



To:  
 European Parliament Rapporteur and Shadow Rapporteurs on [proposal 2020/0349\(COD\)](#)  
 French Presidency of the Council of the European Union  
 Member States Representatives

CC:  
 Cabinet of Commissioner for Migration and Home Affairs Ylva Johansson

26 January 2022

**Civil society urges European policy-makers to seriously reconsider the expansion of Europol's data processing capacities**

Dear Madam/Sir,

We are writing on behalf of 23 civil society organisations from across Europe and beyond.

Following the recent EDPS decision<sup>1</sup> and the report by Lighthouse Reports<sup>2</sup> published in the Guardian, **we are greatly alarmed that the ongoing Europol reform ignores the risks of fundamental rights violations highlighted by these two investigations. We therefore urge you to change plans regarding the draft provisions of the proposal 2020/0349(COD)<sup>3</sup> amending the Europol Regulation<sup>4</sup>.**

The "compromises" found in the trilogues fail to solve the fundamental concerns of Europol's current data processing and retention practices as well as the inherent flaws of the proposed reform:

- Europol is amassing vast quantities of data, up to 4 petabytes – equivalent to 3 million CD-Roms – according to the Lighthouse investigation. This data collection is excessive by any standard for a police authority. Specifically, Europol is only allowed to process personal data of persons with a link to crimes for which Europol is competent, which requires a targeted data collection, contrary to what the investigation exposes.
- Europol's data collection has a disproportionate effect on marginalised communities. The Lighthouse investigation states that Europol has been "running a mass screening programme in Italian and Greek refugee camps," collecting "data from tens of thousands of asylum seekers in search of alleged foreign fighters and terrorists". This is contrary to EU values and it was even not proven to be effective in the prevention of terrorist attacks.
- The proposal for a reform of Europol Regulation seeks to legalise the unlawful (under the current Europol Regulation) retention of datasets lacking a Data Subject Categorisation (DSC), and of data concerning individuals with no established link to a criminal activity. The proposal puts no legal limits on large data sets which can be provided to Europol for analysis, even by third countries with poor human rights records. Legalising existing unlawful practices, especially if done with retrospective effects, runs counter to the basic rule of law principles upon which the Union is founded.
- The compromise text validates the use of predictive policing, a controversial method known to have a disproportionate effect on racialised and marginalised communities.<sup>5</sup> Europol would be allowed to seek "suspicious behaviours" and identify "persons of interest" by means of algorithmic data analysis of large datasets. It would be able to do so an unlimited number of times for up to three years after receipt of the dataset, whereas the EDPS order enforces a six-month analysis and retention period.

We therefore recommend to:

- **Delete Article 18a and Article 18(5a)** in light of the numerous rights violations at stake. The responsibility for verifying the legality of data transfers to Europol and carrying out the Data Subject Categorisation should remain with the Member States and third countries and organisations with which Europol has operational agreements. **These entities should refrain from knowingly sending information that Europol is not allowed to process.** To oversee the legality of these transfers, Member States must provide adequate resources to their national data protection authorities (DPAs). If, following a processing activity, Europol discovers that it is not allowed to process certain parts of a dataset

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1 EDPS Decision on the retention by Europol of datasets lacking Data Subject Categorisation, January 2022

2 Fotadis *et al* (2022) A data 'black hole': Europol ordered to delete vast store of personal data, *The Guardian*, available at <https://www.theguardian.com/world/2022/jan/10/a-data-black-hole-europol-ordered-to-delete-vast-store-of-personal-data>

3 [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0349\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0349(COD)&l=en)

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>

5 Fair Trials (2021) Automating Injustice: The Use of Artificial Intelligence & Automated Decision-Making Systems in Criminal Justice in Europe, available at: [https://www.fairtrials.org/app/uploads/2021/11/Automating\\_Injustice.pdf](https://www.fairtrials.org/app/uploads/2021/11/Automating_Injustice.pdf)

received from a Member State or a third party, it should be required to stop the processing, inform the submitting entity and promptly delete the dataset received.

- **Abandon any attempt to annul the effects of the EDPS Decision**, such as by legalising and extending the retention of datasets without a DSC received before the entry into force of the new amending Regulation.<sup>6</sup> Europol should comply with the EDPS Decision in its entirety and as soon as possible. **Article 74a proposed by the French Presidency must be deleted;**
- **Require a strong and permanent involvement of the EDPS before any new data processing operation**, especially of operational data and before any individual transfer to third countries:
  - The EDPS should not only be informed but should have the possibility (time, human and financial resources) to exercise its corrective powers when “high risks for data subjects and potentially severe impact on their fundamental rights and freedoms”<sup>7</sup> are involved;
  - It should be possible for the EDPS to suspend the consultation period foreseen in Article 39(2) when the EDPS needs further information to provide its reasoned advice;
- **Guarantee a genuine independence of the newly established Fundamental Rights Officer (FRO) from Europol’s management line.** The FRO should be selected by the Joint Parliamentary Scrutiny Group.

We understand the need for law enforcement authorities and Europol to perform their duties effectively. However, we firmly reiterate that mass surveillance and predictive policing are incompatible with EU fundamental rights law, fail to reach their set objectives, and set precedents which would further undermine people’s fundamental rights. The recent press revelations and EDPS action are a strong signal of the need to tighten data protection safeguards in the compromise text, rather than unravel them.

We thank you in advance for your time and consideration. We remain at your disposal should you wish to discuss this further.

Kind regards,

Access Now  
Asociatia pentru Tehnologie si Internet (ApTI), Romania  
Bits of Freedom, Netherlands  
Citizen D, Slovenia  
Committee for Justice & Liberties (CJL), France  
Defesa dos Direitos Digitais (D3), Portugal  
epicenter.works - for digital rights, Austria  
European Center for Not-for-Profit Law Stichting (ECNL)  
European Digital Rights (EDRi)  
European Network Against Racism (ENAR)  
European Sex Workers’ Rights Alliance (ESWA)  
Fair Trials  
Förderverein Informationstechnik und Gesellschaft e. V. (FITUG), Germany  
Gong, Croatia  
IT-Pol, Denmark  
Maruf Foundation

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6 Statewatch (2022), Europol: Council Presidency proposes workaround for illegal data processing, available at: <https://www.statewatch.org/news/2022/january/europol-council-presidency-proposes-workaround-for-illegal-data-processing/>

7 EDPS (2022), Decision on the retention by Europol of datasets lacking Data Subject Categorisation

La Ligue des Droits Humains (LDH), Belgique  
La Quadrature Du Net (LQDN), France  
Platform for International Cooperation on Undocumented Migrants (PICUM)  
Privacy International  
Statewatch, UK  
Vrijdschrift.org, Netherlands  
Digitale Gesellschaft, Germany