EUROPOL
Management Board

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

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 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 2(q) and 18a thereof;

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

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 provided, pursuant to points (a) or (b) of Article 17(1) of the Regulation, by Member States, the European Public Prosecutor's Office ("EPPO"), Eurojust or third countries in support of an ongoing specific criminal investigation in accordance with Article 18a of the Regulation for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation.

Article 2
Personal data provided by the Member States, the EPPO, Eurojust and third countries

1. When providing investigative data to Europol in accordance with Article 18a of the Regulation, Member States, the EPPO, Eurojust and third countries shall indicate whether the data contains personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. They shall also indicate that the investigative data are provided in the context of an ongoing specific criminal investigation in one or more Member States for which investigative activities are currently being carried out by the national competent authorities in one or more of these Member States or by EPPO. In this context, the data provider(s) shall indicate identifiers for the specific investigation according to the relevant legal regime and Europol will request the data providers to confirm at regular intervals that the investigation is still ongoing, at the same time as the confirmation referred to in Article 7(1).

2. Upon receipt of the investigative data, Europol shall verify, on the basis of this indication and the information provided, whether the categories of the 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.

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 2, shall be processed in accordance with Article 18a of the Regulation and with 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.

4. In case Europol considers, following the verification mentioned in paragraph 2, 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).

5. 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.

Article 3
Additional requirements for processing personal data in accordance with Article 18a of the Regulation

1. The data providers shall indicate whether they request Europol to provide support by way of operational analysis or exceptionally by way of cross-checking, as referred to in Article 18a(1), for which in the latter case, the data provider shall indicate the exceptional operational or urgent circumstances justifying this request.

1bis. Europol shall define the scope of the ongoing specific criminal investigation it supports by clustering all relevant identifiers for the specific investigation(s) provided by the data provider(s) referred to in Article 2(1) of this Decision and by documenting such cluster in a Europol Ongoing Specific Criminal Investigation Support Order (OSCISO). Such Support Order shall comprise, but not be limited to, a description of the investigation(s) supported, the relevant support request(s) to Europol, the names of the countries and Union bodies involved in the investigation(s), the confirmation by the data provider(s) that their investigation is ongoing, and relevant national or Europol identifiers.

2. Europol shall also assess whether it is not possible to support the specific criminal investigation as requested by the data provider, without processing personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. Such assessment shall take into account, the type of the data provided (including structure, encryption, complexity), the context of the submission including its relevance to the investigation as well as the specific instructions of the data provider that requested the support as per paragraph 1.

2bis. In case Europol considers that the support requested for the ongoing specific criminal investigation can be achieved by alternative means limited to processing operations upon personal data for which the categories of data subjects are already identified in accordance with Annex II of the Regulation, it shall inform the data provider that these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation. The personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation shall be processed in accordance with paragraph 6a of Article 18 of the Regulation.

2ter. In case Europol assesses, in line with paragraph 2, that it is not possible to support the ongoing specific criminal investigation without processing personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation, it shall record the results of the assessment. Europol shall send the results of this assessment to the EDPS for information when it ceases to support the related specific criminal investigation in accordance with Article 7.

3. Europol shall report at regular intervals to the EDPS the total number of contributions under Article 2 and 3 per data provider, including for data provided by third countries in accordance with Article 4, the number of verifications in accordance with Article 2(2), the progress in identifying the categories of data subjects as listed in Annex II of the Regulation and the number of contributions erased.

4. All verifications and assessments referred to in Article 2 and this Article shall be logged following the standard logging, auditing and control mechanisms in accordance with Article 40(1) of the Regulation.

Article 4
Personal data provided by third countries

1. Where a third country as referred to in Article 25(1) of the Regulation provides investigative data to Europol in accordance with Article 18a of the Regulation, it shall also indicate, in addition to fulfilling the requirements of paragraph 1 of Article 2, that it obtained the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law. Third countries will indicate this in accordance with the applicable provisions in this regard contained in the agreements referred to in Article 25(1) of the Regulation.

2. Europol shall verify that the amount of personal data provided by the third country is not manifestly disproportionate in relation to the specific criminal investigation that Europol supports in the Member State concerned. Where Europol concludes that there is an indication that such data are manifestly disproportionate or were collected in obvious violation of fundamental rights, Europol shall not process the data and shall erase them without prejudice to Articles 7 and 8 of this Decision. Europol shall assess that in accordance with the applicable provisions in this regard contained in the agreements referred to in Article 25(1) of the Regulation and shall take into account the specific circumstances for processing required for the support of the specific criminal investigation(s) concerned. Europol shall consult the DPO enabling him or her to notify the EDPS, where appropriate.

Article 5
Access to data by Europol staff

1. Only trained and duly authorised Europol staff members shall have access to the investigative data for which the categories of the data subjects are not yet identified and which are processed by Europol pursuant to Article 18a of the Regulation and this Decision. The Executive Director shall identify specifically which dedicated staff members will have access to such personal data by means of a specific authorisation process, stipulating that the access is granted only for the purpose of the processing in support of the ongoing specific criminal investigation. These staff members shall only have access to the data which they need to know in the context of this Decision for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

2. Personal data processed pursuant to paragraph 6 of Article 18a of the Regulation and Article 4 of this Decision shall be accessed by Europol only where necessary for the support of the specific criminal investigation in one or more Member States for which they were provided. Europol shall implement appropriate technical and organisational measures in order to ensure and verify that at regular intervals.

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 investigative 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 process investigative data received under Article 18a of the Regulation in accordance with Article 18(2) of the Regulation for as long as it supports the ongoing specific criminal investigation for which they were provided and only for the purpose of supporting that investigation.

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 transmitted or transferred to Member States, Union bodies, third countries, international organisations or private parties, except for sharing within the Union when strictly necessary for the support of the specific investigation in one or more Member States for which these data were provided.

3. Personal data for which the categories of data subjects have been identified in accordance with Annex II of the Regulation as a result of processing in accordance with this Article 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).

4. 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 for the purpose of strategic and thematic analysis.

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 may process investigative data for as long as it supports the ongoing specific criminal investigation for which the investigative data were provided. Europol's support of the investigation shall end upon receipt of the notification of the provider in accordance with Article 18a(2) of the Regulation, according to which the provider shall inform Europol where it is no longer authorised to process that data in the specific ongoing criminal investigation in accordance with procedural requirements and safeguards under the applicable law. In this context, Europol shall request the data providers to confirm this authorisation at regular intervals.

2. As soon as the data provider confirms that the investigation is no longer ongoing in accordance with Article 2(1) or when the data provider confirms, in accordance with paragraph 1, that it is no longer authorised to process the investigative data, Europol shall erase such investigative data without prejudice to a possible storage of the data in accordance with Article 8 of this Decision or Article 31(6) of the Regulation. Europol shall also erase the data if no such confirmation is received within a specific timeframe.

3. Where Europol concludes that the data do not comply with the requirements of Article 18(5) of the Regulation, it shall erase such investigative data without prejudice to a possible storage of the data in accordance with Article 8 of this Decision or Article 31(6) of the Regulation.

4. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the erasure.

Article 8
Storage for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process

1. Before erasing the investigative data upon expiry of the time limits stipulated in Article 7, Member States may request Europol to store specific investigative data and the outcome of its processing of those data beyond the processing period determined by such time limits for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. Europol may store the data only where requested by the provider of the investigative data or, with the provider's agreement, by a Member State in which judicial proceedings concerning related criminal investigations are ongoing.

2. To determine the admissible storage duration, Europol shall, upon receipt of a storage request, require the provider of the investigative data to notify Europol upon termination of the judicial proceedings concerning the specific criminal investigation for which the investigative data were provided. In case of related criminal investigations in a Member State other than the one having provided the investigative data to Europol, Europol shall require that other Member State to notify it upon termination of the judicial proceedings concerning such related criminal investigation.

3. In accordance with Article 5, only duly authorised staff shall have access, specifically designated for the purpose outlined in paragraph 1, to the investigative data stored in accordance with this Article. The staff members shall be identified by means of a specific authorisation process in accordance with Article 5.

4. As soon as Europol is notified about the termination of the relevant judicial proceedings, it shall erase the relevant investigative data stored in line with paragraph 1. Europol shall inform the provider of the data accordingly by means of notification announcing the erasure of the data.

5. Personal data stored for the purpose of this Article shall be further functionally separated, archived and will only be strictly accessible by a limited number of specifically designated staff referred to in paragraph 3. Such access is to be granted at the moment of the request by a data provider as mentioned in paragraph 1.

6. Europol shall set out in a policy on data archiving the detailed conditions and procedures for the storage, purpose of data retrieval, assessment of retrieval requests, data retrieval procedures and logging of data retrievals for data processing in line with paragraph 1 in order to ensure the further functional separation referred to in paragraph 5.

Article 9
Review

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

Article 10
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

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Jérôme Bonet

Chairperson of the Management Board