



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

# EDPS OPINION ON A PRIOR CONSULTATION REQUESTED BY EUROPOL on QUEST+

## (Case 2022-0625)

### 1. PROCEEDINGS

On **8 June 2022**, the EDPS received a request for prior consultation from Europol under Article 39 of the Regulation (EU) 2016/794<sup>1</sup> on a system called Querying Europol Systems plus (also referred to as 'QUEST+')The prior consultation request contained the following documents:

- The formal notification of the prior consultation, with an identification of two risks and a filled-out questionnaire by Europol's staff ( 'the Notification')<sup>2</sup>;A cover letter from Europol's DPO to the EDPS<sup>3</sup>;The Use and Management Policy of the 'Querying Europol SysTems' ('QUEST') system interface<sup>4</sup>;The interface control document of the Quest service version of 10 May 2022 including documenting changes introduced by QUEST+, extending person search with the ability to query for EAS data (Quest Plus extension)<sup>5</sup>;The QUEST requirement specifications, version of 4 April 2022, including QUEST+ to extend searches to EAS (QUEST v.2.1 - QUEST plus extension)<sup>6</sup>.

<sup>1</sup> 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) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/936/JHA and 2009/968/JHA.

<sup>2</sup> EDOC#1146661.

<sup>3</sup> EDOC-#1146662-v3.

<sup>4</sup> EDOC #907223v10.

<sup>5</sup> EDOC-#1175282-v2.

<sup>6</sup> EDOC-#1160864-v7.



On 8 June 2022, Regulation 2016/794 was amended by Regulation (EU) 2022/991<sup>7</sup> which entered into force on 28 June 2022. As the prior consultation was submitted on 8 June 2022, it falls under the scope of Regulation (EU) 2016/794 as approved on 11 May 2016<sup>8</sup> ('the Europol Regulation') and not as amended by Regulation (EU) 2022/991 ('the amended Europol Regulation'). The EDPS will thus, for this Opinion, refer to Regulation (EU) 2016/794 of 11 May 2016. Nevertheless, where relevant, the EDPS will also refer to the amended Europol Regulation considering that it will apply to the processing of personal data under QUEST+ when it becomes operational.

According to Article 39(3) of the Europol Regulation, the EDPS is to issue his Opinion to the Europol Management Board within a period of two months following the receipt of the notification of the prior consultation. That period may be suspended until the EDPS has obtained any further information requested and for a maximum period of two additional months, after which the opinion shall be deemed favourable.

In this case, the deadline for the EDPS' response has not been suspended, meaning the deadline within which the EDPS shall issue his Opinion is **8 August 2022**.

## 2. DESCRIPTION OF THE PROCESSING

QUEST is an automatic (system-to-system) interface between Member States' systems and the Europol Information System ('EIS'). End users (only duly empowered Member State (MS) officials) must be directly involved in cases related to the prevention and combating of crimes falling under Europol's mandate as listed in Annex 1 of the Europol Regulation.<sup>9</sup> The interface currently in use, which was submitted to the EDPS for prior consultation in 2017<sup>10</sup>, allows a user to consult the following types of entities: [REDACTED]

<sup>7</sup> 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, PE/8/2022/REV/1, OJ L 169, 27.6.2022, page 1-42 entered into force on 28 June 2022.

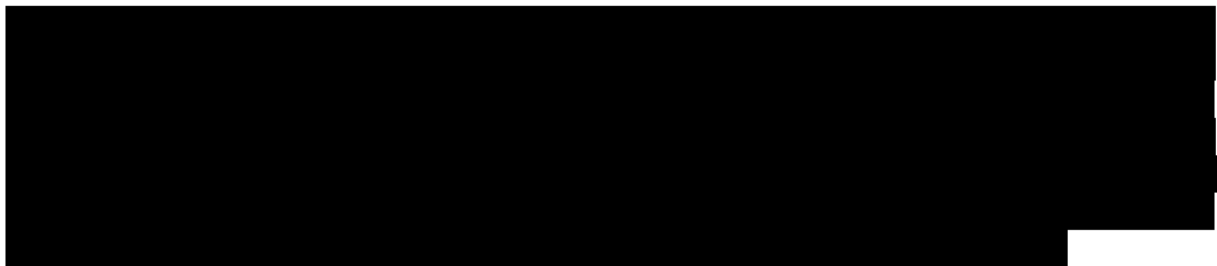
<sup>8</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53-114.

<sup>9</sup> See Section 4.1.1 of EDOC #907223v10.

<sup>10</sup> Opinion of 26 January 2018 on the prior consultation regarding "Querying Europol Systems (QUEST)", EDPS Case 2017-0877.

[REDACTED] These data are processed for purposes of cross-checking, under Article 18(2)(a) of the Europol Regulation.

QUEST+ will extend the type of information to which MS users have access and include personal data processed in the Europol Analysis System ('EAS') in the different Analysis Projects ('APs') for purposes of operational analysis under Article 18(2)(c) of the Europol Regulation ('AP data'). It implements Article 20(2) of the Europol Regulation, which allows MS to have indirect access on the basis of a hit/no hit system to information provided for the purposes of Article 18(2)(c) of the Europol Regulation. QUEST+ will thus include a search mechanism based on a hit/no hit basis to AP data, building on the search mechanism already implemented via QUEST for searches in the EIS.



A search request on a person using the new QUEST+ functionality<sup>15</sup> will return the following information categories (visible hits):

- [REDACTED]
- [REDACTED]

<sup>11</sup> The user sees the available data about the person searched.

<sup>12</sup> The user is informed that data about the person searched are available but do not see them.

<sup>13</sup> See page 6 of the Notification.

<sup>14</sup> [REDACTED]


<sup>15</sup> The search request is sent with "data set" parameter set to "EAS, EIS", EDOC-#1175282-v2, page 13.


<sup>16</sup> From the documentation provided (EDOC#1175282v2, page 14), the EDPS understands that this will be the AP providing the data.

<sup>17</sup> From the documentation provided (EDOC#1175282v2, page 14), the EDPS understands that this will be the contributor of the data to Europol.

<sup>18</sup> From the documentation provided (EDOC#1175282v2, page 14), the EDPS understands that this will be the criminal activity under investigation.

<sup>19</sup> Notification, page13, EDOC#1146661.



In the future, queries and returns using the QUEST+ functionality will be extended to other persons  and to all AP data (i.e. including data stored in the Analysis projects of Counter Terrorism).<sup>23</sup>

Currently, five Member States (Germany, Spain, Romania, Poland and Sweden) are taking part in the initial phase of QUEST+. It is expected that in the future all EU Member States (MS) will also be able to access this functionality.<sup>24</sup>

### 3. Legal and technical assessment

#### 3.1. Need for prior consultation pursuant to Article 39 of the Europol Regulation

Article 39 of Regulation 2016/794 subjects some processing operations to prior consultation by the EDPS. According to Article 39(1) of the Europol Regulation, the scope of application of the prior consultation requirement covers:

- (a) processing of special categories of personal data as referred to in Article 30(2); or
- (b) types of processing, in particular using new technologies, mechanisms or procedures, presenting specific risks for the fundamental rights and freedoms, and in particular the protection of personal data, of data subjects.

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<sup>20</sup> USE is an intuitive web application allowing for searching across several operational data sources available at Europol (including the EAS for SOC and CT data, SIENA and the EIS). USE is the standard tool for cross-checking data that is being processed in the EAS, p.23 of EDOC#886249v16.

<sup>21</sup> Notification, page 2, , EDOC#1146661.

<sup>22</sup> Notification, page 17, EDOC#114666.

<sup>23</sup> Notification, page 6, EDOC#1146661.

<sup>24</sup> Page 14 of the Notification, EDOC#114666.

Furthermore, according to Recital 50 of the Europol Regulation: *“the prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities, such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto”*.

The EDPS stresses that compared to QUEST, QUEST+ introduces significant changes as regards the nature of the searches performed and the associated risks. Risks for fundamental rights of individuals in the context of the development of QUEST+ are particularly high as this will involve an increase in the amount of personal data exchanged between Europol and national competent authorities, as well as between national competent authorities (whenever there is a hit), the nature of the personal data exchange is much larger given the broader scope of the data processed for operational analysis purposes and will finally involve the exchange of data with different levels of reliability.

Most notably, QUEST+ will allow searches on much larger datasets considering the wider scope of Annex II.B of the Europol Regulation. These data are submitted for operational analysis purposes, and thus may have lower levels of reliability. In addition, they do not include only information on suspected and convicted persons but also on other categories of persons [REDACTED]).<sup>25</sup> Finally, QUEST+ will provide much faster access for national competent authorities to EAS data by making the system directly searchable, fostering personal data exchanges between Europol and national competent authorities, between national competent authorities (taking into account follow-up exchanges after a hit), including about data with a low level of reliability.

The EDPS recalls that the processing of data about individuals in EU law enforcement databases can have deep consequences for those involved. A hit as such already reveals information about a person that may harm him or her as the only information that a person is known by the police create as such a suspicion that this person is associated to a criminal activity, might be a disreputable individual, even a possible criminal. Data subjects run the risk of being wrongfully linked to a criminal activity, with all of the potential damage for their personal and family life, freedom of movement and occupation that this entails.

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<sup>25</sup> See also EAS Manual stating that: ‘Processing for the purpose of operational analysis (Art. 18(2)(c) ER) differs from processing for the purpose of cross-checking (Art. 18(2) (a) ER) in the range of data subjects and data categories, and the complexity of processing and analysis, section 7.5, page25 of EDOC #886249v16.



In view of all of the above, the EDPS considers that the development QUEST+ **is subject to prior consultation** in accordance with Article 39(1)(a) and (b) of the Europol Regulation.

### 3.2. Scope of the Opinion

The Opinion of the EDPS on this prior consultation only concerns QUEST+ as described in the notification of 8 June 2022<sup>26</sup> and appended documentation, i.e. as a way of accessing data on suspects, convicted persons, potential future criminals, contacts and associates in EAS data.<sup>27</sup> Europol specifies that the notification does not include ‘single searches’, which has been introduced by the Interoperability Regulations<sup>28</sup> to enable an authorised user to run a search simultaneously against the Europol databases and several other national or international databases as mentioned under the general description field of the Notification.<sup>29</sup>

While the request for prior consultation was submitted under the Europol Regulation, the EDPS will also refer to the amended Europol Regulation where relevant, considering that it will apply to the processing of personal data under QUEST+ when it becomes operational.

### 3.3. Europol’s legal basis for the development of QUEST+

Europol indicates in the notification that the processing operations in the context of QUEST+ relate to its tasks laid down in:

- Article 4(1) (b) of the Europol Regulation: ‘notify the Member States, via the national units established or designated pursuant to Article 7(2), without delay of any information and connections between criminal offences concerning them’ and,
- Article 4 (1) (h) of the Europol Regulation ‘support Member States’ cross-border information exchange activities, operations and investigations, as well as joint investigation teams, including by providing operational, technical and financial support’.

<sup>26</sup> EDOC#1146661.

<sup>27</sup> See in this regard Section 1.4 of “QUEST Use and management policy”: “QUEST is a system interface that allows end users of a Member State’s national information system concerned to QUEST to run a search and receive information on existing Europol Information System (EIS) entities.”

<sup>28</sup> Regulation (EU) 2019/817 establishing a framework for interoperability between EU information systems in the field of borders and visa and Regulation (EU) 2019/818 establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration.

<sup>29</sup> Notification, page 6, EDOC#1146661

In addition, Article 20 (2) of the Europol Regulation provides that MS will, in accordance with their national law, have indirect access on the basis of a hit/no hit system to information provides for the purpose of operational analysis without prejudice to any restrictions indicated by the Member States, Union bodies and third countries or international organisations providing the information.

Given the above, the EDPS considers that the processing of information, including personal data, in the context of the operation of QUEST+ **falls within Europol's tasks provided in Articles 4 (1) (b) and (h) and implements the indirect search capability foreseen by Article 20 (2) of the Europol Regulation.**

The EDPS notes that none of the aforementioned articles have been modified by the amended Europol Regulation. They will thus continue to form a valid legal basis for the envisaged processing of personal data under the amended Europol Regulation.

### **3.4. Assessment of the risks to data subjects**

#### **3.4.1. Deficiencies in the notification submitted for prior consultation according to Article 39(2) of the Europol Regulation**

Under Article 39 (2) of the Europol Regulation, four elements should be present in each prior consultation of the EDPS:

- (1) a description of the process or system that is being consulted,
- (2) an assessment of the specific risks posed by this process or system,
- (3) the mitigating measures that Europol plans to apply in order to mitigate these risks where possible and,
- (4) additional 'safeguards and mechanisms to ensure the protection of personal data'.

The EDPS would like to stress that although QUEST, which allows searching data in the EIS, was subject to a former prior consultation, EAS contains a much larger amount of personal data which are subject to separate rules and different processes. The prior consultation should therefore focus on the description of these differences, the related risks and the mitigation measures to address these risks.

The EDPS finds that the notification submitted in accordance with Article 39(2) of the Europol Regulation is insufficient as to the description of the

process, in particular with regard to the flowcharts provided and as to the risk assessment.

#### *Incomplete process description*

The EDPS considers that the description of the processing is incomplete to allow for a comprehensive overview of the QUEST+ data flows. In this regards, he notes that the Notification reports that QUEST+ will use the same technical infrastructure as QUEST,

However the QUEST requirement specification<sup>30</sup> has not been updated to provide flowcharts of queries to both the EIS and EAS which would clarify the systems involved in the different steps and the different purposes of the searches. He recalls that such overview is essential to allow the identification of potential risks and the allocation of appropriate mitigating measures. If the flowchart is missing elements, it is not possible to map the risks to the corresponding elements, leading to gaps in the risk analysis and creating risks of non-compliance with the Europol Regulation.

#### *Incomplete risk assessment*

The EDPS recalls that the main purpose of the data protection impact assessment ('DPIA') process, and the prior consultation with the EDPS, is to identify and address the specific risks generated by novel systems, or by substantial changes to personal data processing at Europol. These are the risks which should be focused on in the main risk table, for which mitigating measures should then be devised, and for which the resulting risk level should be estimated.

The risk assessment table included in Europol's prior consultation form on QUEST+ identifies the two following risks: unauthorised access and unnecessary storage of data. These risks are general risks and do not address the specificities of the new type of operation being consulted, as described below.

In addition, the EDPS notes that the two risks identified in the notification are indicated as low risks both before and after the application of the mitigation measures, making it difficult to assess the impact of the mitigation measures on the identified risks.

<p>The deficiencies in the process description and the risk assessment of the notification submitted to the EDPS for prior consultation creates risks of non-compliance with the Europol Regulation and prevents Europol and the EDPS to takes full advantage of the prior consultation procedure, which</p>
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<sup>30</sup> EDOC-#1160864-v7.



acts as an a priori safeguard to ensure compliance with data protection requirements introduced by the Europol Regulation.

The deficiency in the risk assessment is particularly concerning in the light of the amended Europol Regulation which now subjects the processing of operational data by Europol to Chapter IX of Regulation 1725/2018.<sup>31</sup> This means that Europol will have to conduct a data protection impact assessment prior to new types of processing, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, which are likely to result in a high risk to the rights and freedoms of natural persons (Article 89). Prior consultation of the EDPS is only required where the outcome of the DPIA indicates high risks for the rights and freedoms of data subjects (Article 90).

### **3.4.2. Risks linked to the disclosure of special categories of data subjects**

The Notification mentions that QUEST+ implements a safeguard regarding possible disclosure of data about special categories of data subjects. This refers to the fact that hits against personal data about minors will be processed as hidden hits. A similar solution will be implemented when data about the other special categories of data subjects listed under Article 30(1) of the Europol Regulation will be included in QUEST+ searches (2023+).

While the EDPS, at first sight, welcomes this safeguard, he also notes that this risk is not included in the risk table and therefore the level of risk is not assessed before and after the mitigating measure. In addition, there is no explanation about where such risk could occur or why, making it difficult to assess to what extent the safeguard proposed would be sufficient to mitigate it.

For this reason, the EDPS continues to advocate for a system whereby Europol (schematically) represents the data flow at the start of its notification form, and indicates at each stage what risks it foresees and what mitigating measures it intends to apply.

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<sup>31</sup> Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ, L 295, 21.11.2018, pp. 39-98

The EDPS considers that the processing of data about special categories of data subjects involves a high risk in terms of data protection. Such risk must be properly described and mitigated in the notification submitted for prior consultation. The limited information provided does not allow the EDPS to confirm whether the proposed safeguard is sufficient to correctly address this risk.

### **3.4.3. Risks stemming from cross-matching with EAS entities that have not been validated and accepted**

It appears from the documentation provided by Europol that searches through QUEST+ will also include:

[REDACTED]

Matches against these entities will generate a hidden hit.<sup>32</sup>

This means that entities which have not been through the full extraction process, i.e. assigned a Data Subject Category, validated and accepted by the analyst will fall under the scope of the QUEST+ queries.

The EDPS finds this highly problematic as he understands that the validation and acceptance process are key to ensure the quality of the data processed. The validation ensures that the data are correct and fits within the limits of the Opening Order. The validation process ensures that the data are adequate, i.e. they are relevant for the purposes of the request of the support from the MS and for the AP. They are thus meant to ensure the highest possible data quality of the information processed for purposes of operational analysis.

Given the impact of the processing and further exchange of operational personal data generated by QUEST+, the EDPS considers that only data that have been validated by an analyst and accepted for an AP should be included in QUEST+ searches. Any other personal data processed by Europol for purpose of operational analysis, in particular data which have not been assigned a Data Subject Categorisation, should be excluded from the searches. This is an important safeguard in order to comply with the principles of data minimisation and data accuracy under Article 28(1)(c) and (d) of the Europol Regulation. These principles are also explicitly recognised under Article 47(1)(c) and (d) of Regulation 1725/2018 to which Europol is subject under Article 27a of the amended Europol Regulation.

<sup>32</sup> QUEST requirement specification, QUEST V.2.1 (QUEST Plus extension, section 7.9: (Use case: Generate results for search request on EAS data), EDOC-#1160864-v7, page24.

The EDPS also notes that Article 20(2) of the Europol Regulation limits the scope of indirect access granted to MS on the basis of a hit/no hit system to information provided for the purposes of operational analysis under Article 18(2)(c) of the Europol Regulation. This constitutes an important restriction in terms of purpose limitation, which should be strictly implemented by Europol. This means that only data processed for purposes of operational analysis under Article 18(2)(c) of the Europol Regulation can be searchable through QUEST+. Processing of personal data for other purposes, such as under Article 18 (6) of the Europol Regulation, should be excluded. This article only allows Europol to process data for the purpose of determining whether the data are relevant to its tasks and if so, for which purposes. Both tasks and purposes may not be related to operational analysis.

The EDPS recommends that Europol limits QUEST+ searches to personal data that have been through the full extraction process, i.e. personal data which have been validated and accepted under the relevant AP in order to ensure compliance with the principles of data minimisation and data accuracy.

#### **3.4.4. Risk stemming from batch searches**

The EDPS notes that the QUEST Use and management policy indicates the possibility to perform batch searches<sup>33</sup> without specifying any limitation as regards the number of searches. He stresses that a former version of the policy, submitted in the context of Europol's prior consultation on QUEST, provided that the batch search functionality was limited to [REDACTED]. This limitation was also underlined by Europol as one safeguard to prevent duplicated copies of EIS at Member State level and bulk requests to EIS.<sup>34</sup> This safeguard is important to avoid that batch searches are used for 'fishing expeditions' by Member States (i.e. when a disproportionate number of queries are sent from a limited number of end users).

Europol should be able to justify that the deletion of specific safeguards would not reintroduce or increase such risk against which the measure was safeguarding. Europol may do so for instance through the introduction of another safeguard that would mitigate the risk at least in an equivalent level.

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<sup>33</sup> Page 10 of EDOC #907223v10.

<sup>34</sup> Point 3.4.2 of EDPS opinion of 26 January 2018 on the prior consultation regarding "Querying Europol Systems" (QUEST), EDPS Case 2017-0877

The EDPS recommends that Europol assesses the risk of excessive use by Member States of the system created by the possibility to perform batch searches.

## **4. CONCLUSION AND RECOMMENDATIONS**

The EDPS considers that QUEST+ constitutes a new type of processing that involves high risks to the rights and freedoms of data subjects, in particular considering the volume of data, their sensitivity and different levels of reliability, as well as the fact that they are made rapidly accessible leading to increased processing generated by the searches.

The EDPS is of the view that Europol has insufficiently described the processing operations and identified the specific risks related to the development of QUEST+. As a consequence, the EDPS is unable to make concrete proposals under Article 39(3) of the Regulation to ensure compliance of the envisaged processing with the Europol Regulation.

Nevertheless, the EDPS has identified high risks for the data subjects that need to be addressed in order to ensure compliance with the Europol Regulation and the amended Europol Regulation.

As a consequence, the EDPS recommends that Europol:

- Improves the documentation provided with the notification submitted for prior consultation in accordance with Article 39(2) of the Europol Regulation. Insufficiencies in the provided flowcharts and in the risk assessment performed, which does not address the specificities of the data processing activities, prevents Europol from identifying all risks linked to this new processing activities, creating risks of non-compliance with the Europol Regulation and with the amended Europol Regulation.
- Defines the risk linked to the processing of data about special categories of data subjects in order to ensure that the proposed mitigation measure correctly address the risk in order to ensure compliance with Article 30 of the Europol Regulation and of the amended Europol Regulation.
- Ensures that QUEST+ does not allow searches on personal data that have not been through the full extraction process, i.e. that have been validated and accepted under the relevant AP in order to ensure compliance with Article 28(1)(c) (principle of data minimisation) and (d) (principle of data accuracy) of the Europol Regulation and Article 27a(1) of

the amended Regulation and Articles 47 (1)(c) and (d) of Regulation 1725/2018.

- Define the risk linked to the use of batch searches and implement adequate mitigation measures in order to avoid an excessive use of the system by Member States and ensure compliance with Article 28(1)(a) (principle of lawfulness and fairness) of the Europol Regulation and Article 27a(1) of the amended Europol Regulation and Articles 47 (1)(a) of Regulation 1725/2018.

Done at Brussels, 29 July 2022

***[e-signed]***

Wojciech Rafał WIEWIÓROWSKI