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Brussels, **22 MAR 2018**
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C2017-0454/ C2018-0223

Subject: Opening Decisions of Operational Analysis Projects

Dear Mr Wainwright,

I refer to your letter dated from 24 November 2017, informing us of the amendments made to the Operational Analysis Project Portfolio, in accordance with Article 18(3(a) of the Europol Regulation and Article 7(5) and (7) of the IDMC Guidelines.

The amendments to the Portfolio concern (1) the inclusion of two new Operational Analysis Projects, ██████████, (2) the inclusion of Denmark into the list of Third Parties and (3) the modifications to the table of data categories and to the provisions for processing data on persons under 18. Modifications on (3) followed informal exchanges between the EDPS and Europol at staff level, pending further analysis by the EDPS of the statistics on the processing of data on persons under 18 by Europol.

On 19 January 2018, in the context of the review of the portfolio, the EDPS asked Europol DPF to provide additional information: 1) **statistics** on the processing of persons under 18 and under 15 in each of the Analysis Projects (AP) for the past five years, as well as their personal implications and 2) **annexes** to the international agreements with Switzerland, Norway and the US, broadening the scope of these agreements to include the types of crimes covered by the AP CIC.

On 5 February 2018, Europol DPF provided the EDPS with statistics only for the APs which had not been migrated to the new Europol Analysis System (EAS).¹

¹ ██████████
██████████ The justification provided by Europol was: "At the moment we cannot provide the requested statistics efficiently by

Europol DPF also informed us that the scope of the international agreements with Switzerland, Norway and the US had not been broadened following the extension of Europol's mandate and were still under review. As a result, Europol decided to stop the transfers of personal data to these countries under [REDACTED] and to remove them from the list of Third Parties in the Opening Decision (OD). The modification of the portfolio is under way. The DPF also checked whether any transfer had taken place since the creation of the AP. They confirmed that no personal data had been transferred.

Overall, the EDPS is satisfied with the solution proposed by the DPF as regards the amendments of the Portfolio. In that sense, I would like to thank again Europol for the constructive and proactive collaboration to ensure a great level of protection of EU citizens' fundamental rights.

I would however like to draw your attention on two issues in relation to the processing of data on persons under 18: (1) the justification provided in the introductory Chapter of the Portfolio does not include all the criteria contained in internal Europol's documents; and (2) the statistics provided on 5 February 2018 show some irregularities.

(1) Criteria for the processing of data related to persons under 18

The introductory Chapter of the Portfolio now integrates a series of paragraphs (Annex, Chapter 3 - Data subject and personal data categories) which detail the rules applicable to the processing of personal data in respect of persons under 18. These rules adapt the criteria already in place at Europol, which were so far contained in the Analysis Work File (AWF) Manual and the Europol National Unit Handbook, to the new legal obligations stemming from the ER. With the entry into force of the ER, the AWF Manual is being updated and have been renamed into the "Analysis Project Manual". To our knowledge, this document is still in a draft stage. The AWF Manual thus remains applicable. In any case, the section on the processing of personal data in respect of persons under 18 remains unaffected.²

Some of the criteria contained in the AWF Manual and the Europol National Unit Handbook are however not reproduced in the introductory chapter of the Portfolio. This relates in particular to the general criteria requiring that data on persons under 18 are only inserted in the EAS when there are substantive grounds for assuming that the data are relevant for the aim of the AP as established in the OD.

This also relates to the more specific criteria used by Europol to assess whether the personal data in respect of persons under 18 and 15 should be inserted into the EAS. These criteria further specify the general requirement for personal data to be proportionate and strictly necessary in each individual case. As regards the insertion of data related to persons under 15 labelled as suspects, the AWF Manual requires that there are clear indications or sufficient grounds that the person is actively involved in crimes stipulated in the OD. In addition, the JSB recommended Europol National Units³ to process data on persons under 15 labelled as victims,

using any of our available methods. We can easily find number of minors in the EAS and information of how many times "Justification for Storage of Minor" property is missing, by using Palantir's helpers and applications. We can also find the linked documents and contributions with owner (AP) information but we cannot export this information to the format that could be used for making statistics. A completely manual approach could be possible but way too time-consuming." The difficulties linked to the provision of statistics in the new EAS has been discussed in the bi-monthly meeting of 8 February 2018 and the subject of a letter by the EDPS to Europol dated from 16 February 2018.

² Analysis Project Manual, draft version from June 2017(EDOC #886249)

³ See Europol National Unit Handbook.

associates, contacts or witnesses, only if linked to specific investigations where they appeared as such.

The EDPS asks Europol to ensure consistency of the criteria referred to in the introductory Chapter of the Portfolio and in the AWF Manual (to be soon replaced by the Analysis Projects Manual). The EDPS also recommends following the rules proposed by the JSB with regard to the processing of persons under 15 as contained in the Europol National Units Handbook. Finally, the EDPS recommends using the ER terminology "persons under 18" consistently in the Portfolio and to remove any reference to the term "minor", which can be misleading as regards the age of criminal responsibility.

(2) Processing activities in breach of the rules applying to the processing of data with respect to persons under 18

The (incomplete) statistics provided in February 2018 show, for the year 2017, several irregularities which should be corrected:

- Data on persons under 18 labelled as associate, contact or victims are processed in APs in which such data processing is not allowed. This refers to ██████████ (9 persons under 18 as contacts), ██████████ (7 as associate, 15 as contact, 7 as victims), ██████████ (3 as associate, 7 as contacts, 5 as victims), ██████████ (1 as associate, 19 as contacts, 1 as witness)⁴, ██████████ (3 as contacts), ██████████ (1 as contact)⁵, ██████████ (2 as contacts)
- A total of 184 persons under 18 are labelled as suspects in the EAS without indication of the national legal provisions specifying that persons of that age can be punished for the offence in question.

The EDPS asks Europol to ensure (1) that data with respect to persons under 18 labelled as associate, contact or victims are only processed in APs where such processing is authorised and (2) that all persons under 18 processed as suspects in the EAS are linked to a reference to the national legal provisions specifying that persons of that age can be punished for the offence in question. Thus, Europol should conduct a thorough review of the data on minors processed in the EAS to ensure that they are processed in compliance with the Portfolio.

Finally, I would also like to point your attention to the justification contained in the AP ██████████ which only refers to persons under the age of 15 who are identified as being used in terrorist propaganda as child soldiers. The processing of the data of these persons is integral to the original material derived from Internet. This means that the processing of persons between 15 and 18 is not authorised. It however seems difficult to know the exact age of the person in a video. As this AP has been migrated to the new EAS, we do not have information with regard to the number and personal implication of persons under 18 being processed.

The EDPS asks Europol to confirm that the justification provided in the OD of the AP ██████████ ██████████ in relation to the processing of persons under 18 is adjusted to the reality of this AP.

⁴ The OD of the AP ██████████ only provides a justification with regard to the processing of persons under 18 who are victims.

⁵ The OD of the AP ██████████ only provides a justification with regard to the processing of persons under 18 who are victims.

Given the sensitivity of the topic of the processing of personal data on persons under 18, which has motivated the introduction of a specific provision in the Europol Regulation, we intend following up very closely on the above-mentioned recommendations, notably in the framework of the inspection planned in May 2018.

Sincerely yours,

A handwritten signature in blue ink, consisting of a large initial 'W' followed by a series of loops and a long horizontal stroke ending in a vertical flourish.

Wojciech Rafał WIEWIÓROWSKI

Cc:

A solid black rectangular redaction box covering the recipient information in the 'Cc:' field.