



10 January 2022

EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

**EDPS orders Europol to erase data concerning
individuals with no established link to a criminal
activity**

Frequently Asked Questions

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On 3 January 2022, the European Data Protection Supervisor (EDPS) notified Europol of an order to erase data concerning individuals with no established link to a criminal activity (referred to as data without Data Subject Categorisation).

This Decision concludes the EDPS' inquiry launched in April 2019.

What does the EDPS do?

The European Data Protection Supervisor (EDPS) is the European Union's independent data protection authority responsible for supervising the processing of personal data by the European institutions, bodies and agencies.

We advise European institutions, bodies and agencies on new legislative proposals and initiatives related to the protection of personal data.

We monitor the impact of new technologies on data protection and cooperate with supervisory authorities to ensure the consistent enforcement of EU data protection rules.

What are the EDPS' powers over Europol?

The EDPS monitors and ensures that Europol's processing of personal data is lawful, according to [Article 43](#) of Regulation (EU) 2016/794 (the Europol Regulation).

The EDPS may carry out inquiries, including own-initiative inquiries, to monitor Europol's compliance in relation to a specific topic.

The EDPS may also use its corrective powers to ensure that Europol complies with the Europol Regulation, if necessary. Corrective powers include ordering Europol to rectify, erase or destroy personal data processed in breach of the Europol Regulation. The EDPS cannot impose an administrative fine on Europol under the Europol Regulation.

What is the EDPS' Decision about?

The EDPS' Decision is about protecting individuals whose personal data is included in datasets transferred to Europol by EU Member States' law enforcement authorities.

According to the Europol Regulation, Europol is only allowed to process data about individuals who have a clear, established link to criminal activity (e.g. suspect, witness, etc.). Limiting Europol's processing of data avoids exposing other individuals who do not fall into these categories, therefore minimising the risks associated with having their data processed in Europol's databases.

Given the volumes of information contained in the datasets received by Europol from EU Member States' law enforcement authorities in recent years, it is not possible for Europol to distinguish immediately data related to individuals who have a clear, established link to criminal activity from other data without carrying out an assessment.



Europol has been keeping such datasets in its systems for prolonged periods of time - sometimes even years. Europol cannot exclude that such datasets may include individuals' with no established link to crime or criminal activities, therefore going beyond the limits of the allowed processing set out in the Europol Regulation.

By issuing this Decision, the EDPS orders Europol to erase datasets older than six months that are lacking Data Subject Categorisation. As such, the EDPS aims to ensure that individuals' data with no clear link to any crime or criminal activities is not processed in Europol's systems for longer than is necessary.

Why did the EDPS issue this Decision?

Following its inquiry in April 2019, the EDPS issued an admonishment to Europol in September 2020 because of the continued storage of large volumes of data likely involving individuals with no established link to criminal activity, which posed a significant risk to individuals' fundamental rights.

Upon the EDPS' request, Europol introduced a number of technical measures to help ensure that datasets are stored in a separate and secure environment, therefore minimising the chances that this raw and unverified data is used for law enforcement analysis, or further shared with other law enforcement bodies. These measures reduce, but do not remove, the risk posed to individuals' fundamental rights linked to the processing of this data, and in any event do not ensure compliance with the Europol Regulation.

In order to avoid the processing of this data for longer than it is necessary and proportionate, and to reinstate compliance with the Europol Regulation, the EDPS has now issued an order to erase datasets older than six months that are lacking Data Subject Categorisation. The EDPS considers that this six-month retention period allows for an initial processing of data in a pre-analysis phase, while imposing the maximum time limit necessary to enable the filtering and extraction of data in compliance with the data minimisation and storage limitation principles enshrined in the Europol Regulation

Is this Decision putting EU citizens at risk?

The EDPS made a careful assessment of the timeframe necessary for Europol to undertake a Data Subject Categorisation. The EDPS considers that a 6-month retention period should apply to all datasets processed that have not been assessed by Europol, irrespective of the context of their collection. The EDPS believes that this will enable Europol to extract any critical data it needs from the datasets received for operational purposes, and to provide the necessary support to EU Member States' authorities.

At the same time, the EDPS' Decision will protect the rights of EU citizens and other individuals whose data is in Europol's databases. The processing of individuals' data in an EU law enforcement database can have severe consequences for those concerned. Without putting in place the safeguards provided in the Europol Regulation, individuals run the risk of being wrongfully linked to a criminal activity across the EU, with all the potential damage to their private and professional lives that this entails.



What else is imposed on Europol in the EDPS' Decision?

The EDPS Decision also orders Europol to provide reports on the implementation of the EDPS Decision every three months and for a period of twelve months as from the day of notification of the Decision.

What is going to happen now?

From 4 January 2022, datasets submitted to Europol by EU Member States (the day following the date of notification of the EDPS Order to Europol) will have to undergo the Data Subject Categorisation process within six months. Datasets that are lacking Data Subject Categorisation when the 6-month period expires must be erased.

For older datasets, the EDPS has given Europol a period of 12 months to implement the Order since the EDPS recognises that the process of identifying these datasets and clearing the backlog might take some time, given the amount of information processed by Europol. Should this 12-month period elapse before the datasets undergo a Data Subject Categorisation, these datasets must be deleted.

