

From: [REDACTED]
To: [REDACTED] EDPS-CABINET <cabinet@edps.europa.eu>
CC: [REDACTED] ZERDICK Thomas <thomas.zerdick@edps.europa.eu>; [REDACTED]
Sent at: 06/07/22 11:22:34
Subject: RE: Europol MB implementing decisions

Dear [REDACTED]
Dear colleagues,

Following your request please find under the following link (and attached for your convenience) a brief timeline of our cooperation with Europol on the MB Decisions: [📄 Timeline of informal cooperation with Europol on MB implementing Decisions](#)

I am always available for more information/clarifications.

Best regards,

[REDACTED]

From: [REDACTED]
Sent: 05 July 2022 17:51
To: [REDACTED] ZERDICK Thomas <thomas.zerdick@edps.europa.eu>; [REDACTED] EDPS CABINET <cabinet@edps.europa.eu>
CC: [REDACTED]
Subject: RE: Europol MB implementing decisions

Dear [REDACTED]

Thank you, well noted.

Before next steps are discussed, could you provide me with the short recap of the contacts with Europol on these internal rules for Wojciech's information? E.g. dates of meetings, including informal ones, milestones, quotes from the correspondence underlining that we do not consider our contacts as any form of consultation etc., replies on this, minutes from the meetings. I would be very grateful if these could be done quickly, ideally by the end of the tomorrow.

Best,

[REDACTED]

From: [REDACTED]
Sent: 05 July 2022 17:43
To: ZERDICK Thomas <thomas.zerdick@edps.europa.eu>; [REDACTED] [REDACTED] DPS CABINET <cabinet@edps.europa.eu>

Cc: [REDACTED]
Subject: Europol MB implementing decisions

Dear Thomas,
Dear [REDACTED]
Dear [REDACTED]

A couple of hours ago the Chairman of Europol's MB transmitted the four MB Decisions implementing Articles 18 and 18a of the amended Europol Regulation to the Supervisor for consultation.

Before discussing the substance of the Decisions, I wanted to inform you that contrary to our informal advice:

- The four MB Decisions **are adopted**;
- The MB takes note that the **EDPS had received the first drafts** of these Decisions and that subsequent draft versions had been prepared by Europol with the support of both MB Working Groups **to reflect the comments provided by the EDPS both in writing and during dedicated meetings**;
- The MB having noted that the EDPS considered that the formal consultation could only take place upon the entry into force of the amended Regulation, **transmits the Decisions to the EDPS**;
- The MB **will duly consider any further observation the EDPS may wish to make** and revisit its Decisions as appropriate

I would like to remind Thomas' and Daniele's comment that in case Europol adopts the MB decisions without consulting the EDPS, this would be in breach of the provisions requiring consultation of the EDPS read in the light of the principle of loyal cooperation. Non-respect of any of the above constitutes a violation of the procedure foreseen by the legislator for adoption of these kinds of decisions, liable to cause their annulment.

As to the way forward, we already see two options (with [REDACTED])

- Issue the opinion as soon as possible based on our informal comments and already issue a warning with regard to Article 18a;
- Issue a two page opinion noting the violation of the administrative procedure that could be a cause for annulment and issue our Opinion in substance within the regular deadlines.

Happy to further discuss and receive your guidance.

Best regards,



Timeline of informal cooperation with Europol on MB implementing Decisions (Case 2022-0454)

- **On 13 April 2022**, Europol shared a set of four MB Decisions respectively implementing Article 18(2), 18(6), 18(6a) and 18a of the new Europol Regulation. According to the DPO's cover email he was pleased *'to **launch a consultation** with you (EDPS) 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**'*.
- **On 29 April 2022**, the EDPS and Europol held a first meeting at staff level in order to clarify the new process and data flows. Minutes in the form of bullet points were shared with Europol on 3 May 2022 ([D\(2022\) 1108](#), [Meeting on Europol MB Decisions 03 05 2022](#)), to which Europol made no comments.
- **On 16 May 2022**, the EDPS sent written informal comments on the draft MB Decisions, followed by a meeting at staff level on the same day to explain our comments. In the informal comments shared with Europol ([D\(2022\) 1249](#) , [Europol MB Decisions informal comments EDPS](#)) it is explicitly mentioned that *'This document is meant to **provide initial feedback** on the four Management Board decisions. It constitutes **a purely informal advice**. This **informal consultation** by Europol **cannot replace the formal consultation of the EDPS** that can only take place once the new Europol regulation has entered into force. The EDPS will strive nevertheless to provide a swift formal reply to that future consultation building on the present and future informal exchanges. In order to be as constructive as possible and in the interest of timing the EDPS has prepared the comments below, as well as revised versions of the decisions (in track-changes, attached). Please note that this way of working should not be meant as constituting a precedent, and is without any prejudice to any further comments or measures by the EDPS'*.
- **On 31 May 2022**, Europol shared a second set of drafts integrating comments received from Member States and from the EDPS ([A\(2022\) 2109](#)).
- **On 7 June 2022**, the EDPS and Europol held a third meeting at staff level to discuss EDPS informal comments on the second set of draft MB Decisions. Our main comments can be found in the following document, which was presented during the meeting ([Europol MB Decisions informal comments EDPS - in2ndraft](#)). The following email informing HoU and legal service of the main take-aways of the meeting can serve as a kind of minutes ([Takeaways from meeting of 7 June - RE: 2022-0484 Europol draft MB Decision - outcome of meeting with Europol](#)). In this email, it is one more explicitly stated that we informed Europol that these meetings aim at offering informal advice and cannot replace the formal consultation of the EDPS *'they want to adopt the MB Decision on the day of entry into force of the ER, **they had hoped they could not consult us formally** before adoption. We **restated our position** (clearly explained in our written comments of 12 May). They will consult COM legal service'*.

- On **22 June 2022**, a fourth short meeting took place ([D\(2022\) 1539](#)), where Europol thanked us for the assistance provided during the process. The issue of the formal consultation was once more raised but we do not have any evidence of this.

It has **to be highlighted** that Thomas had several informal phone exchanges **with Europol's Deputy ED - Governance Jürgen Ebner** where he made it abundantly clear that a) our comments made at this stage **were informal** and b) that **we expected a formal consultation** on the draft/provisional MB decisions.