



The Hague, 13 June 2024
EDOC #1380886v5

**Europol's response to the recommendations from the
European Data Protection Supervisor (EDPS) issued in the prior
consultation opinion for the Europol Face Recognition Solution
(EDPS case 2023-1104)¹**

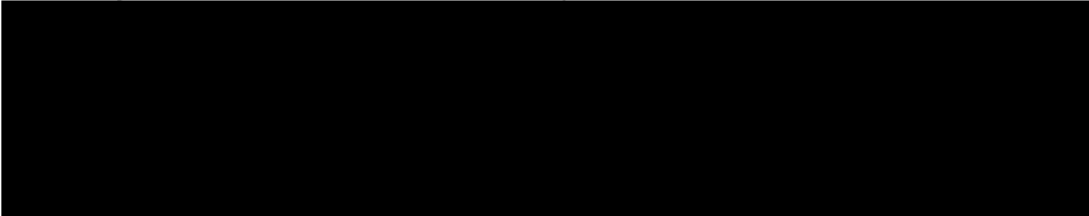
¹ EDPS supervisory opinion on a prior consultation requested by Europol on a Face Recognition Solution (Case 2023-1104), Europol file EDOC -#1360312), issued on 20 December 2023 to Europol

1. EDPS Recommendation 1

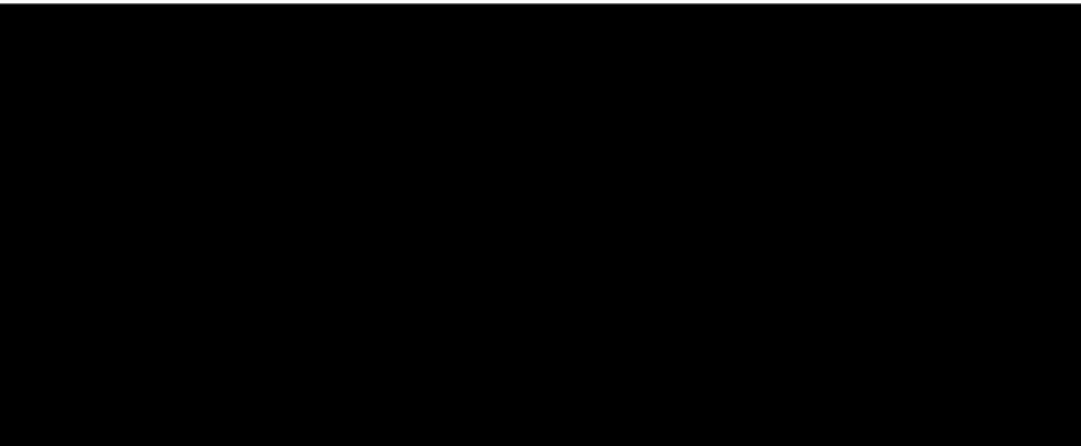
*"The **EDPS therefore deems it necessary**, prior to any processing of facial images for these two purposes using the proposed FRT solution, to:*

- a. describe the proposed implementation of each of these two purposes specifically [i.e. Article 18(2)(a) and Article 18(6) of the Europol Regulation²];*
- b. perform an assessment of the necessity and proportionality of this proposed processing for each of these two purposes. This assessment must be documented in light of Europol's accountability requirements.*

Not doing so would create a risk of non-compliance with Article 30(2) ER.



Europol response:

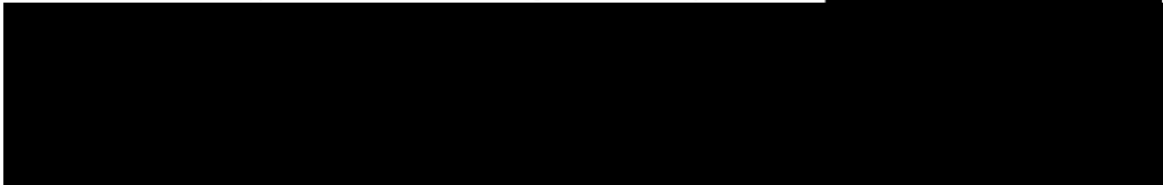


2. Recommendation 2³

*"The **EDPS therefore deems it necessary for Europol** to specify the categories of individuals for whom facial recognition will be used in Europol's AP portfolio and provide concise use cases justifying its application. Not doing creates risks of non-compliance with the principle of purpose limitation as laid out in Article 71(1)(b) of the EUDPR and further specified in article 18(2)(c) and (3) ER.*

***As to the technical conditions** for the processing, the EDPS formulates several recommendations to ensure the compliance of the processing with the Europol Regulation."*

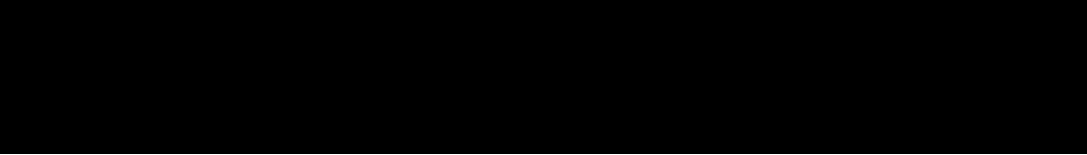
² Recommendation 1 is preceded with the following assessment by the EDPS:



³ Recommendation is preceded with the following assessment by the EDPS: "



Europol response:



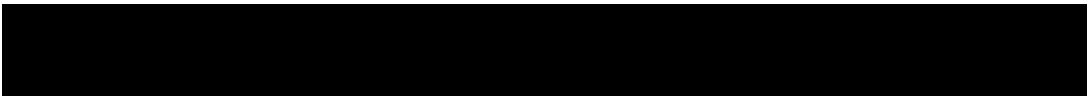
3. Recommendation 3

*"The EDPS **deems necessary** that Europol implements a 'pilot' approach in handling facial images through the new facial recognition tool in order to ensure that the processing of facial images, as a special category of personal data under Article 30(2) ER, remains strictly proportionate. This pilot should allow evidence-driven decision-making on which matching threshold and/or a numerical cap would further reduce the risks to data subjects while allowing the Agency to meet its intended purpose for the facial recognition solution. This approach should lead to an evaluation after a six-month period. Furthermore:*

- Europol should ensure that it is capable to capture adequate performance metrics over the duration of the pilot project, including for each search: the matching confidence scoring of the lead(s) (if any) among the returned results and their rank, as well as the average matching confidence score of the whole search result set (regardless whether it resulted in a lead or not) and its standard deviation;*
- Europol should report to the EDPS with the outcome of this analysis, including supporting information.*

The lack of a matching threshold and the display of the maximum number of results in all cases creates a risk of non-compliance with the strict proportionality requirement for the processing of biometric data under Article 30(2) ER."

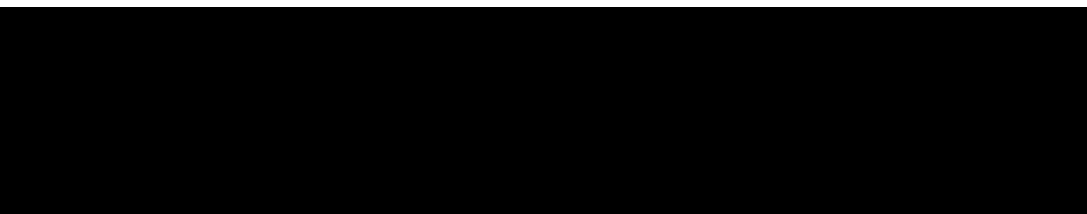
Europol response:



4. Recommendation 4

*"The EDPS **deems necessary** that Europol provides further evidence on the accuracy of the algorithm on minors under 12, before enrolling these minors in the use of the facial recognition system. In case Europol cannot provide evidence on the potential bias of the system for these minors, then the processing of minors under 12 years old should be excluded from the system. Not doing so creates a risk of non-compliance with Article 71(1)(d) EUDPR ('accuracy')."*

Europol response:



5. Recommendation 5

*"The EDPS **deems necessary** that Europol define and implement a plan to migrate the facial images to the new system, following the same quality standards set for ingestion of new facial images and (if any) clarify the cases where the existing*

‘FACE’ solution would be maintained and used as the only biometric tool processing facial images. Not doing so risks incoherent processing (including accuracy levels) between different data subjects and therefore creates a risk of non-compliance with Article 71(1)(d) EUDPR (‘accuracy’).”

Europol response:

[REDACTED]

6. Recommendation 6

*“The EDPS **recommends** Europol to ensure that hard deletion of facial images takes place as soon as possible to reduce the possibility of facial images being further processed after they have already been marked for deletion.”*

Europol response:

[REDACTED]

7. Way forward

[REDACTED]