



01 February 2022

EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

“Remarks at the LIBE Committee on Europo1”

Wojciech Wiewiórowski

European Data Protection Supervisor

I am here today to talk about the **recent decision** that the EDPS issued relating to the processing of large datasets by Europol. In this context, I will also share my views on the ongoing **negotiations on the reform** of the Europol Regulation.

As you know, on 3 January 2022, **the EDPS notified Europol of the decision** to delete data concerning individuals with no established link to a criminal activity (so-called Data Subject Categorisation).

In the context of its inquiry, that started in 2019, in September 2020, the **EDPS admonished** Europol for these practices. While most of the measures have been put in place by Europol since then, Europol did **not comply with the EDPS' requests to define an appropriate data retention period** to filter and to extract the personal data permitted for analysis. This means that Europol was keeping this data in breach of law.

In July 2021, the EDPS has formally requested Europol to implement retention periods. As the reply from Europol was not satisfactory, the EDPS decided, upon a careful analysis of the existing legislation in place, to use its corrective powers and to impose **a 6-month retention period** to filter and to extract personal data. Datasets older than 6 months that have not undergone the Data Subject Categorisation must be erased. As a result, Europol will no longer be permitted to retain extensively data about people who do not have an established link to a criminal activity.

In the spirit of **understanding practical needs** (such as potential existing backlog), the EDPS granted a 12-month period to comply with the Decision for the datasets received before this decision. Europol is asked to report every 3 months on the actions taken to implement the decision.

As we know, the work on the reform of the Europol Regulation, which does address, among others, the issue identified by the EDPS, are now entering into the final phase. With this in mind, I would like to make some observations on the developments and proposals put forward in order to achieve a political agreement.

I would like to stress **my serious concerns regarding the proposals tabled, which disregard the EDPS opinion** on this proposal, and most importantly against **the EDPS' recent exercise of supervisory powers**.

Certain proposals touch upon the main areas already commented by the EDPS in his Opinion issued last March, which was based on the premise that there can be no inherent conflict between public security and fundamental rights. However, some proposals have the potential **to interfere even more seriously with the fundamental right** to data protection, despite the fact that they are initially meant to address the risks identified by the EDPS.

First, the proposed article 18a means that the processing of large datasets **would be very broadly allowed** – without providing sufficient safeguards to limit the impact on data subjects and with the EDPS not being able to effectively assess it. Data of individuals with no established link to a criminal activity would be processed in the same way as data of suspects or convicts. While the EDPS has demonstrated an understanding of the approach initially proposed, (namely, to provide



for certain limited exceptions from the general rules on processing large datasets), **I note that this 'exceptional' derogation would actually become the rule for Europol.**

The EDPS submits that a stronger mandate of Europol should always come with stronger oversight. I therefore note with surprise that the extension of powers of Europol does not go hand in hand with strengthened scrutiny of the Agency's actions. The proposed rules would not even provide the EDPS with the tools it has towards other EUIs. *I regret that even though the latest proposals directly relate to the scope of the EDPS' powers concerning Europol, we have not been consulted by the Parliament, the Council and the Commission taking part in the ongoing trilogues.*

Last, but definitely not least. **The possibility that legislation is used to retroactively clear breaches already sanctioned by the EDPS constitutes a direct threat to its role as a supervisory authority.**

The **retroactive effect of the proposed legal provisions** is not only questionable in light of the foundational principle of legal certainty stemming from European Union law. It also appears **to be directly aimed at overriding, and depriving it of its effects, the EDPS' deletion order** notified to Europol, thus effectively undermining the EDPS' statutory role.

The impact on the right to personal data protection is further aggravated by the proposed retroactive effect given to the new provision allowing the processing of data of individuals with no established link to a criminal activity for as long as Europol supports an on-going specific criminal investigation carried out by a national law enforcement authority.

The European Union is proud to lead by example. In past years it has been continuously calling, in particular in the context of the rule of law debate (and especially in this chamber!), for the well-functioning checks and balances system. We shall not turn a blind eye now, when we discuss the relationships between the EU's own institutions and agencies.

