

From: CERVERA NAVAS Leonardo
<leonardo.cerveranavas@edps.europa.eu>
ZERDICK Thomas <thomas.zerdick@edps.europa.eu>;
To: [REDACTED]
CC: BUCHTA Anna <anna.buchta@edps.europa.eu>;
[REDACTED]
Sent at: 06/07/22 17:54:50
Subject: RE: Europol MB implementing decisions

Many thanks to [REDACTED] for this quick but comprehensive and clear analysis. This is for Wojciech to decide of course but my advice would be to go for the second option:

Issue a decision containing a warning within the meaning of Article 43(3) (d) ER and also a referral within the meaning of Article 43(3)(g) (which could also be addressed to the co legislators) requesting them to immediately suspend the application of the 4 decisions until reception of, and due consideration given to, the formal EDPS opinion. Pending the suspension of the application of the MB decisions the EDPS will not work on his Opinion.

As mentioned by [REDACTED] this second option is without prejudice of still reserving our right to go to the Court and could be accompanied of a strong press release where we would tell the world that we would not issue an opinion until the MB of Europol has officially notified to us that the decisions have been suspended. Failure by Europol to do that would reinforce our legal challenge before the Court I think.

I hope this helps

Leo

From: ZERDICK Thomas <thomas.zerdick@edps.europa.eu>
Sent: 06 July 2022 16:08
To: [REDACTED]
[REDACTED] DPS CABINET <cabinet@edps.europa.eu>;
CERVERA NAVAS Leonardo <leonardo.cerveranavas@edps.europa.eu>; [REDACTED]
CC: [REDACTED] BUCHTA Anna
<anna.buchta@edps.europa.eu>; [REDACTED]
Subject: RE: Europol MB implementing decisions
Importance: High

Dear colleagues,
I fully share [REDACTED] assessment, and I support his suggested actions. [REDACTED]
[REDACTED]

[REDACTED]

We need to discuss with Wojciech, indeed.

 **Thomas ZERDICK**
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From: [REDACTED]
Sent: Wednesday, July 6, 2022 3:57 PM
To: [REDACTED] EDPS CABINET
<cabinet@edps.europa.eu>; CERVERA NAVAS Leonardo
<leonardo.cerveranavas@edps.europa.eu>; [REDACTED]
Cc: [REDACTED] ZERDICK Thomas
<thomas.zerdick@edps.europa.eu>; BUCHTA Anna
<anna.buchta@edps.europa.eu>
Subject: RE: Europol MB implementing decisions
Importance: High

Dear [REDACTED] colleagues,

Let me come back on this file as I understand you have provided a first impression and exchange with Wojciech on the file. I also cc Leo to put him in the loop.

The timeline provided by Evi shows clearly the facts and what happened.

Let me provide now an assessment. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to further discuss these or any other options for action at your convenience,

[REDACTED]

From: [REDACTED]
Sent: 06 July 2022 12:33
To: [REDACTED] EDPS
CABINET <cabinet@edps.europa.eu>
Cc: [REDACTED]
[REDACTED] ZERDICK Thomas
<thomas.zerdick@edps.europa.eu>; [REDACTED]
[REDACTED]
Subject: RE: Europol MB implementing decisions

Dear [REDACTED]

Wojciech has been now updated on the matter. He endorses option 1, namely that we do treat it as a consultation process, and we issue our opinion accordingly. At this stage, at first glance, Wojciech does not consider it necessary to use corrective powers.

I remain at your disposal,
[REDACTED]

From: [REDACTED]
Sent: 06 July 2022 11:27
To: [REDACTED]
EDPS CABINET <cabinet@edps.europa.eu>
Cc: [REDACTED]
[REDACTED] ZERDICK Thomas
<thomas.zerdick@edps.europa.eu>; [REDACTED]
[REDACTED]
Subject: RE: Europol MB implementing decisions

Dear [REDACTED]

Thank you very much, this is great.

Best.

From: [REDACTED]
Sent: 06 July 2022 11:23
To: [REDACTED] EDPS CABINET
<cabinet@edps.europa.eu>
Cc: [REDACTED] ZERDICK Thomas
<thomas.zerdick@edps.europa.eu>; [REDACTED]
Subject: RE: Europol MB implementing decisions

Dear [REDACTED]
Dear colleagues,

Following your request please find under the following link (and attached for your convenience) a brief timeline of our cooperation with Europol on the MB Decisions:
[Timeline of informal cooperation with Europol on MB implementing Decisions](#)

I am always available for more information/clarifications.

Best regards,

From: [REDACTED]
Sent: 05 July 2022 17:51
To: [REDACTED] ZERDICK Thomas
<thomas.zerdick@edps.europa.eu>; [REDACTED]
[REDACTED]; EDPS CABINET
<cabinet@edps.europa.eu>
Cc: [REDACTED]
Subject: RE: Europol MB implementing decisions

Dear [REDACTED]
Thank you, well noted.

Before next steps are discussed, could you provide me with the short recap of the contacts with Europol on these internal rules for Wojciech's information? E.g. dates of meetings, including informal ones, milestones, quotes from the correspondence underlining that we do not consider our contacts as any form of consultation etc., replies on this, minutes from the meetings. I would be very grateful if these could be done quickly, ideally by the end of the tomorrow.

Best.

From: [REDACTED]
Sent: 05 July 2022 17:43
To: ZERDICK Thomas <thomas.zerdick@edps.europa.eu>; [REDACTED]
[REDACTED] EDPS
CABINET <cabinet@edps.europa.eu>
Cc: [REDACTED]
Subject: Europol MB implementing decisions

Dear Thomas,
Dear [REDACTED]
Dear [REDACTED]

A couple of hours ago the Chairman of Europol's MB transmitted the four MB Decisions implementing Articles 18 and 18a of the amended Europol Regulation to the Supervisor for consultation.

Before discussing the substance of the Decisions, I wanted to inform you that contrary to our informal advice:

- The four MB Decisions **are adopted;**
- The MB takes note that the **EDPS had received the first drafts** of these Decisions and that subsequent draft versions had been prepared by Europol with the support of both MB Working Groups **to reflect the comments provided by the EDPS both in writing and during dedicated meetings;**
- The MB having noted that the EDPS considered that the formal consultation could only take place upon the entry into force of the amended Regulation, **transmits the Decisions to the EDPS;**
- The MB **will duly consider any further observation the EDPS may wish to make** and revisit its Decisions as appropriate

I would like to remind Thomas' and [REDACTED] comment that in case Europol adopts the MB decisions without consulting the EDPS, this would be in breach of the provisions requiring consultation of the EDPS read in the light of the principle of loyal cooperation. Non-respect of any of the above constitutes a violation of the procedure foreseen by the legislator for adoption of these kinds of decisions, liable to cause their annulment.

As to the way forward, we already see two options (with [REDACTED])

- Issue the opinion as soon as possible based on our informal comments and already issue a warning with regard to Article 18a;
- Issue a two page opinion noting the violation of the administrative procedure that could be a cause for annulment and issue our Opinion in substance within the regular deadlines.

Happy to further discuss and receive your guidance.

Best regards,

