

From: [REDACTED]
To: [REDACTED]
CC: European Data Protection Supervisor
<EDPS@edps.europa.eu>
Sent at: 18/12/18 16:45:51
Subject: Case 2018-1083: Consultation on EASO social media monitoring reports (SMM) - acknowledgement of receipt + questions

Dear [REDACTED]

On behalf of the EDPS, I **acknowledge receipt of your consultation** request on EASO social media monitoring reports (SMM), received on 18 December 2018. The case number is **2018-1083**.

Please use it in all future correspondence on this case. Please copy the functional mailbox edps@edps.europa.eu in all exchanges.

We will examine it and will contact you if we need any further information.

For the time being, we would be grateful to receive **further information/clarifications** on the following issues:

1. Legal basis

I take note of your intention to base this on Arts. 8, 9 and 11 of Regulation 439/2010.

- Regarding **Art. 8**, I fail to see how SMM by EASO could qualify as "common action" in the sense of this Article or how it relates to such "common action"?
- On Art. 9, I note that
 - o **Art. 9(1)** refers to gathering of info by EASO from several sources (Member States, UNHCR and "other relevant organisations" emphasis added), but not from social media;
 - o **Art. 9(2)** refers to info *provided by Member States subject to particular pressure*, but not to social media;
 - o **Art. 9(3)** refers to "rapid exchange of relevant information amongst Member States and the Commission" thus, unlike your description and the draft data protection statement, not referring to EU institutions other than the Commission or EU / UN agencies (international transfers) or social media monitoring (which, to my understanding, is not equivalent to "information exchange").
- As for Art. 11,
 - o **Art. 11(1)** allows for the *creation of databases* on "asylum instruments", i.e. not for social media monitoring (to my understanding, that is different from creating a database) with the broad purpose of determining "developments and changes in sentiment of targeted audiences (potential asylum seekers, smugglers, human traffickers, document dealers and diaspora)" as you note below.
 - o **Art. 11(2)** allows for the "gathering of information", but only on the processing of certain applications (a) and national law and *legal* developments (b), i.e. not for the broad purpose of determining "developments and changes in sentiment of targeted audiences (potential asylum seekers, smugglers, human traffickers, document dealers and diaspora)" referred to below.

Could you please confirm my understanding of these provisions or clarify any misunderstanding on my side?

2. Data subjects/ monitored topics

You very broadly refer to "Social media users (Facebook, Instagram, YouTube, Twitter)" (that's almost everybody) and you qualify this only by the following "with relevant posts on asylum and migration issues mainly in Arabic, Pashto, Dari, Persian, Urdu, Tigrinya, Amharic". At the same time, in the data protection statement, you refer to "strict limitations on the topics we monitor".

Could you please clarify these "strict limitations on the topics" you monitor?

3. Recipients

In the data protection statement,

- You refer to "authorised EASO staff"; in your email below, you refer to a "restricted" audience and, more specifically, to a "list of recipients". Could you please let me have a copy of this list?
- You further refer to "relevant stakeholders" in Member States and "European Institutions and Agencies" could you please clarify who those "relevant stakeholders" are and which EUIs you are referring to?
- You also refer to sharing personal data with "and/or ...UN Agencies" in the second paragraph of the data protection statement mention, whereas under the heading "Who will receive personal data", you only refer to the UNHCR and the IOM.
 - o Could you please clarify whether any other international recipients are envisaged?
 - o To my understanding, such sharing would involve international transfers. Could you please let me know of the safeguards in place envisaged to accompany such transfers?

4. Retention period

In the data protection statement, under the heading "How long will the EASO keep personal data", you refer to "Reports containing limited personal data" being stored for a maximum of five years.

- Could you please provide further explanations as to why keeping such reports for five years is necessary and appropriate in the light of the purpose pursued, i.e. determining "developments and changes in sentiment of targeted audiences (potential asylum seekers, smugglers, human traffickers, document dealers and diaspora)"?
- What would be the event triggering the run of that five year period and the six months period mentioned for the "results of searches" and the "automatic backups"?
- Regarding the "automatic backups", could you please let me know the frequency of such back ups?

5. Data processed

In the data protection statement, you refer to "Reports containing limited personal data" (emphasis added; see under the heading "How long will the EASO keep personal data").

- Could you please give me an understanding of where those limitations are spelled out?
- Could you also please give me a clearer understanding of the "clear instructions" binding EASO staff you refer to under the heading "Origin and type of the data processed"?
- You refer to analysing "latest trends in migration and asylum", and "understand what is the current state of play in discourse among social media community users" as the aim of the reports it appears that they are meant to give a general overview; how far would this require having personal data *in the reports to be distributed*?
- On the "strict limitations on the topics" you monitor (referred to under the same heading), please see my question under 2.

Wishing you a very merry Christmas and a happy 2019,





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Dear [redacted]

I hope this email find you well. I just wanted to get in contact so that I can consult with you on a project carried out by my colleagues in our Communications and Stakeholders Unit (CSU).

More precisely the project in question is a Social Media Monitoring Report (SMM) that my colleagues are carrying out.

It is probably worth mentioning from the beginning that this was first discussed in EASO's Management Board and we have an MB decision authorising our colleagues is CSU to go ahead with this project.

Very briefly described the SMM project consists in periodic Reports being drawn up by my colleagues in CSU they monitor social media in order to determine developments and changes in sentiment of targeted audiences (potential asylum seekers, smugglers, human traffickers, document dealers and diaspora).

The data subjects involved in this project are: Social media users (Facebook, Instagram, YouTube, Twitter) with relevant posts on asylum and migration issues mainly in Arabic, Pashto, Dari, Persian, Urdu, Tigrinya, Amharic.

The purpose of these the SMM Reports is to provide EASO management and relevant stakeholders (Member States, European Institutions and EU Agencies, UNHCR and IOM) with reports on the latest situation, smuggling offers and the discourse among social media community users on key issues flight, human trafficking and migration.

The audience / recipients of the SMM Reports is a restricted one. The actual documents (EASO Social Media Monitoring Reports) are marked as 'LIMITED'. So the information contained in the Reports is not shared/made available to anyone outside this list of recipients.

After my colleagues from CSU consulted me on this project I've always referred to the example of the social media monitoring project performed by the ECB and the EDPS's opinion and guidance on this.

First of all we took note of the EDPS's guidance as regards the legal basis for such a project so we looked at Article 5(a) of Regulation 45/2001, so it should be the same Article 5(a) for Regulation 1725 (a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body). We have linked this to Articles 8, 9 and 11 of the EASO Regulation. I've attached a copy of this just for ease of reference.

Our project differs from the ECB's in the sense that my colleagues in CSU manage to do everything in house, so no part of the process is outsourced to a data processor.

As far as the personal data involved, my colleagues have indicated so far:

“ Identification data (name, username, user identification and geographical area)

Personal characteristics (age, gender, nationality)

Views and/or comments on migration routes, smuggling of human beings/human trafficking

Images and videos

Images and videos any other information published on a website that is analysed or on a third party platform.

Note: Source data is not stored, disclosed or shared, with the exception of the public links of social media posts.

Only a very limited part of the above is included in the Reports that . Images with faces or document details (ex. ID numbers), as well as telephone numbers are either deleted or blurred out in Reports which are distributed to Stakeholders. The only personal data which is included in such Reports are the original public links to the social media posts.”

As for the retention period: Reports containing limited personal data will be stored for a maximum of five years and will then be destroyed/deleted. The results of searches after a period of six months. Automatic backups will also be deleted from the EASO's servers after six months.

We have also prepared a privacy notice with the information to be provided to data subjects. Please see the word file attached.

Could we please have a reaction from your side on the points I've described above? We are particularly interested if we have the correct approach as far as the legal basis is concerned and (of course) the other points we need to take into consideration as well.

Many thanks in advance for your kind input on these.

If you need any further info on this, please do not hesitate to contact me.

Just in case we don't get the chance to discuss this year, let me wish you a nice and relaxing Christmas break!

Best,

[Redacted signature]



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