

The growing need for law enforcement to collect data from private companies is difficult to reconcile with the purpose limitation principle as it is clearly a use or processing for incompatible purposes. The only way that can be derogated from the purpose limitation principle is by ensuring the legality and necessity requirement. This means on the one hand that it should be clear in national legislation that use for these purposes is allowed and this should be (in accordance with the jurisprudence of the European Court of Human Rights) also foreseeable for data subjects. Foreseeability can possibly only be reached by informing data subjects of this potential use. On the other hand this means that the personal data in question are necessary for the ongoing criminal investigation. In other words, the same result cannot be achieved by other means. This would mean first of all minimizing the data that are collected (only those data are collected that are necessary for the investigation and not more than that) and secondly a clear nexus between the data and the criminal investigation.

The danger is that these data are proactively gathered, for example for detecting patterns in specific purchases (weapons or material that can be used for producing explosives, etc.) that an individual makes in order to prevent criminal offences. Even though this can be highly useful in preventing crime, a nexus between the data and the proactive investigation is more difficult here, especially because during such searches the personal data of many innocent data subjects could be disclosed as well. Therefore, there should be at least clear indications that a specific data subject's behavior needs closer investigation, such as investigation of his purchasing behavior.

A strict definition of what a compatible purpose is may not be possible, however indications should minimally be formulated in accordance with which can be concluded on the (in)compatibility of a purpose.

Categories of different types of data subjects should be defined, including suspects, witnesses, victims and others plus a specific category of children being data subjects. Important for criminal investigation, especially proactive gathering of personal data, is a clear distinction between the different degrees of accuracy and reliability for which Europol already has a good system in place.