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Support R&I projects processing personal data (Art 33a ER)

Process Description

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Version of the process	1

1. Document History

1.1. Document contributions

Written by	Name	Department	e-Signature (YubiKey), Name & Date
Process Team		C3-12 Innovation Lab	
		C3-12 Innovation Lab	
		C3-12 Innovation Lab	
		C3-12 Innovation Lab	
		DPF	
		DPF	
Process Facilitator(s)		C3 - IMU	

1.2. Document authorization

Approval	Name	Department / Directorate	e-Signature (YubiKey), Name & Date
Process Owner		C3 - IMU	
Process Executive		Deputy Executive Director Capabilities	
Process Manager		Deputy Executive Director Capabilities	

1.3. Document change record

Date	From process version	To process version	DMS version	Description	Name
24-03-2021 07-04-2021	0	1	1	Creation	
14-04-2021	1	1	2	Start SIPOC	

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16-04-2021				Completion SIPOC	
19-04-2021 11-07-2022				Flowchart inserted Insertion text of Articles 2, 18 (2), 33a ER and Article 8 MB Decision	
12-07-2022	1	1	2a	Amendments from DPF & QPM Clean Up	
16-09-2022	1	1	3	Revision of SIPOC until step 12	
21-09-2022				Update flowchart	
23-09-2022	1	1	3A	Cleaned up comments	
23-09-2022	1	1	4	Revision SIPOC until step 11	
26-09-2022				Flowchart updated	
26-09-2022	1	1	5	Revision SIPOC	
29-11-2022	1	1	6	Cleaning of comments, update of responsibilities and discussion on time- boxing	
08-12-2022	1	1	7	Accepted track changes and updated flowchart	
11-01-2023				Final amendments	
13-01-2023	1	1	8	Final version with updated flowchart and accepted track changes	
23-02-2023				Last DPF revision	
24-02-2023 06-07-2023	1	1	9	Last amendments in track changes	
10-07-2023	1	1	10	Final version without track changes	
24-11-2023	1	1	11	Last amendment as agreed with Process Owner & HoT C3-12	
27-11-2023	1	1	12	Final version	

2. Process Description

2.1. Process category

The process "Support Research & Innovations (R&I) projects processing personal data (Article 33a)" is a core process as it creates direct added value for Europol and the Member States. It belongs to the Process Group "Provide Law Enforcement expertise".¹

2.2. Purpose of the process

Priority 5 of Europol's Strategy requests Europol to be at the forefront of Law Enforcement innovation and research.

Where such a project requires the processing of personal data, Article 33a Europol Regulation (ER) points out the following:

Processing of personal data for research and innovation

1. Europol may process personal data for the purpose of its research and innovation projects, provided that the processing of those personal data:

- (a) is strictly required and duly justified to achieve the objectives of the project concerned;
- (b) as regards special categories of personal data, is strictly necessary and subject to appropriate safeguards, which may include pseudonymisation.

The processing of personal data by Europol in the context of research and innovation projects shall be guided by the principles of transparency, explainability, fairness, and accountability.

2. Without prejudice to paragraph 1, for the processing of personal data performed in the context of Europol's research and innovation projects, the following safeguards shall apply:

- (a) any research and innovation project requires the prior authorisation by the Executive Director, in consultation with the Data Protection Officer and the Fundamental Rights Officer, based on:
 - (i) a description of the objectives of the project and an explanation of how the project assists Europol or competent authorities of the Member States in their tasks;
 - (ii) a description of the envisaged processing activity, setting out the objectives, scope and duration of the processing and the necessity and proportionality to process the personal data, such as for exploring and testing innovative technological solutions and ensuring accuracy of the project results;
 - (iii) a description of the categories of personal data to be processed;
 - (iv) an assessment of the compliance with the data protection principles laid down in Article 71 of Regulation (EU) 2018/1725, of the time limits for the storage and conditions for access to the personal data; and
 - (v) a data protection impact assessment, including the risks to rights and freedoms of data subjects, the risk of any bias in the personal data to be used for the training of algorithms and in the outcome of the processing, and the measures envisaged to address those risks as well as to avoid violations of fundamental rights;
- (b) the EDPS shall be informed prior to the launch of the project;
- (c) the Management Board shall be consulted or informed prior to the launch of the project, in accordance with the guidelines referred to in Article 18 (7);
- (d) any personal data to be processed in the context of the project shall:

¹ Process Landscape for Europol EDOC#830723

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- (i) be temporarily copied to a separate, isolated and protected data processing environment within Europol for the sole purpose of carrying out that project;
 - (ii) be accessed only by specifically authorised staff of Europol in accordance with Article 30 (3) of this Regulation and, subject to technical security measures, by specifically authorised staff of the competent authorities of the Member States and Union agencies established on the basis of Title V of the TFEU;
 - (iii) not be transmitted or transferred;
 - (iv) not lead to measures or decisions affecting the data subjects as a result of their processing;
 - (v) be erased once the project is concluded or the time limit for the storage of personal data has expired in accordance with Article 31;
- (e) the logs of the processing of personal data in the context of the project shall be kept until two years after the conclusion of the project, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing.

3. The Management Board shall establish in a binding document the general scope for the research and innovation projects. Such document shall be updated where appropriate and made available to the EDPS for the purpose of its supervision.

4. Europol shall keep a document containing a detailed description of the process and of the rationale behind the training, testing and validation of algorithms to ensure transparency of the process and the algorithms, including their compliance with the safeguards provided for in this Article, and to allow for verification of the accuracy of the results based on the use of such algorithms. Upon request, Europol shall make that document available to interested parties, including Member States and the JPSG.

5. If the data to be processed for a research and innovation project have been provided by a Member State, a Union body, a third country or an international organisation, Europol shall request consent from that provider of data in accordance with Article 19 (2), unless the provider of data has granted its prior authorisation to such processing for the purpose of research and innovation projects, either in general terms or subject to specific conditions.

Europol shall not process data for research and innovation projects without the consent of the provider of the data. Such consent may be withdrawn at any time.

According to Article 8² (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 for the achievement of Europol's objectives set out in Article 3 of the Regulation, in accordance with Article 18 (2) (e) of the Regulation.
2. 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 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 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

² Management Board Decision further specifying procedures for the processing of information for the purposes listed in Article 18 (2) of the Europol Regulation (EDOC#1226444)

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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) (c), the Management Board shall be consulted prior to the launch of those research and innovation projects which are not yet covered by the binding general scope for the research and innovation projects of Europol decided by the Management Board in accordance with paragraph 3 of this Article. For research and innovation projects within that scope, the Management Board shall only be informed.

2.3. Scope

Within scope:

- Every R&I project which relates to the processing of personal data in line with Article 33a ER and Article 18 (2) (e) ER.

Out of scope:

- Every R&I project which relates to the processing of non-personal data.
- Article 4 (1) (v) ER: proactively monitor research and innovation activities that are relevant for the achievement of Europol's objectives and contribute to such activities by supporting related activities of Member States and by implementing its own research and innovation activities, including projects for the development, training, testing and validation of algorithms for the development of specific tools for the use by law enforcement authorities, and disseminate the results of the activities to the Member States in accordance with Article 67.
- Results generated by the R&I project shall never be used directly for operational purposes, e.g. such as for processes like "Cross check data and manage hits" (Article 18 (2) (a) ER) or "Operational analysis" (Article 18 (2) (c) ER). Moreover, in case a R&I project will be after its completion later implemented in the operational environment, all personal data must be processed again.

*The data processing purposes of **Operational Analysis** vs. **Research & Innovation** are separate. At this stage, the Innovation Lab does not consider that data processing for operational analysis purposes requires use of the "ODIN" R&I Sandbox and its associated policies and processes.*

The boundary between the data processing purposes of Research & Innovation and Operational Analysis is the consideration of the output.

- *The **Operational Analysis** data processing purpose produces information artefacts that may be shared with MS stakeholders for operational/investigative purposes.*
- ***Research & Innovation** projects using the "ODIN" R&I Sandbox environment will produce different outputs that are not intended for operational/investigative purposes, but may instead lead to Uptake initiatives, which are the final phase of the Innovation Pipeline.*

2.4. Customer(s) of the process

The main customers of this process are the Member States (MS) and Europol.

2.5. Expectations of the customer

The MS expect that the process is carried out in a transparent, audible, explainable, repeatable and compliant way. The MS expect to get notified about the project as such, but not about the processing of the individual personal data of which they are data providers.

Europol expects to be enabled in an efficient and legitimate way to develop Europol's core business further by means of R&I projects which require the processing of personal data in line with Article 18 (2) (e) ER.

2.6. Trigger

The first process step can be triggered by the following:

- The Lab is asked by Europol OD or EU MS to assess the possibility of using a technology to address a specific operational need;
- A new identified technology creates the opportunity if successfully validated and can be shared with Europol or MS for a proof of concept (PoC) initiative,
- One EU MS has developed a PoC which is shared with the EU MS and with the Innovation lab;
- The participating EU MS set up a team of developers and data scientists and identify relevant datasets including personal data to test the code/train the model and further develop it. They share it with Europol based on Article 18(2) (e) ER.

2.7. Outcome of the process

The outcome of the process is to achieve documented compliance of an R&I project in line with Article 33a ER.

This documentation can then be included in Enterprise Project Management Tool (EPM live) or the relevant selected application.

This will be a requirement to process personal data within the scope of an R&I project.

2.8. Risks for the process / critical success factors

Risks:

- No common understanding of the safeguards by the different beneficiaries of the process
- Delays due to information exchange between multiple stakeholders

Critical success factors:

- Clear understanding of process and support by all involved parties
- Ex ante check is performed in close consultation with Europol in a timely manner
- Prepare environment
 - Assign resources with the proper skills
 - Make or assess infrastructure design
 - Build scripts for setting up the virtual machines, OSs, containers, pods, networks, routers, firewalls, etc.
 - Create or extend tools and software/container/script repository
 - Etc.

2.9. Relations with other processes

Not applicable

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2.10. SIPOC table – course of process steps

Each process step has to be described using the SIPOC table below.

No	Responsibility ³	Supplier	Input to the process step	Process (in chronological order)	Output of the process step	Customer
1	C3-12 Innovation Lab	Europol MS	Internal or external proposals for projects in line with Article 33a ER Business Case	Identify the need to process personal data in a project for the purpose of research and innovation	Need for project in R&I If personal data is required, go to step 2 If personal data is not required, end of process	C3-12 Innovation Lab
2.	C3-12 Innovation Lab	Europol MS	Internal or external proposals for projects in line with Article 33a ER Business Case	Prepare a R&I project based proposal, for the Executive Director's (ED) prior authorisation according to Article 33.a (2)(a)(i)(ii)(iii)(iv) ER	Identified need to submit a project	C3-12 Innovation Lab
3.	C3-12 Innovation Lab	C3-12 Innovation Lab	Identified need to submit a project	Complete data protection assessment form EDOC#901322 according to Article 33a (2) (a) (v)	Completed data protection assessment form	C3-12 Innovation Lab
4.	C3-12 Innovation Lab	C3-12 Innovation Lab	Completed data protection assessment form and proposal	Consult Data Protection Officer and Fundamental Rights Officer on the R&I project proposal and the data protection assessment form and update if required. Submit agreed documentation to the ED for prior authorisation	Finalized R&I proposal and data protection assessment form	ED
5.	ED	C3-12 Innovation Lab	Finalized R&I proposal and data protection assessment form	Either reject or authorise the project	If rejected, end of process If authorised, go to step 6	C3-12 Innovation Lab
6.	C3-12 Innovation Lab	ED	Authorised project	Identify if R&I project falls within the binding document in accordance with Article 8 (3) MB Implementing decision specifying procedures for the processing of information for the	If R&I project falls within scope of binding document, go to step 8	C3-12 Innovation Lab

³ Responsibility: competent Department or specific function holder who ensures that the process step is performed.

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No	Responsibility ³	Supplier	Input to the process step	Process (in chronological order)	steps	Output of the process step	Customer
				purpose listed in Article 18 (2) of ER (EDOC#1226444)		If R&I project falls not within scope of binding document, go to step 7	
7.	C3-12 Innovation Lab	C3-12 Innovation Lab	R&I project does not falls within scope of binding document	Consult MB and take MB comments into consideration. Submit documentation with MB comments to DPF		Project proposal and the DPIA with MB comments Go to step 9	MB, DPF
8.	C3-12 Innovation Lab	C3-12 Innovation Lab	R&I project falls within scope of binding document	Inform the MB prior to the launch of the project. Submit full documentation to DPF		Full documentation submitted to DPF	DPF
9.	DPF	C3-12 Innovation Lab	Full documentation submitted to DPF	Inform the EDPS prior to the launch of the project by sending the project proposal and the DPIA		Project proposal and DPIA forwarded to EDPS	EDPS
10.	Operational experts ⁴ in conjunction with C1 ICT	C3-12 Innovation Lab	Information to launch the project	Receive from C3-12 Innovation Lab the information to launch the project		Information about project launch	C3-12 Innovation Lab and operational experts
11.	C3-12 Innovation Lab and operational experts	C3-12 Innovation Lab and operational experts	Information about project launch	Identify the relevant datasets which are needed to launch the project and if prior consent was received to be processed for research and innovation ⁵		Relevant datasets identified If prior consent was received on the dataset, go to step 13 If prior consent was not received on the dataset, go to step 12	C3-12 Innovation Lab and operational experts

⁴ Operational experts can comprise Operations Directorate staff and or C3-12 Innovation Lab staff

⁵ The general rule will look as follows: The consent to process the data for a R&I project, was given according Article 33a (5) ER, after the launch of the R&I project. The exception will look as follows: According to Article 18 (6) ER Europol may temporarily process data within 6 months from its receipt, for determining the need to launch the R&I project.

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No	Responsibility ³	Supplier	Input to the process step	Process (in chronological order)	Output of the process step	Customer
12	C3-12 Innovation Lab and operational experts	C3-12 Innovation Lab and operational experts	Prior consent was not received	Ask data provider if consent ⁶ can be granted to process dataset for research and innovation	If consent is granted for dataset, go to step 13 If consent is not granted for dataset, end of process	C3-12 Innovation Lab technical personnel in conjunction with C1 ICT
13.	C3-12 Innovation Lab technical personnel in conjunction with C1 ICT	C3-12 Innovation Lab technical personnel in conjunction with C1 ICT and operational experts	Relevant datasets with consent identified	Launch project ⁷ , prepare the infrastructure, deploy the software and copy the datasets to a separate, isolated and protected data processing environment within Europol for the sole purpose of carrying out that project ⁸	Prepared infrastructure, deployed software, copied datasets	C3-12 Innovation Lab technical personnel and operational experts
14	C3-12 Innovation Lab technical personnel and operational experts	C3-12 Innovation Lab technical personnel in conjunction with C1 ICT	Prepared infrastructure, deployed software, copied datasets	Further develop the software and re-deploy where needed	Software developed,	C3-12 Innovation Lab technical personnel and operational experts
15.	C3-12 Innovation Lab technical personnel and operational experts	C3-12 Innovation Lab technical personnel and operational experts	Prepared infrastructure, deployed software, copied datasets	Explore and test innovative solutions based on datasets from a technical (non-functional) and operational (functional) point of view, take into account all data protection requirements from the data protection assessment form	If repetition required, go to process step 14 If functional or non-functional test was successful or another repetition is not	C3-12 Innovation Lab technical personnel and operational experts

⁶ Consent can be received either via SIENA from a MS, a Union Body, a third country and/or an international organisation, when it concerns publicly available personal data from a private party (commercial intelligence provider) according to Article 17 (2) ER consent may require a data licence agreement or personal data may be directly received from a private party according to Article 26 (2) ER.

⁷ This requires the prior alignment with C1 ICT on resource allocation and available infrastructure

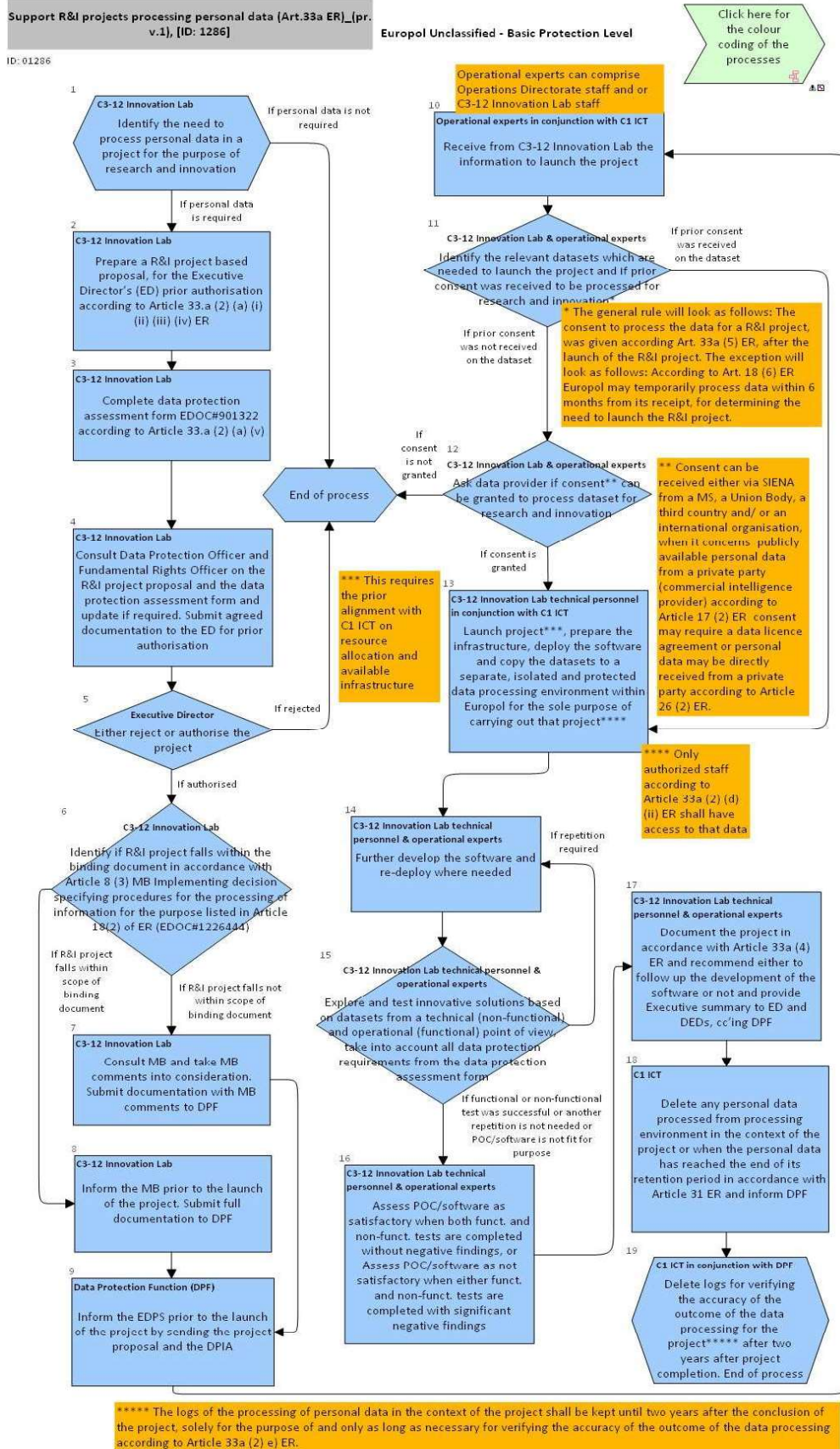
⁸ Only authorized staff according to Article 33a (2) (d) (ii) ER shall have access to that data

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No	Responsibility ³	Supplier	Input to the process step	Process (in chronological order)	Output of the process step	Customer
					needed or POC/software is not fit for purpose, go to step 16	
16	C3-12 Innovation Lab technical personnel and operational experts	C3-12 Innovation Lab technical personnel and operational experts	If functional/ non-functional test was successful or another repetition is not needed or POC/software is not fit for purpose	Assess POC/software as satisfactory when both funct. and non-funct. tests are completed without negative findings, or Assess POC/software as not satisfactory when either funct. and non-funct. tests are completed with significant negative findings	Identification of POC fulfilment	C3-12 Innovation Lab technical personnel and operational experts
17	C3-12 Innovation Lab technical personnel and operational experts C1 ICT	C3-12 Innovation Lab technical personnel and operational experts	Identification of POC fulfilment	Document the project in accordance with Article 33a (4) ER and recommend either to follow up the development of the software or not and provide Executive summary to ED and DEDs, cc'ing DPF	Final report	C1 ICT
18		C3-12 Innovation Lab conjunction with operational experts and C1 ICT	Final report	Delete any personal data processed from processing environment in the context of the project or when the personal data has reached the end of its retention period in accordance with Article 31 ER and inform DPF	Deleted personal data	Europol MS
19	C1 ICT in conjunction with DPF	C3-12 Innovation Lab, operational experts and C1 ICT	Final report	Delete logs for verifying the accuracy of the outcome of the data processing for the project ⁹ after two years after project completion. End of process	Deleted logs	Europol MS

⁹ The logs of the processing of personal data in the context of the project shall be kept **until two years after the conclusion of the project**, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing according to Article. 33a (2) (e) ER.

2.11. Flowchart of the process



2.12. Resources

- *Human Resources*
 - ED
 - DPF
 - C1 ICT
 - C3 -12 Innovation Lab
 - Operations Directorate staff
- *Roles*
 - IT systems support professional (internal & external)
 - IT Developer
 - Data scientist
 - Operational Expert (internal & external)
 - R&I Project manager
 - Data security/compliance auditor
 - IT security & infrastructure expert
 - IT architect (of both enterprise and application type)
 - IT Network support professional
- *Information, documents & know how*
 - Research and Innovation knowhow
 - Technical expertise for software development
 - Operational expertise
- *Working environment, equipment, infrastructure*
 - Secure and separate processing environment for Research & Innovation

2.13. Definitions and abbreviations

List the definitions and abbreviations used in the document (not included in the systems/tools).

Abbreviation	Full name
DEDG	Deputy Executive Director Governance
ED	Executive Director
EDPS	European Data Protection Supervisor
EPM live	Enterprise Project Management Tool
ER	Europol Regulation
EU	European Union
MB	Management Board
MS	Member State
Operational experts	Operational experts can comprise Operations Directorate staff or MS representatives / SNEs seconded to C3-12 Innovation Lab
PoC	Proof of concept
R&I	Research & Innovations

2.14. References

List existing documents relevant for the process:

- *Templates*
 - Research & Innovation project Initiation Document Template, EDOC# 1205606
- *Policies, Directorate Decisions*
 - *Europol Innovation Strategy* EDOC#1073366
- *Quality criteria, methods and responsibilities related to the products / services created by the process*
 - *Data Protection Assessment Form* #901322

2.15. Process performance indicators

Not applicable for the time being

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2.16. Records Retention

As a result of performing the above defined process, inputs and outputs will be handled and created. Some of these outputs of the process are records which have to be managed according to the Corporate Records Retention Policy¹⁰):

Record type	Retention period	Trigger initiating retention	Post-retention action	Format	Citation ¹¹
Business Case (proposal for a R&I project in line with Article 33a ER) [Step 2]	15 years	Beginning of the year following the year in which the project is concluded	Keep permanently	Electronic	HAEU Guidelines EU Agencies Historical Archives Management 1.2.1 - Records unique to Europol (EDOC# 883444)
Data Protection Impact Assessment (DPIA) [Step 3]					
DPF Consultation Record on Proposed R&I Project and DPIA [Step 4]					
FRO Consultation Record on the Proposed R&I Project and DPIA [Step 4]					
Submission Record on Proposed R&I Project and DPIA (to the Executive Director) [Step 4]					
Decision on the Proposed R&I Project [Step 5]					
MB Consultation Record (If R&I project does not fall within scope of binding document) [Step 7]					
MB Information Record (If R&I project falls within scope of binding document) [Step 8]					
EDPS Information Record (prior to the launch of the R&I project, including the proposed project and the DPIA) [Step 9]					
Prior Consent Record (to process dataset for R&I project) [Step 12]					
R&I Project Final Report [Step 17]					
Personal Data Deletion Notification (sent to DPF) [Step 18]					

Retention rationale:

The retention period is understood to allow sufficient time for any auditing requirements and also for verification of the accuracy of the projects' results. The proposed disposal action is based on the understanding that these records are unique to Europol, therefore holding historical value and showing evidence of Europol's Research & Innovation initiatives.

¹⁰ See *Retention schedule for Europol administrative records* (EDOC #488262). Retention periods, as defined in the Process Description are currently not implemented, but are to be included in the revised Corporate Records Retention Schedule and implemented once technical means are available. [remove this text if not applicable]

¹¹ Applicable legal or regulatory requirement(s)