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Subject: FW: Meeting in EDPS - Montoyer 30

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Date : 2/09/22 23:38 (GMT+01:00)

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Objet : Meeting in EDPS - Montoyer 30

Dear Executive Director, Chairman of the Management Board,

Allow me to recap how we concluded the meeting that we just held at the EDPS premises.

I am convinced that the correct procedure for adoption of the four Management Board ('MB') decisions of 28 June 2022 has not been followed. I have not been consulted as required by the provisions of the amended Europol regulation which constitute the legal basis of these MB decisions. I duly take note of the difficulties that you explained you have encountered due to the way the amending Europol regulation is drafted. I also acknowledge the informal cooperation having taken place on these matter of the text of the MB decisions. These difficulties cannot however justify inaction in my role as Supervisory authority in face of a violation of the prerogatives of the function that I fulfil.

I have to take note that to date, no written answer has been provided to my letter of 15 July, in spite of the expiry of the deadline foreseen therein. Nevertheless, in a spirit of compromise and good cooperation, we discussed a possible way out which would allow me not to be obliged to defend in Court my function.

Allow me then to summarise the conditions for a last attempt at avoiding litigation. I hope that you will be able to accept them.

1) Europol should send a letter the European Parliament, the Council, the Commission and the EDPS (this latter in cc), i.e. the Institutions to which the EDPS referred the matter as per Article 43(3)(g) of the regulation, in order to inform them of the settlement reached on the matter.

The letter should contain:

a) a commitment to consult the EDPS on new draft MB decisions that shall replace the old ones as from the date of adoption of such new decisions, and that shall refer to the formal opinion as delivered by the EDPS (with indication in the recitals of the date of delivery of the opinion, as per normal practice);

b) a confirmation of the importance of closely cooperating both formally and informally with the EDPS;

c) an indication that the EDPS on his part has committed to deliver an Opinion in the shortest possible timeframe.

2) Together with the draft letter I would need to receive the text of the new draft management board decisions for my formal consultation.

3) At this stage, and for the avoidance of all misunderstanding, I would ask to be able to revise the draft of such a letter and of the draft decisions.

4) Given the deadlines for lodging an action for annulment under the Treaty, we need to ask you to demonstrate:

a) having sent the letter(s) to EP, Council and Commission with an agreed text **by 9 September 2022 18:00**, and

b) having formally consulted me on the new draft MB decisions by the same deadline of **9 September 2022 18:00**.

I will react swiftly to the draft letters that you will send me for prior review as per points 1) and 2) above (within maximum one full business day following the day of receipt).

I hope that we can proceed as described, which it appeared to me something that you did not reject during the meeting just concluded.

Yours,

Wojciech Wiewiórowski



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