



Valletta, 1 May 2017
EDOC #881014v7

Management Board

DECISION OF THE MANAGEMENT BOARD laying down guidelines implementing Europol's external relations with EU bodies, third countries and international organisations

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to the Regulation (EU) 2016/794 of the European Parliament and the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (EUROPOL) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (hereinafter "the Europol Regulation")¹ and in particular Articles 11, 23, 24, 25 thereof,

Whereas:

- (1) Article 23(1) foresees that Europol may establish and maintain cooperative relations with Union bodies in accordance with the objectives of those bodies, the authorities of third countries, international organisations and private parties;
- (2) Articles 23, 24 and 25 of the Europol Regulation determine the provisions for Europol's external relations with partners and in particular the conditions for the transfer and exchange of personal data to and with Union bodies, third countries and international organisations. These guidelines do not relate to the exchange of information with private parties regulated in Article 26 of the Europol Regulation;
- (3) These guidelines take into account Articles 19(2) and (3) of the Europol Regulation on the respect for the ownership of the data, the right of Member States, Union bodies, third countries and international organisations to indicate, at the moment of providing information to Europol, any restriction on access thereto or the use to be made thereof, and the requirement for Europol to comply with such restrictions;
- (4) These guidelines are without prejudice to Article 67 of the Europol Regulation and to Europol's rules on the protection of sensitive non-classified and classified information and do not cover the exchange of classified information;
- (5) These guidelines are without prejudice to Article 30(5) of the Europol Regulation, specifying that special categories of personal data and different categories of data subjects enumerated in Articles 30(1) and (2) of the Europol Regulation shall not be transmitted to Member States, Union bodies, third countries or international organisations unless such transmission is strictly necessary and proportionate in individual cases concerning crime that falls within Europol's objectives.

HAS ADOPTED THE FOLLOWING DECISION:

¹ OJL 135, 24.05.2016, p.53.

Chapter I

General Provisions

Article 1

Definitions

For the purpose of these guidelines:

- (a) **“Union bodies”** means institutions, bodies, missions, offices and agencies set up by, or on the basis of, the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU);
- (b) **“authorities of third countries”** means police authorities and other law enforcement services existing in a third country which are responsible under national law for preventing and combating criminal offences. They shall also comprise other public authorities existing in the third country which are responsible under national law for preventing and combating criminal offences in respect of which Europol is competent;
- (c) **“international organisation”** means an organisation and its subordinate bodies governed by public international law or any other body which is set up by, or on the basis of, an agreement between two or more countries;
- (d) **“external partners”** means Union bodies, the authorities of third countries and international organisations;
- (e) **“personal data”** means any information relating to a data subject;
- (f) **“transfer of personal data”** means the communication of personal data, actively made available, between a limited number of identified parties, with the knowledge or intention of the sender to give the recipient access to the personal data;
- (g) **“cooperation arrangement”** refers to the working arrangements and administrative arrangements referred to in respectively Articles 23(4) and 25(1) of the Europol Regulation.

Article 2

Scope of this Decision

1. This Decision provides for the guidelines for the implementation of the cooperative relations of Europol with external partners as outlined in Articles 23 to 25 of the Europol Regulation, including the exchange of information. It further sets out the procedures for the conclusion of cooperation arrangements.
2. This Decision shall not be applicable to the exchange of EU classified information which will be governed by the Rules on the protection of EU classified information adopted in accordance with Article 67 of the Europol Regulation.
3. This Decision does not deviate from the applicable provisions of the Europol Regulation in any manner.

Article 3

Establishment of cooperative relations

1. In so far as necessary for the performance of its tasks, Europol may establish and maintain cooperative relations with external partners in accordance with Chapter V of the Europol Regulation.
2. The cooperative relations may in particular include the exchange of specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, participation in training activities as well as providing advice and support in individual criminal investigations.
3. The Executive Director shall regularly inform the Management Board about the cooperative relations which Europol intends to or has established, the development of such relations and the implementation of the cooperation arrangements it has concluded in accordance with Chapter III of this Decision.

Chapter II

Information Exchange

Section 1

Exchange of non-personal data

Article 4

Exchange of non-personal data by Europol

1. In accordance with Article 23(2) of the Europol Regulation, and subject to any restriction pursuant to Article 19(2) and (3) thereof, Europol may directly exchange non-personal data with external partners in so far as such exchange is relevant for the performance of Europol's tasks as referred to in Article 4 of the Europol Regulation.
2. Europol shall provide suitable technical environments to enable the direct exchange of non-personal data and the development of specialist knowledge as one of the manners to fulfil Europol's tasks under Article 4(1)(g) of the Europol Regulation.

Section 2

Receipt of personal data

Article 5

Receipt of personal data by Europol

1. In accordance with Article 23(5) of the Europol Regulation, Europol may receive and process personal data from external partners in so far as it is necessary and proportionate for the legitimate performance of its tasks as referred to in Article 4 of the Europol Regulation.
2. When providing personal data to Europol, external partners shall determine the purpose(s) for which the personal data is transmitted to Europol. If it has not done so, Europol shall determine the purpose. They may also indicate any use or access restriction to the information in accordance with Article 19 of the Europol Regulation.
3. The reliability and the accuracy and the source of the personal data shall be assessed as far as possible by the providing external partner using the evaluation codes as referred to in Article 29 of the Europol Regulation.
4. The requirements outlined in paragraph 2 and 3 of this Article shall be codified in the cooperation arrangements referred to in Chapter III of this Decision, if the conclusion of a cooperation arrangement is considered.
5. Europol shall bear responsibility for the quality of the personal data received by third countries and international organisations in accordance with Article 38(2) of the Europol Regulation.

Section 3

Transfer of personal data

Article 6

Transfer of personal data to Union Bodies

1. In accordance with Article 24 of the Europol Regulation, Europol may directly transfer, at its own initiative or at their request, personal data to a Union body, in so far as such transfer is necessary for the performance of Europol's tasks as referred to in Article 4 of the Europol Regulation or of those of the recipient Union body.

2. The transfer of the data shall be subject to any restriction pursuant to Article 19(2) and (3) of the Europol Regulation.

Article 7

Transfer of personal data to third countries and international organisations

1. In accordance with Article 25(1) of the Europol Regulation, Europol may transfer personal data to an authority of a third country or to an international organisation, insofar as such transfer is necessary for the performance of Europol's tasks as referred to in Article 4 of the Europol Regulation, on the basis of one of the following:
 - a. A decision of the European Commission adopted in accordance with Article 36 of Directive (EU) 2016/680, finding that the third country or a territory or a processing sector within that third country or the international organisation in question ensures an adequate level of protection ('adequacy decision');
 - b. An international agreement concluded between the Union and that third country or international organisation pursuant to Article 218 of the Treaty on the Functioning of the European Union adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals;
 - c. A cooperation agreement allowing for the exchange of personal data concluded, before 1 May 2017, between Europol and that third country or international organisation in accordance with Article 23 of Council Decision 2009/371/JHA.
2. Europol shall publish on its website and keep up to date a list of adequacy decisions and agreements relating to the transfer of personal data referred to in paragraph 1.
3. The transfer of the data shall be subject to any restrictions pursuant to Articles 19(2) and (3) of the Europol Regulation.
4. If the Management Board considers it necessary for the performance of Europol's tasks, it may suggest to the Council of the European Union that it draw the attention of the Commission to the need for an adequacy decision as referred to in point (a) of paragraph 1 of this Article or for a recommendation for a decision authorising the opening of negotiations with a view to the conclusion of an international agreement as referred to in point (b) of paragraph 1 of this Article. Europol shall prepare such a decision of the Management Board, in particular by providing operational and strategic justifications.

Section 4

Exceptional transfer of personal data to third countries and international organisations

Article 8

Transfer of personal data on a case-by-case basis

1. By way of derogation from Article 7(1) of this Decision, the Executive Director may authorise the transfer of personal data to authorities of third countries or international organisations on a case-by-case basis, in line with Article 25(5) of the Europol Regulation, in line with this Article.
2. The Executive Director may directly authorise such a transfer only where the transfer is:
 - a. Necessary in order to protect the vital interests of the data subject or of another person; or
 - b. Necessary to safeguard the legitimate interests of the data subject where the law of the Member State transferring the personal data so provide; or
 - c. Essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country.
3. The Executive Director may further authorise a transfer of personal data under the conditions of paragraph 4, only where the transfer is:
 - a. Necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of criminal sanctions; or
 - b. Necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal sanction.
4. Where the Executive Director considers authorising a transfer of data in line with paragraph 3, he or she shall not do so if he or she determines that the fundamental rights and freedoms of the data subject concerned override the public interest in the transfer. When considering such a transfer in line with paragraph 3, the Executive Director shall also take into account all relevant elements, including, the level of data protection, the nature of the data, the purpose for which it is transmitted, the intended duration of processing, as well as any observations from the Data Protection Officer in this respect. The Executive Director shall also take into account the risk that might occur if Europol does not transmit the personal data concerned.
5. Where the Executive Director has authorised a transfer under this Article, the Executive Director shall as soon as possible inform the Management Board and the EDPS of the cases in which such an authorisation was given.
6. Such authorisations by the Director may not be applicable to systematic, massive or structural transfers.
7. Transfers based on this Article shall be documented and the documentation shall be made available to the EDPS on request, including the date and the time of the transfer, information about the receiving authority, the justification for the transfer and the personal data transferred.

Article 9

Set of transfers of personal data

1. By way of derogation from Article 7(1) of this Decision and when the Executive Director considers the need for a set of transfers of personal data in the cases referred to in paragraphs 2 and 3 of Article 8 of this Decision, the Executive Director may request their authorisation by the Management Board in line with Article 25(6) of the Europol Regulation.
2. Such a request shall outline the circumstances surrounding the authorisation and shall also take into account the existence of adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals. The level of adequacy of these safeguards shall be proportionate to the severity of the circumstances referred to in paragraphs 2 and 3 of Article 8 of this Decision leading to the request of a set of transfers. In the case of an application for renewal under paragraph 4, such an application shall contain any changes as compared to the initial application.
3. The Management Board, at its own initiative or at the request of the Director as foreseen under paragraph 1, having consulted the EDPS and having obtained the latter's agreement, may provide Europol with an authorisation. Where the EDPS did not agree to authorise the set of transfers, the Management Board shall inform Europol about the reasons why the authorisation was not granted and, where possible, about measures to be taken which might lead to an authorisation at a later stage.
4. Where an authorisation has been issued, it shall be valid for a period not exceeding one year. The Management Board or the Executive Director may, at their discretion and together with any information on potential changes which may have an impact on the existence of adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, request justified renewals of the authorisation for further periods, each not exceeding one year, under the procedures outlined in paragraphs 1 to 3 above.
5. Transfers based on this Article shall be documented and the documentation shall be made available to the EDPS on request, including the date and the time of the transfer, information about the receiving authority, the justification for the transfer and the personal data transferred.

Section 5

Conditions for the transfer of personal data

Article 10

Conditions for transfer of personal data by Europol to external partners

1. Europol shall only transfer personal data to external partners if it is necessary for preventing and combating crime falling within the scope of Europol's objectives as referred to in Article 3 of the Europol Regulation. The recipient shall give an undertaking that the data shall be processed for the purpose for which they were transferred.

2. When personal data originates from Member States, Europol shall only provide personal data to external partners with the Member States' prior consent and with respect to any restrictions indicated.
3. Personal data referred to in Articles 30(1) and (2) of the Europol Regulation shall only be provided by Europol to external partners when such transmission is strictly necessary and proportionate in individual cases.
4. Onward transfer of personal data provided by Europol to external partners shall be prohibited, unless Europol has given its prior explicit authorisation.
5. When providing personal data to external partners, Europol shall determine the purpose(s) for which the personal data is transmitted.
6. The reliability of the source and the accuracy of the personal data shall be assessed as far as possible by Europol when transferring personal data to external partners, using the evaluation codes as referred to in Article 29 of the Europol Regulation.
7. The requirements outlined in paragraphs 1 to 6 of this Article shall be codified in the cooperation arrangements referred to in Chapter III of this Decision, if the conclusion of a cooperation arrangement is considered.

Article 11

Data protection aspects of the transfer of personal data by Europol to external partners

1. Europol shall keep detailed records of all transfers of personal data and of the grounds for such transfers.
2. Europol shall not process any information which has clearly been obtained in obvious violation of human rights.
3. The responsibility for the legality of a data transfer shall lie with Europol for personal data provided by it to external partners.

Chapter III

Conclusion of arrangements

Article 12

Conclusion of cooperation arrangements

1. Europol may conclude cooperation arrangements with external partners.
2. Such cooperation arrangements may be concluded for the purpose of supporting the Member States of the European Union and external partners in preventing

and combating organised crime, terrorism and other forms of serious crime within the mandate of Europol.

3. Where feasible, arrangements concluded with third countries shall be concluded with the central law enforcement authority of that third country and shall cover all the law enforcement authorities of that country competent for the prevention and combating of crime falling within the mandate of Europol.
4. Such cooperation arrangements shall not be the legal basis for the transfer of personal data. The transmission of personal data by Europol to external partners is governed by Articles 24 and 25 of the Europol Regulation.
5. Europol shall strive to conclude in accordance with the procedure outlined in Article 13 of this Decision, cooperation arrangements with external partners where a structured and regular cooperation is envisaged. To that end, the Management Board shall - taking into account a documented proposal of the Executive Director - decide on a list of external partners with which Europol may conclude arrangements. That list shall constitute Europol's future priority partners.

Article 13

Procedure for the conclusion of cooperation arrangements

1. Europol shall seek the opinion of the Management Board if it intends to negotiate a cooperation arrangement with an external partner. It shall take account of the strategy for relations with third countries and international organisations contained in the multiannual programming as adopted by the Management Board in accordance with Article 12 of the Europol Regulation.
2. When suggesting the conclusion of a cooperation arrangement with a certain external partner to the Management Board, Europol shall provide the operational or strategic justifications based upon the needs of the law enforcement community of the European Union.
3. The Management Board may also, at their own initiative, invite Europol to conclude cooperation arrangements with external partners.
4. The cooperation arrangements may only be concluded after approval of the Management Board.
5. Europol shall transmit to the Joint Parliamentary Scrutiny Group, in accordance with Article 51 of the Europol Regulation, for information purposes, the cooperation arrangements it has concluded.

Article 14

Content of the cooperation arrangements

1. In addition to scope and areas of crime of the cooperation envisaged, the cooperation arrangements may moreover regulate matters such as the exchange of liaison officers, handling codes, liability for incorrect data processing, confidentiality, (national) contact point and/or any other practical matter of the cooperation.

2. The cooperation arrangements may also regulate the exchange of information between Europol and the external partners.
3. The cooperation arrangements shall not be the legal basis for the transfer of personal data by Europol. Such transfer should be based upon Articles 24 and 25 of the Europol Regulation. The cooperation arrangements may however regulate the practical implementation of the transfer of personal data by Europol to the external partners, as well as other aspects of the cooperative relations.
4. The cooperation arrangements shall be based on a model cooperation arrangement, which Europol shall submit to the Management Board for its approval.

Done at Valletta on 1 May 2017

For the Management Board,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract representation of the name 'A. IJzerman'.

A. IJzerman
Chairperson