EUROPOL
Management Board

PUBLIC
Document made public on:
26 JUN 2023

EDOC #1252127v8A

Management Board Decision further specifying procedures for the processing of information for the purposes listed in Article 18(2) of the Europol Regulation[1]

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation, 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 and Article 73 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in accordance with Article 18 of the Europol Regulation of 13 December 2017, which as a consequence should be repealed;

Considering that this Decision takes into account and incorporates the safeguards and data protection guarantees provided for in Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation;

Whereas the Management Board, acting on a proposal from the Executive Director and after consulting the European Data Protection Supervisor ("EDPS"), shall specify the conditions relating to the provision and processing of personal data;

Whereas the EDPS delivered an opinion on 17 November 2022,

HAS DECIDED AS FOLLOWS:

[1] This Decision also implements Articles 20(2a), 33a(2)(b), 33a(3) and 26(2) of the Regulation.

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, international organisations and third countries

1. When providing personal data to Europol, Member States, Union bodies, third countries and international organisations shall determine the purpose(s) for which Europol may process the data. Where a provider has not indicated this specifically, Europol shall determine the appropriate purpose in consultation with the data provider concerned.

2. When providing personal data to Europol, Member States, third countries and, where applicable, Union bodies, shall indicate, where relevant and applicable, 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, European Public Prosecutor's Office and third countries shall also indicate where relevant and applicable, that the data is provided in order to support an ongoing specific criminal investigation in one or more Member States that Europol supports or is requested to support.

3. Upon receipt of personal data Europol shall verify, on the basis of this indication and the information provided, whether the categories of data subjects listed in Annex II of the Regulation for the personal data provided are identified. The provider shall be informed of the outcome of the verification. 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_in line with the determined specific purpose(s). Where the provider of the data has identified the category of data subject in accordance with the categories listed in Annex II of the Regulation of personal data previously provided to Europol, it may inform Europol thereof where appropriate.

4. The verification mentioned in paragraph 3 shall be logged following the standard logging, auditing and control mechanisms in accordance with Article 40(1) of the Regulation.

5. Personal data for which the categories of data subjects listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 3, 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 private parties, private persons or retrieved directly by Europol from publicly available sources

1. When receiving personal data from private parties or 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 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 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 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

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 Article 18(2)(a) of the Regulation is processed with a view to enabling the comparison against other data sets. This can be by means of systematic checks, including automated checks by the system.

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.

2. Even though personal data may be used for processing for the purpose of strategic and thematic analysis, the results of such analysis shall not contain any reference to concrete data subjects.

3. Unless explicitly stated otherwise, all contributions to a specific operational analysis project as well as data submitted for cross-checking under Article 18(2)(a), shall be deemed also to be submitted for the purpose of strategic and thematic analysis. Europol shall adopt technical measures to ensure that the data provider has the possibility, at the time of the submission of the data, to object to the latter.

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 investigations 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 investigations against specific targets. The scope of such a platform can, in particular, be a crime area covering one or more 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, in consultation with the HENUs, by a Decision of the Executive Director, which may be delegated to the responsible Deputy Executive Director. The Management Board and the EDPS 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, in consultation with the HENUs, 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 comply with the conditions applicable to the other operational analysis project. In such cases, Europol shall inform the data provider without undue delay of its decision to use it in the other operational analysis project.[2] 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 HENUs, a procedure for the transmission and acceptance of information in operational analysis projects. This procedure shall be submitted to the Management Board for approval. This procedure shall specify:

    a) that contributions shall indicate for which operational analysis project or projects the information is intended. Where the data provider has not indicated this explicitly, Europol shall determine the appropriate destination in consultation with the data provider 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 provider, 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.

[2] In the event that the data provider 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.

12. Prior to the closure of an operational analysis project, Europol and the providers of the information 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 and without prejudice to Article 31(6) of the Regulation, the personal data shall be erased by Europol.

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

1. Europol may process personal data for the purpose of facilitating the exchanges 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, its infrastructure may still be used for that purpose and these exchanges 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 its 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 for the achievement of Europol's objectives set out in Article 3 of the Regulation, in accordance with Article 18(2)(e) of the Regulation.

2. If necessary to achieve the objectives of Europol's research and innovation projects, the processing of personal data for the purpose of research and innovation, as referred to in paragraph 1, shall be carried out only in the context 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. The Management Board shall define the general scope for the research and innovation projects that Europol can establish in accordance with Article 33a(3) of the Regulation in a binding document by defining the overall strategic objectives, goals and subject matters to be addressed by the research and innovation projects. The document shall be updated where appropriate and made available to the EDPS for the purpose of its supervision.

4. In accordance with the procedure outlined in 33a(2)(c), the Management Board shall be consulted prior to the launch of those research and innovation projects which are not yet covered by the binding general scope for the research and innovation projects of Europol decided by the Management Board in accordance with paragraph 3 of this Article. For research and innovation projects within that scope, the Management Board shall only be informed.

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 on the basis of a national judicial decision relating to a crime that falls within Europol's objectives and facilitating the provision by the public of information on those individuals, to the Member States and Europol in accordance with Article 18(2)(f) of the Regulation.

2. The conditions for the processing of personal data according to this article shall be further specified in a Decision by the Management Board and 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. Until that Decision is taken by the Management Board, the "*Policy on the use of the EU Most Wanted Platform*"[3] as approved by the Deputy Executive Director of Europol Operations Directorate on 24 August 2015 remains valid provisionally.

Article 10
Access to the data for Europol staff

1. Notwithstanding Article 11 of this Decision, 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.

2. Access to personal data referred to in Article 30(1) and (2) of the Regulation shall be authorised by the Executive Director to only a limited number of Europol staff and only when such access is strictly necessary for the performance of their duties.

[3] EDOC #828583v8

Article 11
Access by Member States and Europol staff to information stored by Europol in accordance with Article 20(2a) of the Regulation

In the framework of operational analysis projects referred to in Article 18(3) of the Regulation and subject to the rules and safeguards for personal data processing set out in the Regulation, Member States may determine information to be made directly accessible by Europol to selected other Member States for joint operational analysis in specific investigations, without prejudice to any restrictions indicated pursuant to Article 19(2) of the Regulation. The procedures and conditions for this joint operational analysis shall be further specified in a Decision by the Management Board.

Article 12
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 13
Forwarding personal data received directly from private parties to national units concerned

1. Where Europol receives personal data directly from private parties, Europol shall forward the personal data and any relevant results from the necessary processing of those data for the purpose of establishing jurisdiction immediately to the national units concerned in accordance with Article 26(2) of the Regulation.

2. A Member State of establishment of a private party may choose to be considered per default or only in specific circumstances as 'national unit concerned' for the purpose of the forwarding of the data as outlined in paragraph 1, in which case that Member State shall inform Europol thereof.

Article 14
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 2017[4] is hereby replaced and repealed with effect from the date of entry into force of the Decision of 28 June 2022.

[4] EDOC #832397v36.

Article 15
Review

The Management Board may review and adjust this Decision when deemed appropriate.

Article 16
Entry into force

This Decision shall enter into force on the day of its adoption and shall replace the Decision of 28 June 2022.

Done at The Hague on 21 March 2023



Jérôme Bonet

Chairperson of the Management Board