

MANAGEMENT BOARD

Ms Roberta Metsola

President of the European Parliament

CC: Mr Juan Fernando López Aguilar

Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE)

Mr Wojciech Wiewiórowski

European Data Protection Supervisor

MB Decisions on the conditions related to the processing of personal data on the basis of Articles 18(2), 18(6), 18(6a) and 18a of the amended Europol Regulation

Dear President Metsola,

It is my honour to address you on behalf of the Management Board of Europol (MB).

I would like to inform you that, at its 28-29 June 2022 meeting, the MB adopted implementing Decisions on the conditions related to the processing of personal data pursuant to Articles 18(2), 18(6), 18(6a), and 18a of the amended Europol Regulation.

For the sake of legal certainty, thus also in the interest of the data subjects, the MB endeavoured to ensure that the implementing conditions for the prompt application of the referred provisions be applicable upon the entry into force of the amended Regulation. By adopting the referred implementing Decisions on 28 June 2022, thus on the very date of entry into force of the amended Regulation, the MB achieved this objective.

It would be remiss of me not to mention that, on this important occasion, the MB had the pleasure to welcome Mr López Aguilar, who attended the MB meeting for this item and other topics of strategic importance at the invitation of the Board, in his capacity of Chair of the European Parliament's LIBE Committee and Co-Chair of the Joint Parliamentary Scrutiny Group (JPSG).

In light of the obligations set out in the amending Regulation, the MB initiated the necessary consultation with the European Data Protection Supervisor (EDPS) at the earliest possible stage.

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Since the submission, on 12 April, of the first draft Decisions, an intensive consultation process took place between Europol and the EDPS, resulting in the Decisions eventually adopted by the Board on 28 June, which reflected the comments and guidance provided by the EDPS during such process.

The Decisions were transmitted to the EDPS on 5 July 2022. In doing so, I underscored the Board's determination to duly consider any further observation the Supervisor might wish to make and to revisit its Decisions as appropriate.

By way of a reply letter dated 15 July 2022, the Supervisor reiterated his views (submitted to Europol in writing on 16 May) that "(...) 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 Supervisor requested the Board to repeal its Decisions by 26 August based on the infringement of an essential procedural requirement, failing which the EDPS would seek judicial action to request their annulment.

At my initiative, the Supervisor accepted to meet on 2 September to discuss possible solutions to the situation, for which I am grateful. The meeting was conducted in a spirit of compromise and good cooperation.

Both Europol and its Management Board have the utmost appreciation for the role and responsibilities of the EDPS, and recognise the importance of closely cooperating both formally and informally with the Supervisor. Therefore, in order to avert legal proceedings, and notwithstanding its position on the correctness of the procedure followed for the adoption of the four Decisions, the Board has agreed to consult the Supervisor on new draft Decisions updated on their recitals.

Such consultation will be initiated today and the EDPS has committed to delivering an Opinion within the shortest possible timeframe.

After having duly considered the EDPS Opinion, the Board shall adopt revised MB Decisions which shall replace those of 28 June 2022 as from their adoption.

I will be pleased, on the Board's behalf, to keep the European Parliament and the other EU Institutions informed once the above procedure will have been completed.

Yours sincerely,



Jérôme Bonet
Chairperson

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