

From: European Data Protection Supervisor
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Sent at: 04/12/20 14:53:53
Subject: Our ref.: 2019-0370 - D(2020) 2821

Dear Madam,

Please find attached a letter signed electronically by Mr Wojciech Rafał WIEWIÓROWSKI for the above mentioned subject.

Kind regards,

EDPS Secretariat



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EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

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Brussels, 4 December 2020

WRW [REDACTED] D(2020) 2821 C 2019-0370
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Subject: EDPS Decision on the own initiative inquiry on Europol's big data challenge - Europol Action Plan

Dear Mrs De Bolle,

In your letter of 17 November 2020, you share with the European Data Protection Supervisor (EDPS) the Action Plan as requested under point 5.8 of the EDPS Decision of 17 September 2020 relating to EDPS own inquiry on Europol's big data challenge. You also inform us that the Action Plan will be discussed with the Europol Management Board (EMB) during their next meeting in December 2020. You finally ask the EDPS to provide a feedback regarding its implementation.

Let me first show my appreciation for the work provided by Europol in elaborating the Action Plan within the two months deadline defined in the EDPS Decision of 17 September 2020.

In order to provide constructive feedback, the EDPS has analysed the Action Plan in details and it considers that it contains strong elements to address the risks posed by the processing of large datasets at Europol. While other elements require in our view further clarification or specification, as explained in this letter, we are willing to provide Europol with additional comments to improve these areas. We however deplore that Europol has not shared the accompanying data protection risk assessment. Without having access to this risk analysis, it is difficult for the EDPS to assess whether the controls in place will adequately cover all data protection risks raised by the processing at stake.

The Action Plan is limited to the process preceding the analysis work. It is based on five pillars: (1) the flagging of large datasets in SIENA by the data provider; (2) the labelling of these datasets in Europol's environment before the start of the extraction process; (3) the definition of strict access rights in order to limit access to these datasets only to the persons in charge of performing the extraction process; (4) the implementation of more regular reviews in order to assess whether the large datasets which have not been through the whole extraction process should be retained or deleted; (5) the appointment of a Data Quality Control Coordinator in order to closely monitor the data review process.

On the basis of the description of the different controls provided in the Action Plan, we would like to provide the following comments.

1. First control: Flagging in SIENA

The EDPS considers that this first control is key for the completion of all other controls included in the Action Plan. Data providers have an important role to play in identifying datasets, which because of their characteristics, could not undergo the regular data classification process as provided for in the Europol Regulation (the so-called "data subjects classification" or "DSC") and extraction of data categories according to Annex II and the Opening Decision Orders).

The text of the Action Plan is however ambiguous as the title of the action refers to Europol "exploring" the possibility of implementing the necessary technical changes in SIENA to allow the flagging of these datasets, with no commitment on actually implementing it. On the other hand, in the description of the activity, Europol states that SIENA will be updated in order to realise this technical change, which will be included as a priority in the ICT Work planning for 2021.

We therefore ask Europol:

- to either clearly commit to perform this SIENA update or to inform the EDPS of the alternative measures that would be put in place, would Europol decide not to implement this change.
- to detail the measures that will be put in place to verify that the flagging is performed done and monitored properly
- to provide the EDPS with a copy of the ICT work planning for 2021 in order to be able to assess the content and the timing of this SIENA update.

2. Second control: Labelling of big data files in the Europol's data environment

This second control is even more important than the first one as it conditions the applicability of all other measures proposed by Europol in order to comply with the EDPS Decision of 17 September 2020.

First, it is not clear from the Action Plan whether Europol will define a maximum retention period for datasets, which are waiting to be flagged in Europol data environment.

Second, according to the description provided in the Action Plan, the labelling is meant to address the risk that data without a DSC is further processed or integrated into the analysis work. It is however not clear what is the exact nature of the risk, as well as its likelihood.

This is our understanding that the Action Plan only focuses on the process preceding the analysis work. According to the workflow described in Action (3), only a dedicated number of

analysts/specialists will get access to the raw data for the sole purpose of determining the DSC and extracting the relevant data. The workflow described in Action (3) indicates that the data only becomes searchable by other users via USE or the EAS only when the data have been extracted and reviewed. If this is the case, the raw data should then never be available to perform the analysis work before it is extracted.

Third, as this is an important control, we also would like to know which additional measures will be put in place to enhance the confidentiality of raw data (use of encryption for example), to monitor and verify that the labelling is taking place and that it is done correctly.

3. Third control: Restricted Access rights to raw data.

We consider that the restriction of access to the raw data to the sole analysts/specialist in charge of the extraction process is a strong safeguard in order to limit the risks of further processing of data that have not been classified in line with the provisions of the Europol Regulation.

In order to better understand the nature of the safeguards proposed, we ask Europol to provide further information with regard to:

- the criteria used to define who will be given access to this data and tasked with the extraction process. In other words, we would like to understand how the “need-to-know” is defined.
- the time limit put on the fulfilment of the extraction task.
- the exact content of the review performed by the analysts/specialist of the Analysis Project (AP), at the level of extraction, i.e. which activities does this review entail.
- the policy in terms of deletion, i.e. whether the raw data are deleted once the relevant data have been extracted. Where the storage is considered necessary in order to preserve the chain of the evidence, we would like to know whether Europol intends to store the data in a separate functional environment.

4. Fourth control: Increase of the frequency of the reviews at the level of APs.

While the EDPS agrees that the necessity and proportionality of storing data that have not undergone the classification process should be subject to regular reviews, we have strong reservations about the efficiency of this control as described in the Action Plan.

First of all, the criteria to assess the relevance of the datasets are the same as the ones established for extracted data, i.e. data that have been through a first assessment in terms of necessity and proportionality according to the provision of the Europol Regulation (Annex II and Opening Orders of the APs). Assessing the necessity and proportionality of a dataset without knowing its content is a much more difficult exercise. We have doubts as of its feasibility in practice. It is likely that most of the time the assessment will just validate the initial assessment made when the contribution was accepted on the basis of very large criteria of interpretation. We therefore consider that the review process should be stricter and contain clear criteria, for instance by imposing a maximum time limit for the storage of these large datasets, as there is no guarantee that these datasets are processed in line with the restrictions of Annex II.B of the Europol Regulation and of the Opening Order of the APs.

Second, considering that the data deletion process has been one of the topics of the first EDPS inspection in 2017 and that only two out of the seven recommendations made to Europol by

then have been implemented¹, we have serious concerns about the actual deletion of the datasets that have not passed the review test.

Finally, the Action Plan does not specify the frequency of these reviews, nor how datasets deemed not necessary or proportionate for operational analysis purposes should be kept in order to preserve the chain of evidence.

5. Fifth control: Data Quality Control Coordinator.

The EDPS welcomes the appointment of a Data Quality Control Coordinator tasked with the implementation of the data review mechanism and who will act in close collaboration with the Data protection Function and share with us, on a quarterly basis, the summary of the progress reports. In that regard, we reiterate our assessment from the EDPS Inspection Report of 8 May 2018, according to which sufficient resources should be allocated to the data review process, given the amount of personal data processed at Europol, the important workload the review of this massive amount of personal data involves and its strategic role in the entire data life cycle.²

The appointment of a Data Quality Control Coordinator is however not sufficient per se to ensure an efficient review process. Given the amount of data processed at Europol, stemming from such a variety of sources, the Data Quality Control Coordinator should have in place a strong action plan to ensure that the review mechanisms are comprehensive and efficient in practice.

We therefore ask Europol to provide:

- a full description of the tasks of the Data Quality Control Coordinator
- a copy of the action plan the Data Quality Control Coordinator intends to put in place.

The EDPS stands ready to further exchange views and expertise on the possible solutions to the identified problems with Europol. In view of the interest showed by the Europol Management Board to engage closely with the EDPS in relation to the implementation of the EDPS Decision of 17 September 2020, we put the Chairperson of the EMB in copy of this first feedback on Europol's Action Plan.

Yours sincerely,

[e-signed]

Wojciech Rafał WIEWIÓROWSKI

CC: Mr. Oliver Rüb, Chair of the Europol Management Board

¹ Recommendation I.14 to I.20, from the EDPS Inspection Report of 7 May 2018. as of the latest state-of-play provided by Europol on 16 September 2020, only Recommendations I.17 and 19 had been closed. Europol only intends to address most of the recommendations in the context of the NEO Programme, without a clear deadline.

² Recommendation I.19