EUROPOL
Management Board

PUBLIC
Document made public on:
26 JUN 2023

EDOC #1252125v10A

Management Board Decision on the conditions related to the processing of personal data on the basis of Article 18(6a) of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

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 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, Article 18(6a) and 18(6b) thereof;

Having regard to Regulation 2018/1725, and in particular Article 71 and Article 73 thereof;

Whereas Europol may receive personal data, without the request for support for a specific criminal investigation, that might not fall into the categories of data subjects set out in Annex II of the Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects;

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:

Article 1
Scope

This Decision shall apply to the processing of personal data, received or retrieved by Europol pursuant to paragraphs 1 or 2 of Article 17 of the Regulation, for which the categories of the data subjects are not yet identified in accordance with Annex II of the Regulation, as referred to in Article 18(6a) of the Regulation. This decision shall not apply to data transmitted to or accessible by Europol in accordance with Article 8(4), Article 18(2), points (e) and (f), Article 18a, and data processing pursuant to Article 26(6c) where Europol's infrastructure is used for bilateral exchanges of personal data and Europol has no access to the content of the data.

Article 2
Personal data provided by the Member States, Union 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 Union bodies, shall indicate, after having determined the purpose(s) in accordance with paragraph 1, 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, the European Public Prosecutor's Office and third countries shall also indicate whether the data are provided in the context of 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 received in accordance with paragraph 1 and the information provided, whether the categories of data subjects listed in Annex II of the Regulation for the personal data provided are identified or not. The provider shall be informed of the outcome of the verification.

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

5. In case Europol considers, following the verification mentioned in paragraph 3, that for personal data the categories of data subjects listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation 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.

6. 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 Article 18(6a) of the Regulation and this Decision. They shall be kept functionally separate from other data by being labelled as "DSC not completed". These data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

7. Europol shall adopt technical measures ensuring that data being labelled as "DSC not completed" cannot be transferred outside of this functionally separate environment.

Article 3
Personal data provided by private parties and private persons

1. Upon receipt of personal data from private parties and private persons, Europol shall verify, on the basis of the information provided, whether the categories of data subjects listed in Annex II of the Regulation are identified or not.

2. In case Europol considers, following the verification mentioned in paragraph 1, that for personal data the categories of data subjects listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.

3. 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 1, shall be processed in accordance with Article 18(6a) of the Regulation and this Decision and shall be kept functionally separate from other data by being labelled as "DSC not completed". The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data. Europol shall adopt technical measures ensuring that data being labelled as "DSC not completed" cannot be transferred outside of this functionally separate environment.

Article 4
Personal data retrieved by Europol from publicly available sources

1. Upon retrieval of personal data from publicly available sources, including the internet and public data, under Article 17(2) of the Regulation, Europol shall verify, on the basis of the information retrieved, whether the categories of data subjects listed in Annex II of the Regulation are identified or not.

2. In case Europol considers, following the verification mentioned in paragraph 1, that for certain personal data retrieved by Europol from publicly available sources for which the categories of data subjects listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.

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 Article 18(6a) of the Regulation and with this Decision and shall be kept functionally separate from other data by being labelled as "DSC not completed". The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data. Europol shall adopt technical measures ensuring that data being labelled as "DSC not completed" cannot be transferred outside of this functionally separate environment.

Article 5
Access to data for Europol staff

1. Only trained and duly authorised Europol staff members shall have access to the personal data for which the categories of the data subjects are not yet identified and which are processed by Europol pursuant to Article 18(6a) 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 for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

2. Europol shall implement appropriate technical and organisational measures in order to ensure and verify, at regular intervals, that the processing of personal data under this Decision is limited to the use as defined in Article 6.

3. Europol shall set out in a policy on the control of retrievals the conditions and procedures on the creation of audit logs and trails regarding the access to the data as described in this Article, on their content and storage, on the verification of the legality of such access and data retrievals by the Europol DPO, the EDPS, national supervisory authorities and the Europol national units, as well as on access to the audit logs and trails by the said entities.

Article 6
Use of the data

1. Europol may temporarily process personal data subject to this Decision for the sole purpose of determining whether such data are in compliance with Article 18(5) of the Regulation. The processing shall include checking the data against other data which are processed by Europol in accordance with Article 18(5) of the Regulation, in order to identify whether personal data matches with the data Europol already processes under the Regulation, with the aim to identify the categories of data subjects in accordance with Annex II of the Regulation.

2. Personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation may not be processed in accordance with Article 18(2) of the Regulation.

3. Personal data for which the categories of data subject are not yet identified in accordance with Annex II of the Regulation may not be transferred to Member States, Union bodies, third countries, international organisations, or private parties.

4. Personal data for which the categories of data have been identified in accordance with Annex II of the Regulation, as a result of processing mentioned in paragraph 1, shall be further processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation in line with the determined specific purpose(s).

5. Personal data may not be transferred to private persons without prejudice to Articles 36 and 37 of the Regulation.

Article 7
Time limits for the processing

1. Europol shall process personal data in accordance with Article 6(1) for an initial period of up to 18 months from the moment Europol ascertains that those data fall within its objectives as stipulated in Article 18(6) of the Regulation, if applicable. The data will be reviewed every 3 months in order to verify whether further storage of the data is still strictly necessary for the sole purpose of determining whether personal data are in compliance with paragraph 5 of Article 18 of the Regulation.

1bis. This period may be extended in justified cases for a longer period where necessary for the purpose outlined in Article 6(1), but in any case it may not exceed the maximum period of 3 years.

2. When considering the extension of the temporary processing period up to a maximum of 3 years, Europol shall define the reasonable grounds or factual indications for believing that a prolongation not exceeding a total processing period of 3 years will facilitate the determination of compliance with Article 18(5) of the Regulation. The decision extending the temporary processing period shall be taken from the moment of the last review of 18 months as per paragraph 1 and before the beginning of the last month and shall take into account elements such as the sensitivity of the investigation, the importance of the data in question, the nature of the data which would have made it technically not feasible to be analysed within the initial deadline.

3. When Europol has decided to extend the temporary processing period beyond the initial period of 18 months, Europol shall provide the EDPS the justification referred to in paragraph 2 within one month after the day on which the decision is taken. These justifications shall be provided to the EDPS in quarterly intervals.

4. Where Europol concludes that personal data, after having processed the data in accordance with Article 6, are not in compliance with Article 18(5) of the Regulation or the maximum period of data processing referred to in paragraph 1 of this Article has expired, including any extension if applicable, Europol shall erase that data without prejudice to Article 31(6) of the Regulation.

5. In the cases mentioned in paragraph 4, Europol shall inform the provider of those data, where relevant, prior to the erasure.

Article 8
Review

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

Article 9
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