



PRESS RELEASE No 134/23

Luxembourg, 6 September 2023

Order of the General Court in Case T-578/22 | EDPS v Parliament and Council

The action brought by the European Data Protection Supervisor (EDPS) against the amended Europol regulation is inadmissible

The transitional provisions contested by the EDPS do not directly affect his legal situation

On 3 January 2022, following an own-initiative inquiry, the European Data Protection Supervisor (EDPS) adopted a decision against the European Union Agency for Law Enforcement Cooperation (Europol).

In the context of his enquiry leading to that decision, the EDPS had found that there had been infringements of the initial Europol regulation, since, according to him, sets of personal data had been continuously stored by Europol, without categorisation of data subjects and the personal data relating to those subjects (listed in Annex II to the initial Europol regulation), an obligation which was, however, provided for under that regulation in order for Europol to be able to use those data in the context of certain activities.

By the decision in question, the EDPS ordered Europol, in essence, for personal data received as from 4 January 2022, to proceed to the categorisation of certain data subjects within 6 months as from the date of reception of the personal data and to proceed to data subject categorisation within 12 months for all sets of personal data existing as at the date of that decision. If those periods were exceeded, Europol was required to erase the data.

On 8 June 2022, the European Parliament and the Council amended the Europol regulation, inserting two transitional provisions. Those provisions lay down the conditions in which Europol is to proceed, within a specified period, to the categorisation of the data in its possession at the time of entry into force of the amended regulation. Furthermore, the transitional provisions specify the conditions and procedures according to which the processing of personal data, not relating to certain categories of data subjects (listed in Annex II to the amended Europol regulation) and which were transferred to Europol before 28 June 2022, is to be authorised in support of an ongoing criminal investigation.

The EDPS takes the view that those transitional provisions infringe his independence and his powers as a supervisory authority. In his view, those provisions retroactively legalise Europol's contested data retention practices and de facto annul his decision of 3 January 2022. Thus, the EDPS sought the annulment of those transitional provisions before the General Court. He submits that his standing to bring an action is justified by the need to be able to have a judicial remedy in order to defend his institutional prerogatives and, in particular, his independence as a supervisory authority.

By order of 6 September 2023, **the General Court dismisses the action as inadmissible**, thereby upholding the objection of inadmissibility raised by the Council.

The General Court notes, first of all, that **the EDPS does not have privileged standing before the EU Courts** in order to seek the annulment of an EU act.

Since the EDPS may be treated in the same way as a legal person, **he must, like any natural or legal person, demonstrate, in particular, that the act whose annulment he seeks is of direct concern to the EDPS. However, the General Court considers that this is not the case here.**

Indeed, while it is true that the legal regime for which the EDPS is responsible for monitoring the proper application has been changed, his own powers have not been, since the way in which he can lawfully exercise those powers has not been altered as such.

In addition, as regards any effects of the contested provisions on the EDPS's decision of 3 January 2022, the EDPS cannot rely on them in support of his action, since an administrative decision cannot affect legislative acts, such as the amended Europol regulation, or affect the content thereof.

Furthermore, the contested provisions leave Europol a certain discretion. They are not, therefore, purely automatic in nature resulting from the EU rules alone vis-à-vis the EDPS, without the application of other intermediate rules.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text and, as the case may be, the résumé](#) of the order is published on the CURIA website.

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