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EUROPEAN DATA PROTECTION SUPERVISOR

Case Reference  
**2019-0063**

**REPORT  
ON  
INSPECTION AT EUROPOL**

pursuant to Article 57(1)(a) and (f), 58(1)(b), (d) and (e) of Regulation (EC) No 2018/1725  
and Article 43(1) and (4) of Regulation (EU) No 2016/794

5 December 2019

**EDPS**  
Supervision & Enforcement Unit  
and  
IT Policy Unit

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<b>1. Executive summary .....</b>	<b>6</b>
<b>2. Scope .....</b>	<b>7</b>
<b>3. Methodology.....</b>	<b>8</b>
<b>4. Analysis and recommendations - Compliance with Regulation 2016/794.....</b>	<b>9</b>
4.1. ....	9
4.1.1. Background .....	9
4.1.2. Criteria.....	11
4.1.3. Actions and findings.....	12
4.1.4. Conclusion.....	13
4.2. ....	14
4.2.1. Background .....	14
4.2.2. Criteria.....	14
4.2.3. Actions and findings.....	14
4.2.4. Conclusion and recommendations.....	18
4.3. ....	19
4.3.1. Background .....	19
4.3.2. Criteria.....	21
4.3.3. Actions and findings.....	22
4.3.4. Conclusion and recommendations.....	28
4.4. ....	29
4.4.1. Background .....	29
4.4.2. Criteria.....	29
4.4.3. Actions and findings.....	30
4.4.4. Conclusion and recommendations.....	32
4.5. ....	33
4.5.1. Background .....	33
4.5.2. Criteria.....	34
4.5.3. Actions and findings.....	35
4.5.4. Conclusion and recommendations.....	39
4.6. ....	41
4.6.1. Background .....	41
4.6.2. Criteria.....	42
4.6.3. Actions and findings.....	43
4.6.4. Conclusion and recommendations.....	48
4.7. ....	49
4.7.1. Background .....	49

## RESTREINT UE/EU RESTRICTED

4.7.2. Criteria.....	49
4.7.3. Actions and findings.....	49
4.7.4. Conclusion and recommendations.....	50
4.8. Follow-up to inspection report of 8 May 2018 (December 2017 inspection).....	51
4.8.1. Background .....	51
4.8.2. Actions, findings and status of the recommendations.....	51
4.9. Follow-up to inspection report of 19 December 2018 (May 2018 inspection).....	55
4.9.1. Background .....	55
4.9.2. Actions, findings and status of the recommendations.....	55
<b>5. Analysis and recommendations - Compliance with Regulation 2018/1725.....</b>	<b>58</b>
<b>6. Compiled list of recommendations and deadline for implementation.....</b>	<b>69</b>
6.1. List of recommendations .....	69
6.2. Deadline for implementation.....	74
Annex 1. Restricted information.....	75
Annex 2. Powers of the EDPS .....	80
Annex 3 – Documents collected during the inspection .....	83
Annex 4 - List of abbreviations.....	91

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The European Data Protection Supervisor (EDPS) is the independent supervisory authority established by Article 52 of Regulation (EU) No 018/1725 (Regulation 2018/1725)<sup>1</sup> responsible for:

- monitoring and ensuring the application of the provisions of the Regulation and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a EU institution or body;
- advising EU institutions and bodies and data subjects on all matters concerning the processing of personal data.

Moreover, in accordance with Article 43 of Regulation (EU) No 2016/794<sup>2</sup> (Regulation 2016/794 or Europol Regulation or ER), the EDPS is specifically in charge of monitoring the processing of operational data by Europol and ensure compliance with Regulation 2016/794 and any other Union act relating to the protection of natural persons with regard to the processing of personal data by Europol.

Regulation 2016/794 applies to Europol's processing of operational data and Regulation 2018/1725 applies to Europol's processing of administrative data<sup>3</sup>.

To these ends, the EDPS fulfils the tasks and exercises the powers provided for in Articles 57 and 58 of Regulation 2018/1725 as well as Article 43 of Regulation 794/2016. Among his powers to investigate, the EDPS can conduct on-the-spot inspections. The power to inspect is one of the tools established to monitor and ensure compliance with Regulations 2016/794 and 2018/1725.

The formal decision was communicated to Europol by means of an Announcement Letter dated 30 April 2019. The fieldwork was carried out between 3 and 6 June 2019 at the Europol premises in The Hague. The minutes of the inspection were sent to Europol for comments on 20 June 2019. Europol communicated their comments on 8 July 2019 (received by EDPS on 11 July 2019). The final minutes were sent to Europol on 29 July 2019.

This report summarises the findings identified during the inspection. Main findings and recommendations are included at the end of each section. A compiled list of all recommendations is inserted at the end of the report. Some restricted information is inserted in **Annex 1**.

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies and agencies and on the free movement of such data, and repealing Regulation No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> 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) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

<sup>3</sup> Article 46 of Regulation 2016/794.

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The recommendations contained in this report must be implemented to comply with Regulations 2016/794 and 2018/1725. The EDPS will carry out a close follow-up. If need be, powers listed in **Annex 2** may be exercised.

This inspection was part of the EDPS annual inspection plan for 2019 and should be viewed as the final stage before formal enforcement action under Article 43(3) of Regulation 2016/794 and Article 58(2) of Regulation 2018/1725.

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### Issues with EAS - Palantir

In the course of previous supervisory activities, the EDPS highlighted notably the following issues with Palantir<sup>39</sup>.

First, the **personal implication** is not a mandatory field for individuals stored in Palantir. However, personal implication is essential to:

- (i) ensure compliance with Article 18(5) and Annex II.B ER, which lists the categories of personal data and categories of data subjects (i.e. their personal implication) whose data may be processed for each AP<sup>40</sup>;
- (ii) apply additional safeguards to the processing of data on special categories of data subjects (victims, witnesses, informants and persons under the age of 18)<sup>41</sup>.

In addition, it appears difficult to single out **special categories of data**, or retrieve them automatically via a search. This affects the ability of Europol to ensure that the restrictions on special categories of data (contained in the OD of the different APs) are actually complied with. This also complicates compliance with the legal requirement to provide statistical information to the EDPS on special categories of personal data (Art. 30(6) ER) and to inform the EDPS

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<sup>39</sup> During annual inspection of December 2017 (EDPS case file 2017-0656) and own-initiative inquiry on Palantir ontology (EDPS case file 2018-0047).

<sup>40</sup> as further specified by the OD of each AP (in compliance with Art. 18(3)(a) ER).

<sup>41</sup> Art. 30(1) ER.

when special categories of data and data on special categories of data subjects are stored for a period exceeding five years (Art. 31(3) ER).<sup>42</sup>

The EDPS has issued recommendations on these issues.<sup>43</sup>

To mitigate Palantir's shortcoming on personal implication and pending the implementation of a new analysis system having personal implication as a mandatory requirement, Europol put in place internal controls on data quality.<sup>44</sup>

Since November 2018, Europol has implemented a new Palantir property "Special categories of personal data". This property consists of a drop own list ("Racial or ethnic", "Political", "Religious or philosophical", "Trade union", "Genetic", "Health", "Sex life") and a free comments field.<sup>45</sup>

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<sup>42</sup> As regards statistics, the EDPS inspection team has identified means for producing statistics on special categories of data stored in Palantir during the annual inspection: see pp. 68-69 of the inspection minutes and Section 4.8.2 of this report (follow up to inspection report of 8 May 2018).

<sup>43</sup> Recommendations Nos 7 (personal implication), 10 (specific fields for special categories of data) and 11 (production of statistics) of Inspection report of 7 May 2018 (EDPS case file 2017-0656).

<sup>44</sup> Status of implementation of the EDPS inspection report of 7 May 2018 provided by Europol on 21 May 2019

<sup>45</sup> Idem.

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The EDPS has previously issued recommendations on the matter.<sup>124</sup> Since at the time, iBase was supposed to be replaced with Palantir for all APs, the recommendation covered only Palantir. In the meantime, Europol has however decided to stop the migration process of all

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<sup>124</sup> Recommendation No (specific fields for special categories of data) and Recommendation No (statistics) of Inspection report of 7 May 2018 (EDPS case file 2017-0656).

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APs to Palantir<sup>125</sup> and to develop a new EAS that will eventually replace both and Palantir.

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<sup>125</sup> Only the data from the APs related to counter-terrorism (Check the Web, Dolphin, Hydra, TFTP and Travellers) were migrated to Palantir.

#### **4.8. Follow-up to inspection report of 8 May 2018 (December 2017 inspection)**

The EDPS carried out its first inspection at Europol between 12 and 15 December 2017 and issued an inspection report including 43 recommendations on 8 May 2018. The inspection team verified the implementation of selected recommendations of this report during the June 2019 inspection.<sup>161</sup>

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- **Recommendation** : *Revise Palantir's data model to include mandatory fields for special categories of personal data where (and only where) such personal data (if allowed by the OD of the AP) can be inserted.*

**Findings and evaluation:** The data model has been revised.<sup>163</sup>

**Status:** closed<sup>164</sup>.

- **Recommendation 11:** *Revise the ontology of Palantir to ensure Europol's capability to comply with the obligation for Europol to provide the EDPS the statistics referred to under Article 30(6) ER and information referred to in Article 31(3) ER.*

**Findings and evaluation:** From the demonstrations provided for [redacted] and Palantir, Europol can produce statistics. For Palantir, Europol should invest in implementing a solution that would produce the statistics.

**Status:** pending.



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**Annex 2. Powers of the EDPS**

Art 58 of Regulation 2018/1725 sets forth the powers of the EDPS as follows:

*Article 58 Powers*

1. *The European Data Protection Supervisor shall have the following investigative powers:*
  - (a) *to order the controller and the processor to provide any information it requires for the performance of his or her tasks;*
  - (b) *to carry out investigations in the form of data protection audits;*
  - (c) *to notify the controller or the processor of an alleged infringement of this Regulation;*
  - (d) *to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of his or her tasks;*
  - (e) *to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union law.*
2. *The European Data Protection Supervisor shall have the following corrective powers:*
  - (a) *to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;*
  - (b) *to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;*
  - (c) *to refer matters to the controller or processor concerned and, if necessary, to the European Parliament, the Council and the Commission;*
  - (d) *to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;*
  - (e) *to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;*
  - (f) *to order the controller to communicate a personal data breach to the data subject;*
  - (g) *to impose a temporary or definitive limitation including a ban on processing;*
  - (h) *to order the rectification or erasure of personal data or restriction of processing pursuant to Articles 18, 19 and 20 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 19(2) and Article 21;*
  - (i) *to impose an administrative fine pursuant to Article 66 in the case of non-compliance by a Union institution or body with one of the measures referred to in points (d) to (h) and (j) of this paragraph, depending on the circumstances of each individual case;*
  - (j) *to order the suspension of data flows to a recipient in a Member State, a third country or to an international organisation.*
3. *The European Data Protection Supervisor shall have the following authorisation and advisory powers:*
  - (a) *to advise data subjects in the exercise of their rights;*

- (b) to advise the controller in accordance with the prior consultation procedure referred to in Article 40, and in accordance with Article 41(2);*
  - (c) to issue, on his or her own initiative or on request, opinions to Union institutions and bodies and to the public on any issue related to the protection of personal data;*
  - (d) to adopt standard data protection clauses referred to in Article 29(8) and in point (c) of Article 48(2);*
  - (e) to authorise contractual clauses referred to in point (a) of Article 48(3);*
  - (f) to authorise administrative arrangements referred to in point (b) of Article 48(3);*
  - (g) to authorise processing operations pursuant to implementing acts adopted under Article 40(4).*
- 4. The European Data Protection Supervisor shall have the power to refer the matter to the Court of Justice under the conditions provided for in the Treaties and to intervene in actions brought before the Court of Justice.*
- 5. The exercise of the powers conferred on the European Data Protection Supervisor pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedies and due process, set out in Union law.*

Article 43 of Regulation 2016/794 sets forth the powers of the EDPS as follows:

"...

*3. The EDPS may pursuant to this Regulation:*

- (a) give advice to data subjects on the exercise of their rights;*
- (b) refer a matter to Europol in the event of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;*
- (c) order that requests to exercise certain rights in relation to data be complied with where such requests have been refused in breach of Articles 36 and 37;*
- (d) warn or admonish Europol;*
- (e) order Europol to carry out the rectification, restriction, erasure or destruction of personal data which have been processed in breach of the provisions governing the processing of personal data and to notify such actions to third parties to whom such data have been disclosed;*
- (f) impose a temporary or definitive ban on processing operations by Europol which are in breach of the provisions governing the processing of personal data;*
- (g) refer a matter to Europol and, if necessary, to the European Parliament, the Council and the Commission;*
- (h) refer a matter to the Court of Justice of the European Union under the conditions provided for in the TFEU;*
- (i) intervene in actions brought before the Court of Justice of the European Union.*

*4. The EDPS shall have the power to:*

- (a) obtain from Europol access to all personal data and to all information necessary for his or her enquiries;*

- (b) *obtain access to any premises in which Europol carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.*

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**Annex 4 - List of abbreviations**

AD	Active Directory
AP	Analysis Project (or operational analysis project)
AWF	Analysis Work File
CFN	Computer Forensic Network
CORPNET	Corporate Network
DPF	Data Protection Function unit
DPO	Data Protection Officer
EAS	Europol Analysis System
ECB	Europol Cooperation Board
ECTC	European Counter-Terrorism Centre
EC3	Europol Cybercrime Centre
ED	Executive Director
EDOC	Europol Document
EDPS	European Data Protection Supervisor
EIS	Europol Information System
ENU	Europol National Unit
ER	Regulation 2017/94 (Europol Regulation)
IAM	Identity and Access Management
IDMC	Integrated Data Management Concept
JSB	Europol Joint Supervisory Body
LFE	Large File Exchange
MACR	Minimum Age of Criminal Responsibility
MS	Member State(s)
O1	Europol Front Office
OAR	Operational Analysis Report
OD	Opening Decision
OPSNET	Operational Network
PKI	Public Key Infrastructure
SIENA	Secure Information Exchange Network Application
SSSR	System Specific Security Requirement
TLS	Transport Layer Security
TP	Third Party