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Sent at: 19/04/21 16:26:45
Subject: Our ref.: 2019-0370 - D(2021) 0882

Dear Madam,

Please find attached a letter signed electronically by Mr Wojciech Rafał WIEWIÓROWSKI for the above mentioned subject.

[REDACTED]

Kind regards,

EDPS Secretariat



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WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

Ms Catherine DE BOLLE
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Brussels, 19 April 2021

WW/JP/amp/D(2021) 0882 C 2019-0370
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Subject: EDPS Decision on the own initiative inquiry on Europol's big data challenge - Europol progress report

Dear Ms De Bolle,

Thank you for your letter of 17 March 2021, in which you share the progress report detailing the state-of-play of the Action Plan addressing point 5.8 of the EDPS Decision of 17 September 2020 relating to the own inquiry on Europol's big data challenge.

Let me first show my appreciation for the timely submission of the progress report, and for the inclusion of a risk assessment, as requested by the EDPS in the letter of 4 December 2020. I welcome the headway Europol is making to implement the set of safeguards laid down in the Action Plan of 17 November 2021. The implementation of a reinforced data quality monitoring structure, and the technical adaptations for flagging and labelling large datasets without a Data Subject Categorisation ("DSC") are important improvements to mitigate the risks of processing large datasets.

Having carefully assessed the measures and clarifications detailed in the progress report, the EDPS continues however to have serious concerns relating to data minimisation and retention of datasets lacking a DSC. In the interest of addressing those concerns, we would like to provide specific feedback on a number of points, which require further attention. These are detailed as follows, under the five action areas described in the progress report:

Action 1: Flagging of contributions sent to Europol lacking a DSC

The EDPS welcomes the technical update of SIENA, foreseen for May 2021, to allow contributors to flag datasets without a DSC, as well as the technical update to ensure a secondary assessment by Europol staff upon acceptance of the contribution, foreseen for the second half of 2021. Although it would be preferable to accelerate this second stage SIENA update, the EDPS takes note of the fact that this measure is a new addition to the Action Plan and hence may require more time to implement.

The Action Plan, under Action (1), states that Europol will review and adjust the criteria to accept/reject incoming contributions, to prevent the inflow of data without DSC where required. The progress report makes no mention of this measure, unless the secondary assessment by Europol staff is intended to form part of a revised procedure for acceptance/rejection of contributions.

- The EDPS requests information on the state-of-play regarding the review and adjustment of the criteria to accept/reject incoming contributions;
- The EDPS requests clarification as to whether the secondary assessment by Europol staff upon receipt of a contribution lacking a DSC will form part of the acceptance/rejection process or will be performed on datasets only once they have been accepted by Europol.

Action 2: Labelling of data files where DSC is pending

The timeframe foreseen for implementing the automatic labelling of data files pending a DSC (Q3 of 2021 for CT data, 2022 for iBase data, in line with the launch of the new analysis environment) implies a lengthy delay. Given the importance of this control both for preventing the risk of data being further processed/integrated into analysis work and for ensuring the application of the subsequent measures under the Action Plan, an interim solution should be sought.

- The EDPS requests Europol to explore the means for putting in place automatic labelling in the current technical system and to inform the EDPS of its proposed solution by 1 June 2021.

There is no time limit specified for the extraction process, nor a maximum retention period laid down for datasets lacking a DSC. The EDPS takes note of the fact that datasets pending a DSC will be subject to increased review. However, as no clear criteria for assessing the necessity and proportionality of continued storage of datasets has been provided, the EDPS deems that the threshold to justify continued storage until the closure of an investigation (“necessary and proportionate to the investigation concerned”) is low, and will lead to prolonged retention of datasets in breach of Annex II.B ER.

The EDPS understands that, by default, Europol will apply the same data retention period as for datasets that comply with Annex II.B (three-year review period). However, the rules concerning data retention as defined by the ER apply to data submitted in compliance with the ER. Datasets submitted to Europol that are pending a DSC imply compliance risks and must be subject to a more restrictive retention regime.

- The EDPS requests Europol to implement a maximum retention period for datasets lacking a DSC. Once that retention period is exceeded, datasets lacking a DSC must be deleted. The EDPS requests that the new retention policy concerning large datasets pending a DSC be implemented as of the receipt of this letter, and procedures and guidance to staff be updated accordingly.

Action 3: Restricted access rights to raw data

The EDPS welcomes the application of a separate, secure environment for the storage of data lacking a DSC, and the stronger access controls envisaged in the NFE once it is deployed in Q2 of 2021. It is the EDPS' understanding that via separate storage in specific folders in the NFE, and through the application of access controls to designated Europol staff whose sole purpose of accessing the data is to carry out extraction and assessment to assign a DSC, no data pending a DSC will be processed in Europol's analysis work.

- The EDPS requests confirmation of this understanding and a clear assurance that data lacking a DSC is neither extracted to the Europol Analysis System (EAS) environment, nor is it included in a Europol analysis product, or subject to a general search against new information received by Europol, or shared with a Member State or third party.
- As regards the NFE, the EDPS requests Europol to provide information as to the estimated date for the submission of a prior consultation on the NFE or, if not planned, to provide a copy of the internal DPIA and the explanation why the NFE will not be sent for prior consultation.

Action 4: Increased reviews of large datasets

No update is provided regarding data kept to preserve the chain of evidence. Europol intends to provide this information in upcoming progress reports. The EDPS takes this opportunity to underline that, as preservation of the chain of evidence in this case implies the continuous storage of raw datasets with no DSC beyond the process of entity extraction, it is critical to ensure that such data will be subject to a stricter set of security and access controls which prevent the possibility of such data being further processed for analysis purposes.

- The EDPS requests information detailing the security and access controls in relation to datasets stored to preserve the chain of evidence by 1 June 2021.

Action 5: Appointment of a Data Quality Control Coordinator

The EDPS welcomes the approach detailed in the Data Quality Control Action Plan, and the reinforced framework for data quality monitoring, while underlining that the efficacy of the data review process will rely on implementation of the stricter safeguards highlighted above (i.e. the application of the one-year maximum retention period for datasets pending a DSC assessment.)

With regard to the role of the DPF, the EDPS draws attention to the importance of ensuring that the functionalities of the Europol Unified Audit System (UAS) are updated to accommodate the technical adjustments (e.g. flagging and labelling) described in the progress report:

- The EDPS requests to align the Europol Unified Audit System (UAS) to ensure that the new labelling can be audited appropriately by the Europol DPF and to inform the EDPS of its ICT planning in this respect by 1 June 2021.

The EDPS stands ready to further exchange views and expertise on the matters raised in this letter and trusts in Europol's continued cooperation to implement all necessary and appropriate measures to mitigate the risks posed by the processing of large datasets to data subjects.

In view of the interest showed by the Europol Management Board to engage closely with the EDPS in relation to the implementation of the EDPS Decision of 17 September 2020, we include the Chairperson of the EMB in copy of this feedback on Europol's progress report.

Yours sincerely,

[e-signed]

Wojciech Rafał WIEWIÓROWSKI

CC:

[REDACTED]