and private persons

1. Upon receipt of personal data from international organisations, private parties and private persons, Europol shall verify, on the basis of the information provided, whether the categories of data subjects as listed in Annex II of the Regulation are identified or not.
2. In case Europol considers, following the verification mentioned in paragraph 1, that for personal data the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
3. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(6a) of the Regulation and this Decision and shall be functionally separated from other data by being labelled as

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“DSC not completed”. The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

Article 4 Personal data retrieved by Europol from publicly available sources

1. Upon retrieval of personal data from publicly available sources, including the internet and public data, under Article 17(2) of the Regulation, Europol shall verify, on the basis of the information retrieved, whether the categories of data subjects as listed in Annex II of the Regulation are identified or not.
2. In case Europol considers, following the verification mentioned in paragraph 1, that for certain personal data retrieved by Europol from publicly available sources for which the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
3. Personal data for which the categories of the data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(6a) of the Regulation and with this Decision and shall be functionally separated from other data by being labelled as “DSC not completed”. The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

Article 5 Access to data

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(6a) of the Regulation. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

Article 6 Use of the data

1. Europol may temporarily process personal data subject to this Decision for the sole purpose of determining whether such data comply with the requirements of Article 18(5) of the Regulation. The processing may include checking the data against other data which are processed by Europol in accordance with Article 18(5) of the Regulation, in order to identify whether personal data matches with the data Europol already processes under the Regulation, with the aim to identify the categories of data subjects in accordance with Annex II of the Regulation.
2. Personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation may not be processed in accordance with Article 18(2) of the Regulation.
3. Personal data for which the categories of data subject are not yet identified in accordance with Annex II of the Regulation may not be transferred to Member States,

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Union bodies, third countries, international organisations, private parties or private persons.

4. Personal data for which the categories of data subjects have been identified in accordance with Annex II of the Regulation, as a result of processing as mentioned in paragraph 1, shall be further processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.

Article 7 Time limits for the processing

1. Europol may only process personal data in accordance with Article 6(1) for an initial period of 18 months from the moment Europol receives or retrieves the personal data, without prejudice to the period of processing under Article 18(6) of the Regulation, if applicable. This period may be extended in justified cases for a longer period where necessary for the purpose outlined in Article 6(1), but in any case it may not exceed a period of three years.
2. When it is necessary to extend the temporary processing period beyond the initial period of 18 months, Europol shall inform the European Data Protection Supervisor.
3. When Europol concludes that personal data, after having processed the data in accordance with Article 6, does not comply with the requirements of Article 18(5) of the Regulation or the maximum processing period for the data referred to in paragraph 1 of this Article has expired, including any extension if applicable, Europol shall delete that data.
4. In the cases mentioned in paragraph 3, Europol shall notify the provider of the data prior to the deletion.

Article 8 Entry into force

This Decision shall enter into force on [date].

Done at Lille on [date].

For Europol,

Chairperson of the Management Board



The Hague, 7 April 2022

EDOC#1226447v1

DRAFT

Management Board Decision on the conditions related to the processing of personal data on the basis of Article 18a of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/... and Regulation 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), as amended, hereafter referred to as "the Regulation", and in particular, Articles 2(q) and 18a thereof;

Having regard to Regulation 2018/1725, and in particular Article 71 and 73 thereof;

Whereas the European Data Protection Supervisor was consulted on the draft decision on...;

HAS DECIDED AS FOLLOWS:

**Article 1
Scope**

This Decision shall apply to the processing of personal data provided, pursuant to points (a) or (b) of Article 17(1) of the Regulation, by Member States, the European Public Prosecutor's Office, Eurojust or third countries in support of a specific ongoing criminal investigation in accordance with Article 18a of the Regulation for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation.

**Article 2
Personal data provided by the Member States, the EPPO, Eurojust and third countries**

1. When providing investigative data to Europol in accordance with Article 18a of the Regulation, Member States, the European Public Prosecutor's Office, Eurojust and third countries shall indicate whether the data contains personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. They shall also indicate whether the investigative data are provided in the context of an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.
2. Upon receipt of the investigative data, Europol shall verify, on the basis of this indication and the information provided, whether the categories of the data subjects as listed in Annex II of the Regulation for the personal data provided are identified or not.
3. In case Europol considers, following the verification mentioned in paragraph 2, that for personal data the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
4. Europol shall assess whether it is possible to support the specific criminal investigation without processing personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. In case Europol assesses that this is not possible, it shall record the assessment. Europol shall send the results of this assessment to the European Data Protection Supervisor for information when Europol ceases to support the related specific criminal investigation.
5. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 2, shall be processed in accordance with Article 18a of the Regulation and with this Decision. They shall be functionally separated from other data by being labelled as "DSC not completed". These data shall only be accessible in accordance with Article 4 and the labelling shall be clearly visible to those having access to the data.

**Article 3
Additional requirements for personal data provided by third countries**

1. Where a third country provides investigative data to Europol in accordance with Article 18a of the Regulation, it shall also indicate, in addition to fulfilling the requirements of paragraph 1 of Article 2, that it acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law.

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2. Europol shall verify that the amount of personal data provided by the third country is not manifestly disproportionate in relation to the specific investigation that Europol supports. Where Europol reaches the conclusion that there is an indication that such data are manifestly disproportionate or were collected in obvious violation of fundamental rights, Europol shall not process them further and shall delete the data.
3. Where a third country provides investigative data to Europol, the Data Protection Officer may, where relevant, notify the EDPS.

Article 4 Access to data

1. Only trained and duly authorised Europol staff members shall have access to the investigative data processed by Europol pursuant to Article 18a of the Regulation and this Decision. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.
2. Personal data processed pursuant to paragraph 4 of Article 18a of the Regulation and Article 3 of this Decision may only be accessed by Europol where necessary for the support of the specific criminal investigation in one or more Member States for which they were provided.

Article 5 Use of the data

1. Europol may process investigative data received under Article 18a in accordance with Art 18(2) for as long as it supports the ongoing specific criminal investigation for which they were provided and only for the purpose of supporting that investigation.
2. Personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation may not be transmitted or transferred to Member States, Union bodies, third countries, international organisations, private parties or private persons, except where strictly necessary for the support of the specific investigation for which these data were provided.
3. Personal data for which the categories of data subjects have been identified in accordance with Annex II of the Regulation, as a result of processing in accordance with this Article shall be further processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.

Article 6 Time limits for the processing

1. Europol may process investigative data for as long as it supports the ongoing specific criminal investigation for which the investigative data were provided. Europol's support of the investigation shall end upon receipt of the notification of the provider in accordance with Article 18a(1a) of the Regulation, according to which the provider shall inform Europol when its authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable law has ceased to exist.

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2. As soon as Europol no longer supports the ongoing specific criminal investigation for which the data were provided and where Europol, after having processed personal data in accordance with Article 5, concludes that the data does not comply with the requirements of Article 18(5) of the Regulation, it shall delete such investigative data without prejudice to a possible storage of the data in accordance with Article 7.
3. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the deletion.

Article 7

Storage for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process

1. Before deleting the investigative data upon expiry of the time limits stipulated in Article 6, Europol may store the investigative data and the outcome of its processing beyond the processing period determined by such time limits for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. Europol may store the data only where requested by the provider of the investigative data or by a Member States in which judicial proceedings concerning related criminal investigations are ongoing.
2. To determine the admissible storage duration, Europol shall, upon receipt of a storage request, require the provider of the investigative data to notify Europol upon termination of the judicial proceedings concerning the criminal investigation for which the investigative data were provided. In case of related criminal investigations in a Member State other than the one having provided the investigative data to Europol, Europol shall require that other Member State to notify it upon termination of the judicial proceedings concerning such related criminal investigation.
3. Without prejudice to Article 4, only duly authorised staff shall have access to the investigative data stored in accordance with this Article. The staff members shall be identified by means of specific authorisation process in accordance with Article 4.
4. As soon as Europol is notified about the termination of the relevant judicial proceedings, it shall delete the relevant investigative data stored in line with paragraph 1. Europol shall inform the provider of the data accordingly by means of notification announcing the deletion of the data.

Article 8

Entry into force

This Decision shall enter into force on [date].

Done at Lille on [date].

For Europol,

Chairperson of the Management Board