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Sent at: 31/05/22 12:02:24

Subject: @EXT: Case 2022-0454 Consultation on Europol's MB
Decisions

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Dear [REDACTED]

Please find enclosed the new versions of the Europol MB draft decisions. The password will follow by the agreed alternative means of communication.
Please confirm the receipt in good order.

Regarding the online meeting on 07/06/2022, would you please let us know your earliest availability on Tuesday afternoon, so I can proceed with the further arrangements.

Thank you and kind regards,

[REDACTED]
Data Protection Function
www.europol.europa.eu

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EDOC-#1226443-v7-2b_DRAFT_Management_Board_decision_on_the_conditions_related_to_the_processing_of_data_on_the_basis_of_Article_18(6)_of_the_Europol_Regulation.DOCX

EDOC-#1226444-v6-2a_DRAFT_Management_Board_Decision_on_the_conditions_related_to_the_processing_of_personal_data_on_the_basis_of_18(2)_of_the_Europol_Regulation.DOCX

EDOC-#1226445-v7-2c_DRAFT_Management_Board_Decision_on_the_conditions_related_to_the_processing_of_personal_data_on_the_basis_of_Article_18(6a)_of_the_Europol_Reg.DOCX

EDOC-#1226447-v5-2d_DRAFT_Management_Board_Decision_on_the_conditions_related_to_the_processing_of_personal_data_on_the_basis_of_Article_18a_of_the_Europol_Regula.DOCX



The Hague, 23 May 2022

EDOC#1226447v5

DRAFT

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 2022/.... 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 73** thereof;

Having regard to the proposal by the Executive Director;

Whereas the European Data Protection Supervisor ("**EDPS**"), was consulted on the draft decision; ~~on...~~

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 specific** 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 personal data to Europol, Member States, the EPPO, Eurojust and third countries shall determine the purpose(s) for which Europol may process the data. Where they have not indicated this specifically, Europol shall determine the appropriate purpose in consultation with the data provider concerned.**
2. When providing investigative data to Europol in accordance with Article 18a of the Regulation, Member States, the European Public Prosecutor's Office, Eurojust and third countries, **where relevant and applicable**, 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 whether the investigative data are provided in the context of an ongoing **specific** criminal investigation in one or more Member States **that Europol supports or is requested to support 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, Europol will request the data providers to confirm every six months that the investigation is still ongoing, at the same time as the confirmation referred to in Article 6(1).**
3. 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 **as** listed in Annex II of the Regulation for the personal data provided are identified or not.
4. Personal data for which the categories of data subjects **as** listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph **23**, shall be processed in accordance with Article 18a of the Regulation and with this Decision. They shall be **kept** functionally separated from other data by being labelled as "DSC not completed". These data shall only be accessible in accordance with Article 4 and the labelling shall be clearly visible to those having access to the data.
5. In case Europol considers, following the verification mentioned in paragraph **23**, that for personal data the categories of data subjects **as** 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.
- 6. 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 shall inform Europol thereof.**

Article 2bis

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

- 1. When the data providers have indicated the investigative data are provided in the context of an ongoing specific criminal investigation, they shall indicate whether Europol should 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 provide the exceptional operational or urgent circumstances justifying this request.**
2. Europol shall **also** assess whether it is **not** possible to support the specific criminal investigation, ~~either by way of operational analysis or by way of cross-checking as referred to in Article 18a (1) (i) and (ii),~~ without processing personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. In case Europol assesses that this is not possible, it shall record **the results of** the assessment. Europol shall send the results of this assessment to the EDPS for information when Europol ceases to support the related specific criminal investigation **in accordance with Article 6. Such assessment shall consider whether the support will be provided in a specific Europol case for which the purpose as well as the specific conditions for processing are clearly defined.**
- 3. Europol shall report every six months to the EDPS the total number of contributions per data provider, the number of verifications in accordance with Article 2(3), the progress in identifying the categories of data subjects as listed in Annex II of the Regulation and the number of contributions deleted.**
- 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 3

Additional requirements for Personal data provided by third countries

- 1. When providing personal data to Europol, third countries, as referred to in Article 25(1) of the Regulation shall determine the purpose(s) for which Europol may process the data. Where they have not indicated this specifically, Europol shall determine the appropriate purpose in consultation with the third country concerned.**
2. Where a third country 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 **acquired 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 that in accordance with the applicable provisions in this regard contained in the agreements referred to in Article 25(1) of the Regulation.**
3. 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 ~~reaches the conclusion~~ **reaches the conclusion** that there is an indication that such data are manifestly disproportionate or were collected in obvious violation of fundamental rights, Europol

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shall not process them ~~m data further~~ and shall delete them ~~m data~~. **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.**

4. Where a third country provides investigative data to Europol, the Data Protection Officer may, where **appropriate relevant**, notify the EDPS **thereof**.

Article 4 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 **and only for the purpose of such processing**. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data ~~for~~ **for which they have a 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 **46** of Article 18a of the Regulation and Article 3 of this Decision ~~may only 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.**

Article 5 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 ~~or private persons~~, except where 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.
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 6 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(21a) of the Regulation, according to which the provider shall inform Europol ~~when it is no longer its authorisation~~ to process that data in the specific **ongoing** criminal investigation in accordance with procedural requirements and safeguards under the applicable law ~~has ceased to exist~~. **In this context, Europol shall request the data providers to confirm this authorisation every six months.**
 2. **As soon as the data provider confirms that the investigation is no longer ongoing in accordance with Article 2(2) or when the data provider confirms, in accordance with paragraph 1, that it is no longer authorised to process the investigative data,** Europol shall delete such investigative data without prejudice to a possible storage of the data in accordance with Article 7. **Europol shall also delete the data if no response is received in either of these cases.**
- 2bis** Where Europol, ~~after having processed personal data in accordance with Article 5,~~ concludes that the data does not comply with the requirements of Article 18(5) of the Regulation, it shall delete such investigative data without prejudice to a possible storage of the data in accordance with Article 7.
3. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the deletion.

Article 7 Storage for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process

1. Before deleting the investigative data upon expiry of the time limits stipulated in Article 6, **Member States may request** Europol ~~may~~ to store ~~the specific~~ investigative data and the outcome of its processing **of those data** beyond the processing period determined by such time limits for the ~~sole~~ 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 States 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. ~~Without prejudice~~ **In accordance with** Article 4, 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

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shall be identified by means of **a** specific authorisation process in accordance with Article 4.

4. As soon as Europol is notified about the termination of the relevant judicial proceedings, it shall delete 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 deletion of the data.
5. **Personal data stored for the purpose of this Article shall be further functionally separated and will only be strictly accessible by specifically designated staff referred to in paragraph 3.**

Article 7bis **Review**

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

Article 8 **Entry into force**

This Decision shall enter into force **on the day of its adoption.**

Done at Lille on [date].

For Europol,

Chairperson of the Management Board



The Hague, 24 May 2022

EDOC #1226444v6

DRAFT

Management Board Decision on the conditions related to the processing of personal data on the basis of 18(2) of the Europol Regulation¹

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/... and 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'), as amended, hereafter referred to as "the Regulation", and in particular, Articles 11(1)(q) and 18 thereof;

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

Whereas this Decision aims to replace the Management Board Decision adopting the guidelines further specifying the procedures for processing of information in accordance with Article 18 of the Europol Regulation of 13 December 2017, which as a consequence should be repealed;

Having regard to the proposal by the Executive Director;

Whereas the European Data Protection Supervisor (**'EDPS'**) was consulted on the draft decision ~~on~~

HAS DECIDED AS FOLLOWS:

¹ **This Decision also implements Articles 20(2a), 33a(2)(b), 33a(3) and 26(2) of the Regulation.**

Article 1 Scope

This Decision shall apply to the processing of personal data for the purposes listed in Article 18(2) of the Regulation.

Article 2 Personal data provided by the Member States, Unions bodies, international organisations and third countries

1. **When providing personal data to Europol, Member States, Union bodies, third countries and international organisations shall determine the purpose(s) for which Europol may process the data. Where a provider has not indicated this specifically, Europol shall determine the appropriate purpose in consultation with the data provider concerned.**
2. When providing personal data to Europol, Member States, third countries and, where applicable, Union bodies, shall indicate, where **required relevant and applicable for the purposes listed in Article 18(2) of the Regulation**, whether the contribution contains personal data for which the categories of data subjects are not yet identified on the basis of the information provided. Member States, Eurojust, European Public Prosecutor's Office and third countries shall also indicate whether the data is provided in order to support an ongoing **specific** criminal investigation in one or more Member States that Europol supports or is requested to support.
3. Upon receipt of personal data Europol shall verify, on the basis of this indication and the information provided, whether the categories of data subjects **as** listed in Annex II of the Regulation for the personal data provided are identified. Personal data for which the categories of data subjects are identified shall be processed in accordance with Article 18(2) of the Regulation and this Decision. **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 shall inform Europol thereof.**

3bis. The verification mentioned in paragraph 3 shall be logged following the standard logging, auditing and control mechanisms in accordance with Article 40(1) of the Regulation.

4. Personal data for which the categories of data subjects **as** listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph **23**, shall be processed in accordance with Articles 18(6a) or 18a of the Regulation and their respective implementing Management Board Decisions. **Europol shall inform the provider of the data of the outcome of the verification mentioned in paragraph 3.**

Article 3 Personal data provided by ~~international organisations~~, private parties, private persons or retrieved directly by Europol from publicly available sources

1. When receiving personal data from ~~international organisations~~, private parties **or**, private persons, or when personal data is retrieved directly by Europol from publicly available sources, including the internet and public data, Europol shall verify, where required for the purposes listed in Article 18(2) of the Regulation,

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whether the categories of data subjects **as** listed in Annex II of the Regulation are identified, on the basis of the information provided or retrieved.

2. Personal data received by Europol from ~~international organisation~~, private parties, private persons or when personal data is retrieved directly by Europol from publicly available sources, including the internet and public data, for which the categories of data subjects are identified in accordance with Annex II of the Regulation, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(2) of the Regulation and this Decision.
3. Personal data for which the categories of the data subjects **as** listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Articles 18(6a) or 18a of the Regulation and their respective implementing Management Board Decisions.

Article 4 Processing for the purpose of cross-checking

1. Europol may process personal data for the purpose of cross-checking in accordance with Article 18(2)(a) of the Regulation, with the aim to identify connections or relevant links between information related to:
 - a) persons who are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who have been convicted of such an offence,
 - b) persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences in respect of which Europol is competent.
2. Personal data submitted for cross-checking in accordance with Article 18(2)(a) of the Regulation is processed with a view to enabling the comparison against other data sets. This can be by means of systematic **checks, also** automated checks by the system, ~~for instance against data that is submitted to an operational analysis project. The personal data received for the purpose of cross-checking is, subject to any restrictions and conditions imposed by the data provider thereof, also made available for searching in accordance with Articles 20-21 of the Regulation which facilitates the identification of possible links with other data.~~

Article 5 Processing for the purpose of analyses of a strategic or thematic nature

1. Europol may process personal data for the purpose of analyses of a strategic or thematic nature in accordance with Article 18(2)(b) of the Regulation. Such processing shall aim to give an insight and better understanding of crime and criminal trends in general ~~and also should enable decisions at a strategic level to influence the criminal developments in question.~~
2. Even though personal data may be used for processing for the purpose of strategic and thematic analysis, the results of such analysis ~~do~~ **shall** not contain any references s to concrete data subjects.

3. Unless explicitly stated otherwise, all contributions to a specific operational analysis project **as well as data submitted for cross-checking under Article 18(2)(a)**, shall be deemed also to be submitted for the purpose of strategic and thematic analysis.

Article 6

Processing for the purpose of operational analyses

1. Europol may process personal data for the purpose of operational analysis in accordance with Article 18(2)(c) of the Regulation. Such processing shall aim to support **criminal investigations and criminal intelligence operations** through all methods and techniques by which information is collected, stored, processed and assessed.
2. The processing for operational analysis shall only take place within the context of operational analysis projects. An operational analysis project is a platform in which operational analysis can be conducted to support international criminal investigations and criminal intelligence operations against specific targets. The scope of such a platform can, in particular, be a crime area covering one or more types of crime; it can relate to a geographical dimension, or it can focus on particular crime structures, phenomena or incidents that due to their size, complexity or impact require a dedicated approach.
3. Operational analysis projects shall be created, **in consultation with the HENUs**, by a Decision of the Executive Director, which may be delegated to the responsible Deputy Executive Director. The Management Board and the European Data Protection Supervisor shall be informed of the Decision opening such an operational analysis project.
4. The Decision opening an operational analysis project shall specify:
 - a) The specific purpose for which it is set up;
 - b) The categories of personal data which may be processed, and where it concerns personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and processing of genetic data or data concerning a person's health or sex life, the reason why the inclusion of such data is considered to be strictly necessary and proportionate for the purposes of the project concerned;
 - c) The categories of data subjects which may be processed, and where it concerns victims, witnesses or minors, the reason why the inclusion of such data is considered to be strictly necessary and proportionate for the purposes of the project concerned;
 - d) The participating Member States and associated third parties of the operational analysis project;
 - e) Specific conditions for storage, access, transfer and use of the personal data, where these are stricter than the generally applicable provisions to the processing of personal data in general under the Regulation or this Decision.
5. The Executive Director, and by delegation the responsible Deputy Executive Director, may decide, **in consultation with the HENUs**, to close an operational analysis project, or amend the decision opening the project, including the changing of categories, its purpose, its scope, its members or its extension. The

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Management Board and the EDPS shall be informed of any such Decision to amend or close a project.

6. The Management Board may instruct the Executive Director to modify the Decision opening or amending an operational analysis project. The Management Board may also instruct the Executive Director to close a project.
7. The EDPS may address any comment on the opening, closure or amendment of an operational analysis project it deems necessary to Europol as controller of the data processing. Europol shall promptly inform the Management Board of any such comments received from the EDPS and seek without any undue delay to implement, in consultation with the Management Board any recommendations made by the EDPS in relation to the opening, closure or amendment of an operational analysis project.
8. Where it becomes apparent that personal data provided for operational analysis in one operational analysis project may be relevant for another operational analysis project, Europol may use it in that other project; however, further processing of that personal data shall only be permitted in so far as such further processing is necessary and proportionate, and the personal data **comply are compatible** with the conditions applicable to the other operational analysis project. In such cases, Europol shall inform the data **owner provider** without undue delay of its decision to use it in the other operational analysis project.² The justification for such use in another operational analysis project shall be duly documented.
9. All Member States shall be invited to participate in an operational analysis project at the moment of setting up the project. Member States can inform Europol of their intention to participate at the moment of setting up the project or at a later stage.
10. Union bodies, third countries and international organisations, with whom the exchange of personal data is permitted under any of the provisions of Chapter V of the Regulation, may be invited to be associated to a certain operational analysis project if the purpose of the project is relevant to them or if the data processed in the project concerns them and if agreed by all participating Member States. Notwithstanding the possibilities to exchange personal data with private parties under Article 26 of the Regulation, private parties and private persons may not be associated to an operational analysis project.
11. Europol shall develop and implement, in close collaboration with the ~~Management Board and the~~ HENUs, a procedure for the transmission and acceptance of information in operational analysis projects. **This procedure shall eventually be submitted to the Management Board for approval.** This procedure shall specify:
 - a) that contributions shall indicate for which operational analysis project or projects the information is intended. Where the data **owner provider** has not indicated this explicitly, Europol shall determine the appropriate destination in consultation with the data **owner provider** concerned.
 - b) that contributions shall be in accordance with the categories of personal data and data subjects as specified in the decision opening the operational analysis project.

² In the event that the data provider does not agree with the use of the data in the other operational analysis project, then it can restrict its use in accordance with Article 19.2 of the Regulation and inform Europol of such restriction.

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- c) that, unless explicitly stated otherwise, all contributions to a specific operational analysis project shall be deemed to be submitted for the purpose of operational analysis.
 - d) that if Europol believes, after appraisal, that personal data provided by Member States, Union bodies, third countries and international organisations for an operational analysis project is incorrect, inaccurate, no longer up to date or should not have been transmitted, it shall without undue delay inform the **data provider owner**, which shall provide its position on the matter, and take appropriate action, including restricting the processing of the personal data deemed incorrect, inaccurate or no longer up to date ensuring they can no longer be processed with the exception of storage.
12. Prior to the closure of an operational analysis project, Europol and the **providers** of the information contained within it, shall agree on the further retention and, where needed, appropriate reallocation of purpose or allocation to different operational analysis project(s), or destruction of said information. Where no agreement on individual contributions of personal data can be found, the personal data shall be deleted by Europol.

Article 7

Processing for the purpose of facilitating the exchange of information

1. Europol may process personal data for the purpose of facilitating the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties in accordance with Article 18(2)(d) of the Regulation. Europol may enable the use of its infrastructure for that purpose.
2. Where these exchanges exclude Europol, **its infrastructure may still be used for that purpose** and **these exchange** shall take place under the responsibility of the entities concerned and in accordance with their law. This applies in particular to those exchanges of information that fall outside of Europol's mandate. The security of such exchanges shall be ensured in accordance with Article 91 of Regulation (EU) 2018/1725.
3. Paragraphs 1 and 2 of this Article may also include automated processes.
4. The exchange of information under this Article shall be without prejudice to the role and responsibilities of the Europol national units as prescribed in Article 7 of the Regulation.
5. Europol, the Member States, Union Bodies, third countries, international organisations and private parties shall each take up their respective responsibilities in terms of information security and take appropriate measures to enforce it.
6. Europol shall follow its operational priorities, in consultation with **the its** Management Board, when deciding which third country, international organisation, other Union bodies or private party shall receive access to Europol's infrastructure for this purpose.

Article 8

Processing for the purpose of research and innovation projects

1. Europol may process personal data for the purpose of research and innovation projects regarding matters covered by the Regulation for the development, training, testing and validation of algorithms for the development of specific tools, and other specific research and innovation projects relevant **to achieve for the achievement of the Europol's** objectives set out in Article 3 of the Regulation, in accordance with Article 18(2)(e) of the Regulation.
2. **Where if** necessary to achieve the objectives of Europol's research and innovation projects, **the** processing of personal data for the purpose of research and innovation, as referred to in paragraph 1, shall be carried out only **by means in the context** of research and innovation projects with clearly defined purposes and objectives. These projects will be subject to the additional safeguards provided for in Article 33a of the Regulation.
3. The Management Board shall define, ~~at regular intervals,~~ the general scope for the research and innovation projects that Europol can establish in accordance with Article 33a(3) of the Regulation **in a binding document by defining the overall strategic objectives, goals and subject matters to be addressed by the research and innovation projects. The document shall be updated where appropriate and made available to the EDPS for the purpose of its supervision.**
4. In accordance with the procedure outlined in 33a(2)(cb), the Management Board shall be consulted prior to the launch of those research and innovation projects which are **not yet covered by not included in** the binding general scope for the research and innovation projects of Europol decided by the Management Board in accordance with paragraph 34 of this Article. For research and innovation projects within that scope, the Management Board shall only be informed.

Article 9

Processing for the purpose of supporting Member States, upon their request, in informing the public about wanted suspects or convicted individuals

1. Europol may process personal data for the purpose of supporting the Member States, upon their request, in informing the public about suspects or convicted individuals who are wanted **on the basis of based on** a national judicial decision relating to a crime ~~inal that falls within Europol's objectives offence in respect of which Europol is competent,~~ and facilitating the provision **by the public** of information **on those individuals**, to the Member States and Europol ~~by the public on these individuals~~ in accordance with Article 18(2)(f) of the Regulation.
2. ~~Europol shall further specify~~ The conditions for the processing of personal data according to this article **shall be further specified in a Decision by the Management Board and shall in a policy document. The policy shall** at least specify the technical means used to inform the public, the access management as well as the content management, including criteria for the selection of suspects or convicted individuals and for data quality as well as data retention requirements. **Until that Decision is taken by the Management Board, the "Policy on the use of the EU Most Wanted Platform"³ as approved by the Deputy Executive Director of Europol Operations Directorate on 24 August 2015 remains valid provisionally.**

³ EDOC #828583v8

Article 10
Access to the data for Europol staff

- 1. Notwithstanding Article 10bis of this Decision,** only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(2) of the Regulation. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data which they need to know for the performance of their duties and without prejudice to security requirements in accordance with Article 67 of the Regulation.
- 2. Access to personal data referred to in Article 30(1) and (2) of the Regulation shall be authorised by the Executive Director to only a limited number of Europol staff and only when such access is strictly necessary for the performance of their duties.**

Article 10bis

Access by Member States and Europol staff to information stored by Europol in accordance with Article 20(2a) of the Regulation

In the framework of operational analysis projects referred to in Article 18(3) of the Regulation and subject to the rules and safeguards for personal data processing set out in the Regulation, Member States may determine information to be made directly accessible by Europol to selected other Member States for joint operational analysis in specific investigations, without prejudice to any restrictions indicated pursuant to Article 19(2) of the Regulation. The procedures and conditions for this joint operational analysis shall be further specified in a Decision by the Management Board.

Article 11
Time limits for processing

Europol may store personal data processed under this Decision only for as long as is necessary and proportionate for the purposes for which the data are processed as outlined in Articles 4 to 9 of this Decision and in accordance with the time limits and conditions as set out in Article 31 of the Regulation.

Article 11bis

Forwarding personal data received directly from private parties to national units concerned

- 1. Where Europol receives personal data directly from private parties, Europol shall forward the personal data and any relevant results from the necessary processing of those data for the purpose of establishing jurisdiction immediately to the national units concerned in accordance with Article 26(2) of the Regulation.**
- 2. A Member State of establishment of a private party may choose to be considered per default or only for certain forms of crime or for certain private parties as 'national unit concerned' for the purpose of the**

forwarding of the data as outlined in paragraph 1, in which case that Member State shall inform Europol thereof.

**Article 12
Replacement and repeal**

The Management Board Decision adopting the guidelines further specifying the procedures for processing of information for the European Law Enforcement Agency in accordance with Article 18 of the Europol Regulation of 13 December 2017⁴ is hereby replaced and repealed with effect from the date of entry into force of this Decision.

**Article 12bis
Review**

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

**Article 13
Entry into force**

This Decision shall enter into force on the day of its adoption.

Done at Lille, on [date].

For Europol,

Chairperson of the Management Board

⁴ EDOC #832397v36.



The Hague, 24 May 2022

EDOC #1226445v7

DRAFT

Management Board Decision on the conditions related to the processing of personal data on the basis of Article 18(6a) of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/.... 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, Article 18(6a) and 18(6b) thereof;

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

Whereas Europol may receive personal data, without the request for support for a specific criminal investigation, that might not fall into the categories of data subjects set out in Annex II of the Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects;

Having regard to the proposal by the Executive Director;

Whereas the European Data Protection Supervisor (**'EDPS'**) was consulted on the draft decision ~~on...~~

HAS DECIDED AS FOLLOWS:

Article 1 Scope

This Decision shall apply to the processing of personal data, received or retrieved by Europol pursuant to paragraphs 1 or 2 of Article 17 of the Regulation, for which the categories of the data subjects are not yet identified in accordance with Annex II of the Regulation, as referred to in Article 18(6a) of the Regulation. **This decision shall not apply to data transmitted to or accessible by Europol in accordance with Article 8(4), Article 18(2), point (e), Article 18a, and data processing pursuant to Article 26(6c), where Europol's infrastructure is used for bilateral exchanges of personal data and Europol has no access to the content of the data.**

Article 2 Personal data provided by the Member States, Union bodies, international organisations and third countries

1. **When providing personal data to Europol, Member States, Union bodies, third countries and international organisations, shall determine the purpose(s) for which Europol may process the data. Where a provider has not indicated this specifically, Europol shall determine the appropriate purpose in consultation with the data provider concerned.**
2. When providing personal data to Europol, Member States, third countries and Union bodies, shall indicate, **after having provided the purpose(s) in accordance with paragraph 1 where relevant and where applicable,** whether the contribution contains personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. Member States, Eurojust, the European Public Prosecutor's Office and third countries shall also indicate whether the data are provided in the context of an ongoing **specific** criminal investigation in one or more Member States that Europol supports or is requested to support.
3. Upon receipt of personal data, Europol shall verify, on the basis of this indication **received in accordance with paragraph 1** and the information provided, whether the categories of data subjects **as** listed in Annex II of the Regulation for the personal data provided are identified or not.

3bis. This verification shall be logged following the standard logging, auditing and control mechanisms in accordance with Article 40(1) of the Regulation.

4. In case Europol considers, following the verification mentioned in paragraph 2, that for personal data the categories of data subjects **as** 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. **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 shall inform Europol thereof.**
5. Personal data for which the categories of data subjects **as** 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 18(6a) of the Regulation and this Decision. They shall be **kept** functionally separated from other data by being labelled as "DSC not completed". These data shall only be accessible in accordance

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with Article **54** and the labelling shall be clearly visible to those having access to the data.

Article 3

Personal data provided by ~~international organisations~~, private parties and private persons

1. Upon receipt of personal data from ~~international organisations~~, private parties and private persons, Europol shall verify, on the basis of the information provided, whether the categories of data subjects **as** listed in Annex II of the Regulation are identified or not.
2. In case Europol considers, following the verification mentioned in paragraph 1, that for personal data the categories of data subjects **as** 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.
3. Personal data for which the categories of data subjects **as** listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(6a) of the Regulation and this Decision and shall be **kept** functionally separated from other data by being labelled as "DSC not completed". The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

Article 4

Personal data retrieved by Europol from publicly available sources

1. Upon retrieval of personal data from publicly available sources, including the internet and public data, under Article 17(2) of the Regulation, Europol shall verify, on the basis of the information retrieved, whether the categories of data subjects **as** listed in Annex II of the Regulation are identified or not.
2. In case Europol considers, following the verification mentioned in paragraph 1, that for certain personal data retrieved by Europol from publicly available sources for which the categories of data subjects **as** 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.
3. Personal data for which the categories of the data subjects **as** listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(6a) of the Regulation and with this Decision and shall be **kept** functionally separated from other data by being labelled as "DSC not completed". The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

Article 5

Access to data for Europol staff

1. Only trained and duly authorised Europol staff members shall have access to the personal data for which the categories of the data subjects are not yet identified and which are processed by Europol pursuant to Article 18(6a) of the Regulation. The Executive Director shall identify specifically which staff members will

have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

- 2. Europol shall implement appropriate technical and organisational measures in order to ensure and verify, at regular intervals, that the processing of personal data under this Decision is limited to the use as defined in Article 6.**

Article 6 Use of the data

1. Europol may temporarily process personal data subject to this Decision for the sole purpose of determining whether such data ~~comply are in compliance~~ with ~~the requirements of~~ Article 18(5) of the Regulation. The processing ~~may shall~~ include checking the data against other data which are processed by Europol in accordance with Article 18(5) of the Regulation, in order to identify whether personal data matches with the data Europol already processes under the Regulation, with the aim to identify the categories of data subjects in accordance with Annex II of the Regulation.
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 processed in accordance with Article 18(2) of the Regulation.
3. Personal data for which the categories of data subject are not yet identified in accordance with Annex II of the Regulation may not be transferred to Member States, Union bodies, third countries, international organisations, or private parties, ~~or private persons~~.
4. Personal data for which the categories of data have been identified in accordance with Annex II of the Regulation, as a result of processing ~~as~~ mentioned in paragraph 1, shall be further processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
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 shall only~~ process personal data in accordance with Article 6(1) for an initial period of up to 18 months from the moment Europol ~~ascertains that those data fall within its objectives receives or retrieves the personal data, without prejudice to the period of processing under as stipulated in~~ Article 18(6) of the Regulation, if applicable. This period may be extended in justified cases for a longer period where necessary for the purpose outlined in Article 6(1), but in any case it may not exceed ~~a the maximum~~ period of ~~three~~ **3** years.
1bis. When considering the extension of the temporary processing period up to a maximum of 3 years, Europol shall describe the evolving criminal intelligence picture and define reasonable grounds or factual indications for believing that a prolongation not exceeding a total processing period of

three years will facilitate the determination of compliance with Article 18(5) of the Regulation.”

2. **When Europol has decided it is necessary** to extend the temporary processing period beyond the initial period of 18 months, Europol shall **inform provide** the European Data Protection Supervisor **the justification referred to in paragraph 1bis.**
3. Where **ren** Europol concludes that personal data, after having processed the data in accordance with Article 6, **does not comply are not in compliance** with **the requirements of** Article 18(5) of the Regulation or the maximum **processing** period **for of the** data **processing** referred to in paragraph 1 of this Article has expired, including any extension if applicable, Europol shall delete that data.
4. In the cases mentioned in paragraph 3, Europol shall **notify inform** the provider of **theose** data, **where relevant**, prior to the deletion.

Article 8 **Review**

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

Article 98 **Entry into force**

This Decision shall enter into force on the day of its adoption.

Done at Lille on [date].

For Europol,

Chairperson of the Management Board



Management Board

The Hague, 24 May 2022

EDOC #1226443v7

DRAFT

Management Board Decision on the conditions related to the processing of data on the basis of Article 18(6) of the Europol Regulation

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/... 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), hereafter "the Regulation", and in particular, Article 18(6) **and Article 18(6b)** thereof,

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

Having regard to the proposal by the Executive Director,

Whereas the European Data Protection Supervisor ('EDPS') was consulted on the draft decision, ~~on...~~,

HAS DECIDED AS FOLLOWS:

Article 1 Scope

This Decision shall apply to the processing of personal data received or retrieved by Europol under Articles 17(1) and 17(2) of the Regulation for the purpose of determining whether such data are relevant to Europol's tasks. This processing shall occur, if necessary, prior to the processing pursuant to Articles 18a, 18(6a) ~~or~~ **and** Article 18(2) of the Regulation.

Article 1 bis Provision of data

When providing personal data to Europol, Member States, Union bodies, third countries and international organisations, may determine that the personal data are provided for the purpose of Article 18(6) of the Regulation. Where a provider

has not indicated this specifically, Europol, if required, can process the provided data for the purpose of determining whether such data are relevant to Europol's tasks, prior to the processing pursuant to 18(6a) or Article 18(2) of the Regulation.

Article 2 **Access to data for Europol staff**

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(6) of the Regulation and this Decision. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

Article 3 **Use of the data**

1. ~~Without prejudice to Article 22 of the Regulation, p~~Personal data processed by Europol under this Decision shall only be used for the sole purposes of determining whether such data are relevant for Europol's tasks, and if so, for which of the purposes referred to in Article 18(2) of the Regulation **in consultation with the provider of the data if necessary.**
2. **Europol shall determine whether the personal data are relevant for Europol's tasks on the basis of Europol's objective defined in Article 3 of the Regulation.**
3. Where Europol determines that the personal data are relevant to its tasks and can be processed pursuant to ~~Articles 18a, 18(6a) or pursuant to one or more of the purposes referred to in~~ Article 18(2) of the Regulation, Europol shall inform the provider of the data about the allocation of the identified purpose(s) **if needed and without prejudice to the determination of the purpose in accordance with Article 19(1) of the Regulation.**

Article 4 **Time limit for the processing**

1. A decision on the use of personal data in accordance with Article 3(~~32~~) shall be taken as soon as possible and in any case no later than six months ~~after such data were received or retrieved from the receipt of those data~~ by Europol.
2. In the absence of a decision mentioned in paragraph 1, upon expiry of the six-month period, Europol shall delete such personal data.
3. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the deletion.

Article 5
Review

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

Article 65
Entry into force

This Decision shall enter into force on **the day of its adoption [date]**.

Done at Lille, on [date].

For Europol,

Chairperson of the Management Board