

**From:** [REDACTED]  
**To:** [REDACTED]  
EDPS-Europol <EDPS-Europol@edps.europa.eu>;  
SUPERVISION <supervision@edps.europa.eu>; [REDACTED]  
[REDACTED] ZERDICK  
Thomas <thomas.zerdick@edps.europa.eu>;  
**CC:** [REDACTED] DPF Data  
Protection Function <DPF@europol.europa.eu>;  
[REDACTED]  
**Sent at:** 16/05/22 12:11:32  
**Subject:** Case 2022-0454 Consultation on Europol's MB Decisions  
- informal comments EDPS

Dear [REDACTED]

As discussed, please find enclosed EDPS informal comments on the draft Europol MB decisions.

The password will be shared through usual communication channels.

Best,

[REDACTED]



[REDACTED]

**European Data Protection Supervisor**  
Postal address: Rue Wiertz 60, B-1047 Brussels  
Office address: Rue Montoyer 30, B-1000 Brussels  
[@EU EDPS](#) [www.edps.europa.eu](http://www.edps.europa.eu)

This email (and any attachment) may contain information that is internal or confidential. Unauthorised access, use or other processing is not permitted. If you are not the intended recipient please inform the sender by reply and then delete all copies. Emails are not secure as they can be intercepted, amended, and infected with viruses. The EDPS therefore cannot guarantee the security of correspondence by email.

---

**From:** [REDACTED]  
**Sent:** 03 May 2022 14:34  
**To:** [REDACTED]  
**Cc:** [REDACTED] EDPS Europol <EDPS  
Europol@edps.europa.eu>; SUPERVISION <supervision@edps.europa.eu>; [REDACTED]  
[REDACTED]  
[REDACTED]



## **ZIP Archive with 5 entries**

EDOC-#1226443-v1 Art18(6)-EDPS.DOCX

EDOC-#1226444-v1 Art18(2)-EDPS.DOCX

EDOC-#1226445-v1-EDPS.DOCX

EDOC-#1226447-v1-EDPS.DOCX

Europol MB Decisions\_informal comments EDPS.pdf



**Management Board**

The Hague, 7 April 2022

EDOC #1226443v1

**DRAFT**

**Management Board Decision on the conditions related to the processing of data on the basis of Article 18(6) of the Europol Regulation**

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to ~~Regulation 2022/...~~ and Regulation 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), hereafter "the Regulation", as amended by Regulation 2022/..., and in particular, Article 18(6b) thereof,

Having regard to the proposal by the Executive Director,

Having regard to Regulation 2018/1725, and in particular Article 71 thereof,

Whereas the European Data Protection Supervisor was consulted on the draft decision on...

HAS DECIDED AS FOLLOWS:

**Article 1  
Scope**

This Decision shall apply to the processing of personal data received or retrieved by Europol under Articles 17(1) and 17(2) of the Regulation for the purpose of determining whether such data are relevant to Europol's tasks. This processing shall occur, if necessary, prior to the processing pursuant to Articles 18a, 18(6a) and Article 18(2) of the Regulation.

**Article 2  
Provision of data**

*[Please provide further details on the provision of data by MSs and on their processing for the specific purpose. For instance this article should provide for Europol to inform MSs about how to provide data and what will happen to data that will have to be sent back]*

**Commented [A1]:** The empowerment to act is in paragraph 6b and not in paragraph 6:  
*"The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data pursuant to paragraphs 6 and 6a, in particular with respect to the provision, access to and use of the data, as well as time limits for the storage and deletion of the data, which may not exceed the respective time-limits set out in paragraphs 6 and 6a, having due regard to the principles referred to in Article 71 of Regulation (EU)2018/1725."*

**Commented [A2]:** To be moved in recitals

Article 3  
Access to data

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(6) of the Regulation and this Decision. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

## Europol Unclassified – Basic Protection Level

### Article 3 Use of the data

1. Without prejudice to Article 22 of the Regulation, personal data processed by Europol under this Decision shall only be used for the sole purposes of determining whether such data are relevant for Europol's tasks, and if so, for which of the purposes referred to in Article 18(2) of the Regulation.
2. Where Europol determines that the personal data are relevant to its tasks and can be processed pursuant to ~~Articles 18a, 18(6a)~~ or to one or more of the purposes referred to in Article 18(2) of the Regulation, Europol shall inform the provider of the data about the allocation of the identified purpose(s).

### Article 4 Time limit for the processing

1. A decision on the use of personal data in accordance with Article 3(2) shall be taken as soon as possible and in any case no later than six months after such data were received or retrieved by Europol.
2. In the absence of a decision mentioned in paragraph 1, upon expiry of the six-month period, Europol shall delete such personal data.
3. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the deletion.

### Article 5 Entry into force

This Decision shall enter into force on [date].

Done at Lille, on [date].

For Europol,

Chairperson of the Management Board

**Commented [A3]:** Not necessary to repeat the regulation, what should be done here is to show how purpose limitation will be ensured in practice

**Commented [A4]:** This is again only a repetition of the Europol regulation. In accordance with the empowerment in that Regulation, the Management Board decision should explain the criteria according to which it is determined that personal data are relevant to the tasks.

This means, to the EDPS understanding, checking whether the crime for which the data is sent is a cross-border crime and it is an Annex I crime.

For example, what are the criteria to be followed in case it is doubtful that a certain crime is falling under the competence of Europol? We understand that there might be cases on the edge ?

**Commented [A5]:** A request for processing data under 18a should exist as of the beginning, so the reference to this article should be deleted.

**Commented [A6]:** In order for Art. 18(6a) to apply, the data should have been accepted under one of the purposes listed under Art. 18(2)(a) to (d) (which are the purposes for which Annex II defines data subject categories and data categories). In those cases, where strictly necessary for the sole purpose of determining whether the personal data are in compliance with Art. 18(5) (thus Annex II), data can be processed under the conditions set up by Art. 18(6a).  
This is not an additional legitimate purpose. This should be deleted.





The Hague, 7 April 2022  
EDOC #1226444v1

**DRAFT**

**Management Board Decision specifying the procedure for the processing of information in accordance with Article 18 of the Europol Regulation on the conditions related to the processing of personal data on the basis of 18(2) of the Europol Regulation**

**Commented [A1]:** Why has the title changed?

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/.... and 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), as amended, hereafter referred to as "the Regulation", and in particular, Articles 11(1)(q) and 18 thereof;

Having regard to Regulation 2010/1725, and in particular Article 71 thereof;

Having regard to the proposal by the Executive Director

**Commented [A2]:** Text of the empowerment:

The Management Board shall:  
(...)  
(q) adopt guidelines further specifying the procedures for the processing of information by Europol in accordance with Article 18, after consulting the EDPS;

Whereas this Decision aims to replace the Management Board Decision adopting the guidelines further specifying the procedures for processing of information in accordance with Article 18 of the Europol Regulation of 13 December 2017, which as a consequence should be repealed;

**Commented [A3]:** Differently from the new empowerments contained in Article 18(6)(b) and Article 18a(3a) there is no mention in Article 11(1)(q) of the proposal by the Executive Director.

Article 16(5)(b) of the ER makes the executive director "responsible for making proposals to the management board as regards the establishment of Europol's internal structures".

Whereas the European Data Protection Supervisor was consulted on the draft decision and has provided an opinion on...;

While the regulation -especially after the changes- is not consistent on the procedures governing the initiative of the Executive Director it could be better to add this, especially if this reflects the actual practice.

**Commented [A4]:** Please adapt citations in accordance with comments in

HAS DECIDED AS FOLLOWS:

## Europol Unclassified – Basic Protection Level

### Article 1 Scope

This Decision shall apply to the processing of personal data for the purposes listed in Article 18(2) of the Regulation.

### Article 2 Personal data provided by the Member States, Unions bodies and third countries

1. When providing personal data to Europol, Member States, third countries and, where applicable, Union bodies, shall indicate, ~~where required for the purposes listed in Article 18(2) of the Regulation,~~ whether the contribution contains personal data for which the categories of data subjects are not yet identified on the basis of the information provided.
2. Member States, Eurojust, the European Public Prosecutor's Office and third countries shall also indicate whether the data is provided in order to support an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.
3. Upon receipt of personal data Europol shall verify, on the basis of this indication and the information provided, whether the categories of data subjects as listed in Annex II of the Regulation for the personal data provided are identified. Personal data for which the categories of data subjects are identified shall be processed in accordance with Article 18(2) of the Regulation and this Decision.
4. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 2, shall be processed in accordance with Articles 18(6a) or 18a of the Regulation and their respective implementing Management Board Decisions.

**Commented [A5]:** Should not this article go in the other decision based on Article 18(6)(a)??

**Commented [A6]:** Europol (like every EUI) cannot impose obligations on third countries. This should be rephrased as a condition for Europol to accept information

### Article 3 Personal data provided by international organisations, private parties, private persons or retrieved directly by Europol from publicly available sources

1. When receiving personal data from international organisations, private parties, private persons, or when personal data is retrieved directly by Europol from publicly available sources, including the internet and public data, Europol shall verify, ~~where required for the purposes listed in Article 18(2) of the Regulation,~~ whether the categories of data subjects as listed in Annex II of the Regulation are identified, on the basis of the information provided or retrieved.
2. Personal data received by Europol from international organisation, private parties, private persons or when personal data is retrieved directly by Europol from publicly available sources, including the internet and public data, ~~that already fall under for which the categories of data subjects referred in Annex II are identified in accordance with Annex II~~ of the Regulation, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(2) of the Regulation and this Decision.
3. Personal data for which the categories of the data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in

**Commented [A7]:** Very convoluted, why not just sat that: "Europol shall verify that personal data retrieved from international organisation, private parties, private persons or directly from publicly available sources, including the internet and public data, falls under the category of Annex II according to the following procedure



Europol Unclassified – Basic Protection Level

paragraph 1, shall be processed in accordance with Articles 18(6a) or 18a of the Regulation and their respective implementing Management Board Decisions.

**Europol Unclassified – Basic Protection Level**

**Article 4  
Processing for the purpose of cross-checking**

*(bold and underlined text in Articles 4, 5, 6 and 7 is new text in comparison to the text of the current IDMC Guidelines)*

1. ~~Europol may process personal data for the purpose of cross-checking in accordance with Article 18(2)(a) of the Regulation, with the aim to identify connections or relevant links between information related to:~~
  - a) ~~persons who are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who have been convicted of such an offence;~~
  - b) ~~persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences in respect of which Europol is competent.~~

2.1. Personal data submitted for cross-checking in accordance with Art. 18(-2)(a) ER is ~~stored~~ **processed** with a view to enabling the comparison against other data sets. This ~~may~~ **can** be ~~done~~ by means of systematic, automated checks by the system, for instance against data that is submitted to an operational analysis project. ~~The personal data received for the purpose of cross-checking is, subject to any restrictions and conditions imposed by the data owner thereof, also made available for searching in accordance with Art. 20-21 ER which facilitates the identification of possible links with other data.~~

**Commented [A8]:** This is a simple copy paste of Article 18(2)(a) ER. It does not provide any guideline and should be deleted.

**Commented [A9]:** There could be more details here as to the modalities of the cross-checking in order to provide the guidelines in the meaning of Article 11(1)(q), i.e. the applicable provision, to which the present decision gives effect.

**Article 5  
Processing for the purpose of analyses of a strategic or thematic nature**

1. ~~Europol may process personal data for the purpose of analyses of a strategic or thematic nature in accordance with Article 18(2)(b) of the Regulation. Such processing shall aim to give an insight and better understanding of crime and criminal trends in general and shall also should enable decisions at a strategic level to influence the criminal developments in question.~~
2. Even though personal data may be used for processing for the purpose of strategic and thematic analysis, the results of such analysis ~~in-principle shall~~ **do** not contain any references to concrete data subjects.

**Commented [A10]:** "influence criminal developments"? Maybe "understand and fight..."?

**Article 6  
Processing for the purpose of operational analyses**

1. ~~Europol may process personal data for the purpose of operational analysis in accordance with Article 18(2)(c) of the Regulation. Such pProcessing for the purpose of operational analysis in accordance with Article 18(2)(c) shall aim to support criminal investigations and criminal intelligence operations through all available methods and techniques by which information is collected, stored, processed and assessed.~~
2. The processing for operational analysis shall only take place within the context of operational analysis projects. An operational analysis project is a platform in which

operational analysis ~~may~~ be conducted to support international criminal investigations and criminal intelligence operations against specific targets. The scope of such a platform can, in particular, be a crime area covering one or more types of crime; it can relate to a geographical dimension, or it can focus on particular crime structures, phenomena or incidents that due to their size, complexity or impact require a dedicated approach.

3. Operational analysis projects shall be created by a Decision of the Executive Director, which may be delegated to the responsible Deputy Executive Director. The Management Board and the European Data Protection Supervisor shall be informed of the Decision opening such an operational analysis project.
4. The Decision opening an operational analysis project shall specify:
  - a) The specific purpose for which it is set up;
  - b) The categories of personal data which may be processed, and where it concerns personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and processing of genetic data or data concerning a person's health or sex life, the reason why the inclusion of such data is considered to be strictly necessary and proportionate for the purposes of the project concerned;
  - c) The categories of data subjects which may be processed, and where it concerns victims, witnesses or minors, the reason why the inclusion of such data is considered to be strictly necessary and proportionate for the purposes of the project concerned;
  - d) The participating Member States and associated third parties of the operational analysis project;
  - e) Specific conditions for storage, access, transfer and use of the personal data, where ~~these are~~ stricter conditions than the ones generally applicable provisions to the processing of personal data in general under the Regulation or this Decision are necessary.
5. The Executive Director, and by delegation the responsible Deputy Executive Director, may decide to close an operational analysis project, or amend the decision opening the project, including the changing of categories, its purpose, its scope, its members or its extension. The Management Board and the EDPS shall be informed of any such Decision to amend or close a project.
6. The Management Board may instruct the Executive Director to modify the Decision opening or amending an operational analysis project. The Management Board may also instruct the Executive Director to close a project.
7. The EDPS may address any comment on the opening, closure or amendment of an operational analysis project it deems necessary to Europol as controller of the data processing. Europol shall promptly inform the Management Board of any such comments received from the EDPS and seek without any undue delay to implement, in consultation with the Management Board any recommendations made by the EDPS in relation to the opening, closure or amendment of an operational analysis project.
8. Where it becomes apparent that personal data provided for operational analysis in one operational analysis project may be relevant for another operational analysis project, Europol may use it in that other project; however, further processing of

## Europol Unclassified – Basic Protection Level

that personal data shall only be permitted in so far as such further processing is necessary and proportionate, and the personal data are compatible with the conditions applicable to the other operational analysis project. In such cases, Europol shall inform the data owner without undue delay of its decision to use it in the other operational analysis project.<sup>1</sup> The justification for such use in another operational analysis project shall be duly documented.

**Commented [A11]:** superfluous Repetition of the Europol Regulation Art. 18(3)(b).

9. All Member States shall be invited to participate in an operational analysis project at the moment of setting up the project. Member States can inform Europol of their intention to participate at the moment of setting up the project or at a later stage.
10. Union bodies, third countries and international organisations, with whom the exchange of personal data is permitted under any of the provisions of Chapter V of the Regulation, may be invited to be associated to a certain operational analysis project if the purpose of the project is relevant to them or if the data processed in the project concerns them and if agreed by all participating Member States. Notwithstanding the possibilities to exchange personal data with private parties under Article 26 of the Regulation, private parties and private persons may not be associated to an operational analysis project.
11. Europol shall develop and implement, in close collaboration with the Management Board and the HENUS, a procedure for the transmission and acceptance of information in operational analysis projects. This procedure shall specify:
  - a) that contributions ~~must~~ indicate for which operational analysis project or projects the information is intended. Where the data owner has not indicated this explicitly, Europol shall determine the appropriate destination in consultation with the data owner concerned.
  - b) that contributions ~~shall~~ **must contain personal data in accordance with the** ~~be in accordance with the~~ categories of personal data and data subjects as specified in the decision opening the operational analysis project.
  - c) that, unless explicitly stated otherwise, all contributions to a specific operational analysis project shall be deemed to be submitted for the purpose of that operational analysis
  - d) that if Europol believes, after appraisal, that personal data provided by Member States, Union bodies, third countries and international organisations for an operational analysis project is incorrect, inaccurate, no longer up to date or should not have been transmitted because...., it shall without undue delay inform the data owner, which shall provide its position on the matter, and take appropriate action, including restricting the processing of the personal data deemed incorrect, inaccurate or no longer up to date ensuring they can no longer be processed with the exception of storage.
12. Prior to the closure of an operational analysis project Europol and the **owners providers** of the information therein contained within it shall agree on the further retention and, where needed, appropriate reallocation of purpose or allocation to different operational analysis project(s), or destruction of said information. Where no agreement on individual contributions of personal data can be found, the personal data shall be deleted by Europol.

**Commented [A12]:** first time this acronym occurs, it should be provided in full.

**Commented [A13]:** Why would storage by Europol continue to be allowed?

<sup>1</sup> In the event that the data owner does not agree with the use of the data in the other operational analysis project, then it can restrict its use in accordance with Article 19.2 of the Regulation and inform Europol of such restriction.



Europol Unclassified – Basic Protection Level

Article 7

Processing for the purpose of facilitating the exchange of information

1. ~~Europol may process personal data for the purpose of facilitating the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties in accordance with Article 10(2)(d) of the Regulation.~~ Europol may enable the use of its infrastructure for ~~that purpose.~~
2. Where ~~these~~ exchanges of personal data for the purposes of Article 7 exclude Europol, they shall take place under the responsibility of the entities concerned and in accordance with their law. This applies in particular to those exchanges of information that fall outside of Europol's mandate. **The security of such exchanges shall be ensured in accordance with Article 91 of Regulation (EU) 2018/1725.**
3. Paragraphs 1 and 2 of this Article may also include automated processes.
4. The exchange of information under this Article shall be without prejudice to the role and responsibilities of the Europol national units as prescribed in Article 7 of the Regulation.
5. Europol, the Member States, Union Bodies, third countries, international organisations **and private parties** shall each take up their respective responsibilities in terms of information security and take appropriate measures to enforce it.
6. Europol shall follow its operational priorities, in consultation with the Management Board, when deciding which third country, international organisation, other Union bodies **or private party** shall receive access to Europol's infrastructure ~~exchanging information for this purpose.~~

Commented [A14]: Again, Nothing added compared to the Regulation!

Commented [A15]: These guidelines could explain a bit more what is meant by excluding Europol

Commented [A16]: The choice of which third countries or other entities can avail themselves of Europol for exchanging information should be governed by clear criteria. The guidelines should provide more details.

Commented [A17]: This article as it stands merely repeats the ER and it is insufficient to provide any guideline on how to process personal data: it should provide indications (where necessary) on how to implement new Article 33a

Article 8

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 to achieve the objectives set out in Article 3 of the Regulation, in accordance with Article 10(2)(e) of the Regulation.~~
- 2.1. Where necessary to achieve the objectives of Europol's research and innovation projects, processing of personal data for the purpose of research and innovation, ~~as referred to in paragraph 1,~~ shall be carried out only by means 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.
- 3.2. In accordance with the procedure outlined in 33a(2)(b), the Management Board shall be consulted prior to the launch of those research and innovation

## Europol Unclassified – Basic Protection Level

projects which are not included in the binding general scope for the research and innovation projects of Europol decided by the Management Board in accordance with paragraph 4 of this Article. For research and innovation projects within that scope, the Management Board shall only be informed.

~~4. The Management Board shall define, at regular intervals, the general scope for the research and innovation projects that Europol can establish in accordance with Article 33a of the Regulation.~~

### Article 9

#### Processing for the purpose of supporting Member States, upon their request, in informing the public about wanted suspects or convicted individuals

~~1. Europol may process personal data for the purpose of supporting the Member States, upon their request, in informing the public about suspects or convicted individuals who are wanted, based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitating the provision of information, to the Member States and Europol, by the public on these individuals in accordance with Article 18(2)(f) of the Regulation.~~

~~2.1.~~ Europol shall further specify the conditions for the processing of personal data according to this article in a policy document. The policy shall at least specify the technical means used to inform the public, the access management as well as the content management, including criteria for the selection of suspects or convicted individuals and for data quality as well as data retention requirements.

**Commented [A18]:** This should be done here rather than delegated to a policy document .

### Article 10

#### Access to the data

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(2) of the Regulation. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data which they need to know for the performance of their duties and without prejudice to security requirements in accordance with Article 67 of the Regulation.

### Article 11

#### Time limits for processing

Europol may store personal data processed under this Decision only for as long as is necessary and proportionate for the purposes for which the data are processed as outlined in Articles 4 to 9 of this Decision and in accordance with the time limits and conditions as set out in ~~Article 31 of~~ the Regulation.

**Commented [A19]:** These guidelines concern all the processing taking place under Article 18 which may be subject to specific time limits other than those of Article 31.

### Article 12

#### Replacement and repeal

Europol Unclassified – Basic Protection Level

The Management Board Decision adopting the guidelines further specifying the procedures for processing of information for the European Law Enforcement Agency in accordance with Article 18 of the Europol Regulation of 13 December 2017<sup>2</sup> is hereby replaced and repealed with effect from the date of entry into force of this Decision.

---

<sup>2</sup> EDOC #832397v36.

Europol Unclassified – Basic Protection Level

Article 13  
Entry into force

This Decision shall enter into force on the day of its adoption.

[Is this decision made public? If so, how?]

Done at Lille, on [date].

For Europol,

Chairperson of the Management Board





The Hague, 7 April 2022

EDOC #1226445v1

**DRAFT**

**Management Board Decision on the conditions related to the processing of personal data on the basis of Article 18(6a) of the Europol Regulation**

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/... and Regulation 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), as amended, hereafter referred to as "the Regulation", and in particular, ~~Article 18(6a) and Article 18(6b)~~ thereof;

~~Having regard to Regulation 2018/1725, and in particular Article 71 thereof;~~

Whereas Europol may receive personal data, without the request for support for a specific criminal investigation, that might not fall into the categories of data subjects set out in Annex II of the Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects;

Whereas the European Data Protection Supervisor was consulted on the draft decision ~~and delivered an opinion on...on...;~~

HAS DECIDED AS FOLLOWS:

## Europol Unclassified – Basic Protection Level

### Article 1 Scope

This Decision shall apply to the processing of personal data, received or retrieved by Europol pursuant to paragraphs 1 or 2 of Article 17 of the Regulation, and accepted under one of the purposes listed under Article 18(2)(a) to (d), for which the categories of the data subjects are not yet identified in accordance with Annex II of the Regulation, as referred to in Article 18(6a) of the Regulation.

**Commented [A1]:** Processing under Art. 18(6a) is only meant to ensure compliance with Article 18(5)

### Article 2

#### Personal data provided by the Member States, Union bodies and third countries

1. When providing personal data to Europol, Member States, third countries and, where applicable, Union bodies, shall indicate whether the contribution contains personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation and the reason for the lack of identification. Member States, Eurojust, the European Public Prosecutor's Office and third countries shall also indicate whether the data are provided in the context of an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.
2. Upon receipt of personal data, Europol shall verify, on the basis of this indication and the information provided, whether the categories of data subjects as listed in Annex II of the Regulation for the personal data provided are identified or not.
3. In case Europol considers, following the verification mentioned in paragraph 2, that for personal data the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
4. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 2, shall be processed in accordance with Article 18(6a) of the Regulation and this Decision. They shall be functionally separated from other data by being labelled as "DSC not completed". These data shall only be accessible in accordance with Article 4 5 and the labelling shall be clearly visible to those having access to the data.

**Commented [A2]:** There is a certain overlap between the decisions.  
Given that there is a single empowerment for adopting further rules in relation to paragraphs 6 and 6a, it should be considered to merge them.  
Nothing actually impedes Europol to have also

**Commented [A3R2]:** This seems out of scope of this Decision. In the recital, it is specified that this MB Decision applies to cases where Europol receives personal data, without the request for support for a specific criminal investigation

**Commented [A4]:** As Article 18(6a) sets up a broad derogation, assurance should be provided that the safeguards put in place are complied with in practice by regular internal checks (eg that the verification process works as expected)

**Commented [A5]:** In this article and the following article 3 and 4, the processing under Art. 18(6a) in case where DSC is not completed seems automatic. However, Art. 18(6a) authorises Europol to temporarily process data for this purpose only where strictly necessary. This necessity assessment is missing from the MB decision.

**Commented [A6]:** The requirement in Article 18(6a) of functional separation of these datasets from datasets processed under the general regime (Art. 18(2)) is a safeguard intended to ensure compliance with the purpose limitation principle. It is meant to prevent further incompatible uses (i.e. processing for other purposes than the one of determining whether personal data are in compliance with Art. 18(5)). In that regard the measures proposed by Europol (labelling of data and limitation of access rights to senior analysts on a "need-to-know basis for the performance of their duties") appear insufficient to ensure that such key data protection principle is complied with. Access to the data should be strictly limited to the purpose of determining whether personal data are in compliance with Art. 18(5). This should be complemented by other measures such as:

- Clear separation of duties, i.e. dedicated analysts for the processing under Art. 18(6a) and/or technical limitations in terms of import of these datasets into the EAS (= blocking of import for non-DSC data)
- Logging that would allow internal checks of who has accessed the data and identification of abnormalities

### Article 3

#### Personal data provided by international organisations, private parties and private persons

1. Upon receipt of personal data from international organisations, private parties and private persons, Europol shall verify, on the basis of the information provided, whether the categories of data subjects as listed in Annex II of the Regulation are identified or not.
2. In case Europol considers, following the verification mentioned in paragraph 1, that for personal data the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.



### Europol Unclassified – Basic Protection Level

3. Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(6a) of the Regulation and this Decision and shall be functionally separated from other data by being labelled as "DSC not completed". The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

#### Article 4 Personal data retrieved by Europol from publicly available sources

1. Upon retrieval of personal data from publicly available sources, including the internet and public data, under Article 17(2) of the Regulation, Europol shall verify, on the basis of the information retrieved, whether the categories of data subjects as listed in Annex II of the Regulation are identified or not.
2. In case Europol considers, following the verification mentioned in paragraph 1, that for certain personal data retrieved by Europol from publicly available sources for which the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
3. Personal data for which the categories of the data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 1, shall be processed in accordance with Article 18(6a) of the Regulation and with this Decision and shall be functionally separated from other data by being labelled as "DSC not completed". The data shall only be accessible in accordance with Article 5 and the labelling shall be clearly visible to those having access to the data.

#### Article 5 Access to data

Only trained and duly authorised Europol staff members shall have access to the personal data processed by Europol pursuant to Article 18(6a) of the Regulation. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties and without prejudice to the security requirements in accordance with Article 67 of the Regulation.

**Commented [A7]:** This is too broad. Processing under Article 18(6a) and thus access to the data should be conducted for the sole purpose of determining whether personal data are in compliance with Art. 18(5).

#### Article 6 Use of the data

1. Europol may temporarily process personal data subject to this Decision, where strictly necessary, for the sole purpose of determining whether such data comply with the requirements of Article 18(5) of the Regulation. The processing may include checking the data against other data which are processed by Europol in accordance with Article 18(5) of the Regulation, in order to identify whether personal data matches with the data Europol already processes under the Regulation, with the aim to identify the categories of data subjects in accordance with Annex II of the Regulation.

**Commented [A8]:** this should be defined in the MB Decision

**Commented [A9]:** authorisation from Art. 18(6a): the MB Decision should define when this will be the case.

### **Europol Unclassified – Basic Protection Level**

2. Personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation may not be processed in accordance with Article 18(2) of the Regulation.
3. Personal data for which the categories of data subject are not yet identified in accordance with Annex II of the Regulation may not be transferred to Member States, Union bodies, third countries, international organisations, private parties or private persons.
4. Personal data for which the categories of data subjects have been identified in accordance with Annex II of the Regulation, as a result of processing as mentioned in paragraph 1, shall be further processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.

### **Article 7 Time limits for the processing**

1. Europol may only process personal data in accordance with Article 6(1) for an initial period of 18 months from the moment Europol receives or retrieves the personal data, without prejudice to the period of processing under Article 18(6) of the Regulation, if applicable. This period may be extended in justified cases for a longer period where necessary for the purpose outlined in Article 6(1), but in any case it may not exceed a period of three years.
2. When it is necessary to extend the temporary processing period beyond the initial period of 18 months, Europol shall inform the European Data Protection Supervisor.
3. When Europol concludes that personal data, after having processed the data in accordance with Article 6, does not comply with the requirements of Article 18(5) of the Regulation or the maximum processing period for the data referred to in paragraph 1 of this Article has expired, including any extension if applicable, Europol shall delete that data.
4. In the cases mentioned in paragraph 3, Europol shall notify the provider of the data prior to the deletion.

### **Article 8 Entry into force**

This Decision shall enter into force on [date].

Done at Lille on [date].

For Europol,

**Commented [A10]:** Europol should clarify in the Decision the criteria which will be used in order to decide whether prolonging this period is justified, when the EDPS will be informed and which information will be provided to the EDPS.



Europol Unclassified – Basic Protection Level

Chairperson of the Management Board



The Hague, 7 April 2022

EDOC#1226447v1

**DRAFT**

**Management Board Decision on the conditions related to the processing of personal data on the basis of Article 18a of the Europol Regulation**

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to Regulation 2022/.... and Regulation 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), as amended, hereafter referred to as "the Regulation", and in particular, Articles 2(q) and 18a(3a) thereof;

**Having regard to the proposal by the Executive Director**

~~Having regard to Regulation 2018/1725, and in particular Article 71 and 73 thereof;~~

Whereas the European Data Protection Supervisor was consulted on the draft decision ~~on...~~ and delivered an opinion on....;

HAS DECIDED AS FOLLOWS:

**Commented [A1]:** Europol: Article 18a being entirely new, the paragraphs will be renumbered and the empowerment to be quoted here will likely be in a new paragraph 4.

Text of the empowerment:

*The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the provision and processing of personal data in accordance with paragraphs 3 and 4.*

**Europol Unclassified – Basic Protection Level**

**Article 1  
Scope**

This Decision shall apply to the processing of personal data provided, pursuant to points (a) or (b) of Article 17(1) of the Regulation, by Member States, the European Public Prosecutor's Office, Eurojust or third countries in support of a specific ongoing criminal investigation in accordance with Article 18a of the Regulation for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation.

**Article 2  
Personal data provided by the Member States, the EPPO, Eurojust and third countries**

1. When providing investigative data to Europol in accordance with Article 18a of the Regulation, Member States, the European Public Prosecutor's Office, Eurojust and third countries shall indicate whether the data contains personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation. They shall also indicate whether the investigative data are provided in the context of an ongoing criminal investigation in one or more Member States that Europol supports or is requested to support.
2. Upon receipt of the investigative data, Europol shall verify, on the basis of this indication and the information provided, whether the categories of the data subjects as listed in Annex II of the Regulation for the personal data provided are identified or not.
3. In case Europol considers, following the verification mentioned in paragraph 2, that for personal data the categories of data subjects as listed in Annex II of the Regulation are identified, these data shall be processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.
4. Europol shall assess whether it is possible to support the specific criminal investigation without processing personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation.
5. The assessment referred in the previous paragraph shall be based on the following criteria:
  - (a)....
  - (b)...
  - (c)...
- ~~4.6.~~ In case Europol ~~concludes assesses~~ that ~~it this~~ is not possible ~~to support the investigation without processing personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified in accordance with annex II of the Regulation~~, it shall record the assessment with indication of the date. Europol shall send the results of this assessment to the European Data Protection Supervisor for information when Europol ceases to support the related specific criminal investigation in accordance with Article 6.
- ~~5.7.~~ Personal data for which the categories of data subjects as listed in Annex II of the Regulation are not yet identified, following the verification mentioned in paragraph 2, ~~shall be processed in accordance with Article 18a of the Regulation and with this Decision~~. They shall be functionally separated ~~from other data by being labelled as "DSC not completed"~~. These data shall only be accessible in accordance with Article 4 and the labelling shall be clearly visible to those having access to the data.

**Commented [A2]:** The text of Art. 18(a) refers to a request from MS, EPPO or Eurojust made to Europol to support an ongoing specific investigation. An indication is not sufficient. The request should also specify whether the support should be by way of operational analysis or by way of cross-checking pursuant to Art. 18(2)(a)

**Formatted:** Indent: Left: 0,64 cm, No bullets or numbering

**Formatted:** Indent: Left: 0,64 cm, No bullets or numbering

**Formatted:** Font: Verdana, 10 pt

**Commented [A3]:** Same comments for functional separation as in MB Decisions on Article 18(6a)

### Article 3

#### Exceptional cross-checking of investigative data

1. In order to assess whether the investigative data provided pertains to an exceptional situation and thus can be exceptionally cross-checked in accordance with Article 18a(1)(a)(ii) of the Regulation, Europol shall take into account the following criteria:

- (a)...
- (b)...
- (c)...
- ...

2. The decision to proceed to cross checking of investigative data shall be recorded with indication of the date.

### Article 4<sup>3</sup>

#### Additional requirements for personal data provided by third countries

1. Where a third country provides investigative data to Europol in accordance with Article 18a of the Regulation, it shall also ~~demonstrate~~ indicate, in addition to fulfilling the requirements of paragraph 1 of Article 2, that it acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law.
2. Europol shall verify that the amount of personal data provided by the third country is not manifestly disproportionate in relation to the specific investigation that Europol supports. Where Europol reaches the conclusion that there is an indication that such data are manifestly disproportionate or were collected in obvious violation of fundamental rights, Europol shall not process them further and shall delete the data.

3. Where a third country provides investigative data to Europol, the Data Protection Officer may, where relevant, notify the EDPS, such as for instance:

(a).

**Commented [A4]:** MB decision should specify the criteria that Europol will use to make these assessments and that such assessments will be documented

**Commented [A5]:** The Management Board cannot impose obligations on third countries. This should be rephrased having Europol as the subject:

1. Europol may only accept data for which the third country indicated that...
2. Europol shall inform third countries submitting information of the requirements in paragraph 1.

**Commented [A6]:** Define cases where it will be relevant to notify the EDPS (at least as examples)

### Article 4

#### Access to data

1. Only trained and duly authorised Europol staff members shall have access to the investigative data processed by Europol pursuant to Article 18a of the Regulation and this Decision. The Executive Director shall identify specifically which staff members will have access to such personal data by means of a specific authorisation process. These staff members shall only have access to the data for which they have a need to know for the performance of their duties, and without prejudice to the security requirements in accordance with Article 67 of the Regulation.
2. Personal data processed pursuant to paragraph 4 of Article 18a of the Regulation and Article 3 of this Decision may only be accessed by Europol where necessary for the support of the specific criminal investigation in one or more Member States for which they were provided.

**Commented [A7]:** again, this is too broad. This should be narrowed down to the scope of the processing as defined by Art. 18a

**Commented [A8]:** Is it really necessary? It is clear that the Regulation applies



## Europol Unclassified – Basic Protection Level

### Article 5 Use of the data

1. Europol may process investigative data received under Article 18a in accordance with Art 18(2) for as long as it supports the ongoing specific criminal investigation for which they were provided and only for the purpose of supporting that investigation.
2. ~~Investigative data~~ ~~Personal data for which the categories of data subjects are not yet identified in accordance with Annex II of the Regulation~~ may not be transmitted or transferred to Member States, Union bodies, third countries, international organisations, private parties or private persons, except where strictly necessary for the support of the specific investigation for which these data were provided.
3. Personal data for which the categories of data subjects have been identified in accordance with Annex II of the Regulation, as a result of processing in accordance with this Article shall ~~continue to be~~ ~~be further~~ processed in accordance with paragraphs 2 to 5 of Article 18 of the Regulation.

**Commented [A9]:** see definition of investigative data

### Article 6 Time limits for the processing

1. ~~Europol may process investigative data for as long as such data it supports the ongoing specific criminal investigation for which the investigative data were provided.~~ Europol's support of the investigation shall end upon receipt of the notification of the provider in accordance with Article 18a(1a) of the Regulation, according to which the provider shall inform Europol when its authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable law has ceased to exist.
2. As soon as Europol no longer supports the ongoing specific criminal investigation for which the data were provided ~~and where Europol, after having processed personal data in accordance with Article 5, concludes that the data does not comply with the requirements of Article 18(5) of the Regulation,~~ it shall delete such investigative data without prejudice to a possible storage of the data in accordance with Article 7.
3. In the cases mentioned in paragraph 2, Europol shall notify the provider of the data prior to the deletion.

**Commented [A10]:** Should not be there here guarantees against cases that are never closed under national law? For instance, after 10 years should not Europol ask for whether there are updates on the cold cases to the MSs authorities?

This is also particularly relevant for EPPO and EUROJUST, where there is no EU criminal procedural law

**Commented [A11]:** Investigative Data (i.e. non-categorised) is already an exception to the general rule on categorisation. Once Europol no longer support the investigation, a DSC performed later cannot allow to prolong the retention of certain data.

### Article 7 Storage for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process

1. ~~By way of derogation from~~ ~~Before deleting the investigative data upon expiry of the time limits stipulated in Article 6(2),~~ Europol may store the investigative data and the outcome of its processing beyond the processing period determined by such time limits for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. ~~Europol may store the data only where requested by the provider of the investigative data or by a Member States in which judicial proceedings concerning related criminal investigations are ongoing.~~

**Commented [A12]:** The MB decision could contain the operational details to be given to MSs: how and when to inform that retention of investigative data for judicial purposes is necessary

**Europol Unclassified – Basic Protection Level**

2. To determine the admissible storage duration, Europol shall, upon receipt of a storage request, require the provider of the investigative data to notify Europol upon termination of the judicial proceedings concerning the criminal investigation for which the investigative data were provided. In case of related criminal investigations in a Member State other than the one having provided the investigative data to Europol, Europol shall require that other Member State to notify it upon termination of the judicial proceedings concerning such related criminal investigation.
3. Without prejudice to Article 4, only duly authorised staff shall have access to the investigative data stored in accordance with this Article. The staff members shall be identified by means of specific authorisation process in accordance with Article 4.
4. As soon as Europol is notified about the termination of the relevant judicial proceedings, it shall delete the relevant investigative data stored in line with paragraph 1. Europol shall inform the provider of the data accordingly by means of notification announcing the deletion of the data.

**Commented [A13]:** o Limitation on access to the data should be further specified (who will get access to the data, when and for what purpose)  
o Europol should specify where the data will be stored (in the archive?) and how the restrictions on processing will be implemented.

**Article 8  
Entry into force**

This Decision shall enter into force on [date].

Done at Lille on [date].

For Europol,

Chairperson of the Management Board

**EDPS Informal comments on  
Europol Draft Management Board Decision on the conditions related to the  
processing of personal data on the basis of 18(2) of the amended Europol  
Regulation**

16 May 2022

**1. Timing and procedure**

This document is meant to provide initial feedback on the four Management Board decisions. It constitutes a purely informal advice.

This informal consultation by Europol cannot replace the **formal consultation** of the EDPS that can only take place **once the new Europol regulation has entered into force**. The EDPS will strive nevertheless to provide a swift formal reply to that future consultation building on the present and future informal exchanges.

In order to be as constructive as possible and in the interest of timing the EDPS has prepared the comments below, as well as revised versions of the decisions (in track-changes, attached). Please note that this way of working should not be meant as constituting a precedent, and is without any prejudice to any further comments or measures by the EDPS.

**2. General remarks**

The decisions, in general terms, should provide **more details** as to how Europol will perform the processing of personal data.

The decisions are based on three specific legal bases in the Europol Regulation:

- **Article 11(1)(q)**: "The Management Board shall: (...) (q) adopt guidelines further specifying the procedures for the processing of information by Europol in accordance with Article 18, after consulting the EDPS;"
- **Article 18(6b)**: "The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data pursuant to paragraphs 6 and 6a, in particular with respect to the provision, access to and use of the data, as well as time limits for the storage and deletion of the data, which may not exceed the respective time-limits set out in paragraphs 6 and 6a, having due regard to the principles referred to in Article 71 of Regulation (EU)2018/1725."
- **Article 18a(3a)** second sentence: "The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the provision and processing of personal data in accordance with paragraphs 3 and 4."

Indeed, in all these provisions the legislator requires the Management Board (MB) to take specific actions. In doing so it specifically framed the administrative autonomy that all EU Institutions and bodies enjoy, indicating how to further regulate certain aspects, related to processing of personal data. It required in particular **to specify the procedures and/or the conditions of processing of personal data**.

The pre-existing and 'general' empowerment contained in Article 11(1)(q) concerns the 'entirety' of Article 18. Then, the legislator of 2022 added a further framing of the powers of auto-organisation of Europol by **adding a duty to further specify conditions** for processing of personal data for determining whether datasets submitted are relevant for Europol tasks (paragraph (6)) and also for the temporary processing of data lacking DSC (new paragraph (6a)).

Concerning new Article 18a, the legislator requires the MB to take specific action in relation to the storage of investigative data (paragraph 3 of Article 18a) and in relation to data received by third countries (paragraph 4 of that same article).

In essence, under these three empowerments, Europol (its Management Board) is under a duty to give concrete effect to the requirements made explicit in the Europol Regulation to specify procedures and conditions for processing.

Two consequences stem from the above:

*First*, the MB is under a duty to give full effect to the provisions introduced by the legislator framing and orienting its autonomy.

The EDPS after a first analysis deems that the draft decisions in some instances only repeat provisions of the Europol Regulation but **do not provide further specifications on the procedures and conditions with the level of detail that the legislator required**. Please see to that purpose the specific comments made directly in the texts and in section 4 below.

*Second*, the existence of specific mandates given to the MB does not mean that this latter cannot take the decisions, which are necessary to implement more generally the new provisions of the amended Europol Regulation. In particular, in connection with Article 18a, **the EDPS deems necessary for the MB also to specify in a specific decision:**

- How an ongoing criminal investigation will be considered 'specific' and 'ongoing'?
- What the term 'investigative data' means? In particular, is this limited to formal criminal investigations (supposedly where the investigation has reached the stage of the judicial investigation) and not in the context of administrative police tasks?
- What criteria will guide the assessment, referred in Article 18a(1)(b) as to whether the support of the ongoing criminal investigation cannot be carried out without proceeding to DSC in accordance with Article 18(5)? (Refer also to section 4 below)
- According to which criteria will Europol verify whether the exceptional situations mentioned in Article 18a(1)(a)(ii) and which allow the cross-checking in line with Article 18(2)(a) are truly exceptional and reject submissions which (at least) are manifestly not exceptional? (Refer also to section 4 below)
- How will this be recorded and stored to be later put at the disposal of the EDPS? (Refer also to section 4 below)

These specifications are essential in order to ensure that the special provision allowing processing of data lacking DSC introduced by the legislator with Article 18a takes place only where the conditions laid down by this latter are fulfilled. Such conditions are important to ensure effective protection of personal data, given the extent of the interference that will be allowed (data of persons not necessarily having a link with the crime will be processed by



Europol for ongoing criminal investigations) and also given the fact that control by the EDPS may only take place once Europol ceases to support the related specific criminal investigation; in order for any supervision to be effective it should be based on the verification of clear and precise rules foreseen in advance.

### 3. Structure and status of the decisions

Europol has chosen to prepare in the immediate four decisions:

- A decision based on the empowerment in Article 11(1)(q) implementing article 18 repealing and replacing a pre-existing one;
- Two separate decisions, one 'implementing' Article 18(6) and another one implementing Article 18(6a), which should be both based on Article 18(6b);
- A decision implementing Article 18a but limited to paragraphs 3 and 4 thereof as mandated by Article 18a(3a).

The EDPS suggests:

- For Article 18: To consider whether it would be possible to merge in one decision all the provisions implementing Article 18 (i.e. the first three mentioned above). If that should not be considered possible or appropriate (see also comments on the role of initiative of the Executive director in the attached revised versions), at least the two decisions based on the same provision in Article 18(6b) could perhaps be grouped together.
- For Article 18a: Introduce the elements missing mentioned in the previous section and prepare a decision with a broader scope than the strict mandate contained in Article 18a(3a).

### 4. Comments on specific data protection aspects

#### 4.1. MB Decision relating to Article 18(6a): Processing for purposes of determining whether personal data are in compliance with Art. 18(5)

- The requirement in Article 18(6a) of functional separation of these datasets from datasets processed under the general regime (Art. 18(2)) is a safeguard intended to ensure compliance with the purpose limitation principle. It is meant to prevent further incompatible uses (i.e. processing for other purposes than the one of determining whether personal data are in compliance with Art. 18(5)). In that regard the measures proposed by Europol (labelling of data and limitation of access rights to senior analysts on a "need-to-know basis for the performance of their duties") appear insufficient to ensure that such key data protection principle is complied with. Access to the data should be strictly limited to the purpose of determining whether personal data are in compliance with Art. 18(5). This should be complemented by other measures such as:
  - o Clear separation of duties, i.e. dedicated analysts for the processing under Art. 18(6a) and/or technical limitations in terms of import of these datasets into the EAS (= blocking of import for non-DSC data);
  - o Logging that would allow internal checks of who has accessed the data and identification of abnormalities

- As this article sets up a broad derogation, assurance should be provided that the safeguards put in place are complied with in practice by regular internal checks (eg that the verification process works as expected).
- The requirement to inform the EDPS of any extension of the maximum processing period is a key safeguard to ensure that the processing period is only extended in justified cases. Europol should thus clarify in the internal rules the criteria which will be used in order to decide whether prolonging this period and when the EDPS will be informed.

#### **4.2. MB decision relating to Article 18a: Processing for the purpose of supporting a specific ongoing criminal investigation**

- The application of this article is subject to a series of preliminary checks, which condition the application of such broad derogation:
  - o MS/EPPO/EJ requests Europol to support an ongoing specific criminal investigation within the mandate of Europol AND Europol assesses that it is not possible to carry out the operational analysis or cross-checking in support of the specific criminal investigation without processing personal data that does not comply with requirements of Art. 18(5). This assessment shall be recorded.
  - o A third country (TC) requests support to Europol provided that:
    - This TC is object of an adequacy decision, international agreement, or there are adequate safeguards or these are provided in a legally binding instrument;
    - The data was acquired in the context of a criminal investigation in accordance with procedural requirements and safeguards under its national criminal law;
    - Europol has verified that the amount of data is not manifestly disproportionate;
    - Europol has verified that there is no indication that the data was collected in obvious violation of fundamental rights
  - o The MB decision should specify the criteria that Europol will use to make these assessments and that such assessments will be documented, in line with the principle of accountability.
- Similarly, the DPO may, where relevant, notify the EDPS that a third country has provided investigative data to Europol. The MB Decision should specify when the DPO should inform the EDPS.
- Article 5 of the MB decision states that Europol may process the data in accordance with Art. 18(2). However, Art. 18a(1)(a) only provides for the possibility to process the data for purposes of operational analysis and, in exceptionally and duly justified cases, for purposes of cross-checking pursuant to Art. 18(2)(a).
  - o The scope should be narrowed down
  - o The MB Decision should specify the criteria that will be used by Europol in order to verify whether the exceptional situations mentioned in Article 18a(1)(a)(ii) and which allow the cross-checking in line with Article 18(2)(a) are truly exceptional and reject submissions which (at least) are manifestly

not exceptional. The MB decision should also provide for relevant documentation.

- Same comments with regard to the requirement of functional separation of the data

#### **4.3. MB Decision relating to Art. 18a: Processing for purposes of ensuring the veracity, reliability and traceability of the criminal intelligence process (Article 7 of the internal rules)**

- Data minimisation: the rules do not specify that only the data which are adequate, relevant and not excessive in relation to this purpose will be stored for a longer period. Europol should plan for a specific process to proceed to the selection of data that should be further stored.
- Limitation on access to the data should be further specified (who will get access to the data, when and for what purpose)
- Europol should specify where the data will be stored (in the archive?) and how the restrictions on processing will be implemented.

#### **4.4. Data subjects access requests**

Although not in the scope of the MB decisions, it is of utmost importance that Europol addresses the issue of the data subjects' access requests, in light as well of the EDPS Opinion of 13 December 2021.