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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

*“13th meeting of the Joint
Parliamentary Scrutiny Group on
Europol”*

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Good morning.

I would like to share with you an update on the work done by the EDPS in the past 6 months.

First of all, I would like to draw your attention to the report of the annual inspection conducted at Europol HQ in December 2022. We focused our inspection on the processing of data about minors under 15 marked as suspects, which has been provided to Europol by international organisations and third countries' law enforcement authorities.

We performed checks at Europol, where we looked at how personal data of minors is assessed when Europol receives it. So, we are talking about for instance a SIENA message notifying Europol about a minor suspect on the radar of a third country, perhaps mentioning an arrest for property crime.

2 weeks ago, we issued our audit report and shared it with Europol. We found that the general process for the assessment of information provided by partners on minors is clear and well developed. At the same time, we consider that when Europol receives personal data from third Countries and international organisations, it must perform its own assessment on whether the data is lawful under the EU's legal system (which may have a higher threshold) and not rely exclusively on the assessment of its partners.

The EDPS has also concerns on whether Europol meets the threshold of 'strict proportionality' for the processing of data on minors suspected of minor infractions. In the context of the inspection, we found some cases where minors have only been involved in minor infractions, such as pickpocketing or shoplifting, albeit within the broader framework of an organised crime group. The EDPS considers that by attributing the same level of suspicion (in terms of classification) to minors as to the main organisers of the criminal activities, the nuances of their participation are not always duly acknowledged and thus may not meet the threshold of 'strict proportionality'.

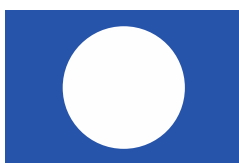
The report's executive summary is available on the EDPS website.

Speaking of the processing of data of minors. We believe the topic of minors involved in the criminal justice system is particularly important given the increased vulnerability of young individuals and the potential long-term negative impacts they could face if they engage with the criminal justice system during their formative years.

Already in 2018, the EDPS conducted an inspection over the processing of data about minors at Europol, which showed that - given the complexity of the different national legal frameworks regarding the definition of the minimum age of criminal responsibility - it was difficult for Europol to give assurances that data provided by national authorities are always transmitted lawfully and are accurate. It made us think about a coordinated supervision with national authorities, in particular of minors under 15 marked as suspects in order to ensure that they have reached the minimum age of criminal responsibility and could be considered as suspects.

As a consequence, in 2020, we launched a coordinated action with national Data Protection Authorities in the EU. We all know that the processing at EU level by Europol cannot be dissociated from the processing at national level (end-to-end). The goal is to make sure that these minors under 15 years can rightly be considered as suspects and that their data can lawfully be shared with Europol.

In the context of this action, the EDPS asked Europol for statistics to have a list of minors processed in that context and to know from which EU Member State the data comes from. We then shared this information with the concerned EU Member States, which conduct checks at national level. This means that by acting together, we are able to capture all of the personal data on these types of minors that are sent to Europol and verify the lawfulness of their processing.



This is a good example of the pan-European cooperation, which is premised on the active involvement of the national DPAs. I would like to bring this in particular here, in JPSG, where - similarly - both national and EU perspective is jointly present to exercise oversight.

The EDPS has also advised Europol on another new processing operation involving the processing of minors' data at Europol.

Specifically, the EDPS issued an Opinion regarding Europol's plans for more automated processing of data from the United States NCMEC for further dissemination to EU Member States. As you are all aware, NCMEC reports are a source of extremely large quantities of child-abuse material reports, which by definition concern extremely sensitive information about minors. The EDPS remains extremely careful about how these minors' data is further processed.

In my Opinion on the automated processing of NCMEC data, I focused on the reliability of the information received by Online Service Providers, which remains self-reported both by the platforms, but also by the platform users who create accounts. Potential gaps in reliability have obvious repercussions for the accuracy of the data, which Europol retains in its systems for purposes of operational analysis.

The EDPS analysed this process in depth, taking into account that being incorrectly marked as a distributor or owner of child sexual abuse material in a law enforcement database can have severe consequences for an individual, including potentially irreparable damage to private and professional relationships. One of the main recommendations of this Opinion related therefore to the need to ensure efficient feedback from the EU Member States on the accuracy of the data during or after the conclusion of the investigation.

In addition to protecting vulnerable data subjects, we are also putting renewed strategic focus on data subject rights.

The right of access is an extremely important safeguard because it enables an individual to exercise an essential right provided by the EU Charter to verify that data processed about them is accurate and processed lawfully. In a law enforcement context, not only are the implications of unlawful processing potentially much more severe for individuals but it is also more likely that limitations to the right of access will be imposed for reasons of public order and public security.

I therefore consider it a core task for the EDPS to ensure that those restrictions are applied correctly and proportionately, and to undertake any necessary checks on the lawfulness of processing on behalf of data subjects. This is why the EDPS is prioritising the investigation of complaints, and has streamlined its procedures to ensure more rigorous investigations, including systematic onsite checks and close cooperation with national data protection authorities.

As already reported in this forum, the amended Europol Regulation implies a significant increase in unstructured data contained in Europol's systems and hence a significant increase in the data subjects whose data are going to be processed by the agency. Our on-site checks at Europol's systems in the context of complaint investigations confirmed that specific parts of the systems are not searched as part of Europol's checks in response to access requests. Therefore, the EDPS opened an investigation in order to assess how Europol could implement a feasible solution to ensure both the need to protect public security and fully implement data subjects' rights, in line with applicable laws.

To conclude, as part of the supervision of Frontex, the EDPS will make an on-site check at Europol to see how the data sent by Frontex, in the context of debriefing interviews, is processed there. This shows that in the environment of growing exchange of data, including between EU agencies, supervisory actions cannot be limited to one entity, and become more of a "follow a process" exercise. I bring this to your attention to illustrate that checking something does not necessarily mean the activity is addressed at the entity being checked.

