



28 February 2022

## EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

*“Remarks at the Europol Joint Parliamentary  
Scrutiny Group - 10th meeting”*

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Good Morning,

Let me bring to you **3 points of particular attention of the EDPS** since our last meeting in October, which all relate to large datasets.

*The lawfulness of the processing by Europol of large datasets.*

Firstly, as you know, after two years of investigation and the issuance of an admonishment in September 2020, the EDPS found that the processing of data concerning individuals with no established link to a criminal activity (so-called Data Subject Categorisation) after 6 months from the reception of these datasets was not compliant with the Europol Regulation. This important safeguard served as a limit to the risks to EU citizens and other individuals whose data was processed in Europol's databases, for example of being wrongfully linked to criminal activities across the EU, with all potential damage to their private and professional lives that this entails.

Therefore, **on 3 January, the EDPS notified Europol of an Order to delete such data.** The EDPS has also granted an additional time to deal with the backlog of datasets, namely 12 months, concerning data lacking data subject categorisation received before the order.

The EDPS intends to monitor closely the implementation of the order, starting from the assessment of the report that **Europol needs to provide every 3 months**, informing about how the order has been implemented.

*The processing of large datasets under the upcoming Regulation*

With the upcoming Regulation, the new type of processing will be largely authorised without any restriction. This presents a substantial shift in Europol's role as support to Member States: Europol is now not limited anymore to processing data about individuals with established links to a criminal activity but **extends to any data collected in a broad context of any criminal investigation by any Member State.**

In other words, data of individuals with no established link to a criminal activity will now be **processed the same way as data of suspects or convicts**, making the supervision largely pointless, as there will be no limitations as to what categories of data Europol can process, under which conditions or for how long they will be processed.



This shift is taking place with no accompanying structural set of safeguards; making Europol, to a large extent ‘a no man’s land’, a hub of data for Member States (or third countries!), letting Europol further process and transmit data gathered domestically under a domestic legal authorisation that does not necessarily extend to further transmission of data with other Member States and Europol.

### *Use of Artificial Intelligence*

As a second point of my remarks, I would like to consider - what the EDPS has observed in the course of the supervisory activities this year - that this increase of unrestrained processing of large datasets will give rise to the **use of Artificial Intelligence (AI) by Europol**. In recent years, some law enforcement authorities have been providing Europol with datasets so big that Europol is often not in a position to efficiently link the persons contained into these datasets to criminal activities only on the basis of analysts’ manual assessment. As a result, in 2020, Europol started developing a set of machine-learning tools to help processing the first of these large datasets.

On 5 March 2021, the EDPS provided guidance to Europol regarding the development and use of machine learning tools. The EDPS put emphasis on the need to identify the risks to fundamental rights and freedoms posed by the use of these innovative technologies, even if Europol might not always be in a position to mitigate them on the basis of the current state-of-the-art. The development and use of such tools was also one topics of the annual Europol inspection in September 2021. Thanks to our supervision, Europol is now putting in place policies and procedures in place and is in the process of assessing the risks posed by the use of AI for operational analysis.

Let me underline that, the EDPS will **continue to monitor the use of AI by Europol**, also in the context of the revised Europol Regulation, which regrettably only obliges Europol to **inform** the EDPS prior to the launch of research and innovation projects.<sup>1</sup>

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<sup>1</sup> New article 33a.



## *Data subject access rights*

**This has also an impact on the effectiveness of data subjects' access rights, which is the third point of my intervention** The increase in processing of large datasets, now to be allowed under the revised Europol Regulation, will lead to increased quantities of unstructured personal data, including on individuals with no link to crime. **This renders the exercise of data subjects' rights both more critical and more complex.**

On 13 December 2021, the EDPS issued [an Opinion](#), in which we reiterated that no Europol system can be *a priori* excluded from a search when assessing data subjects' access requests. However, taking into account that some systems may be particularly complicated and burdensome to search because of the format or the unstructured nature of data, the **EDPS requested that Europol implement appropriate measures to facilitate more efficient search and retrieval of data** and to make sure that data subjects' access requests can be properly reacted upon.

## *Conclusion*

With this, I would like to thank you for your attention. I am aware the intervention did not cover all issues the EDPS is dealing with in its daily supervisory work. I remain at your disposal, both now and at any time, to reply to your questions and comments regarding my activities.

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