COURT OF JUSTICE
OF THE EUROPEAN UNION

Judgment of the Court of Justice in Case C-698/23 P | EDPS v Parliament and Council

Press release No 165/26

Luxembourg, 17 November 2026

Processing of personal data by Europol: the Court of Justice confirms that the action brought by the European Data Protection Supervisor (EDPS) against the amendment of the Europol regulation is inadmissible

The transitional provisions of that regulation which the EDPS has claimed should be annulled do not alter the tasks or the powers of the EDPS and thus do not directly affect his legal situation

Having found that the European Union Agency for Law Enforcement Cooperation (Europol) was storing personal data without having categorised those data as provided for by EU law, the European Data Protection Supervisor (EDPS) had adopted a decision ordering Europol to proceed to categorisation within the prescribed periods or, failing that, to erase the data concerned. A few months later, the EU legislature adopted transitional provisions authorising, under certain conditions, the continued processing of data in Europol's possession.

Taking the view that those provisions undermined his independence as a supervisory authority and rendered his decision ineffective, the EDPS sought the annulment of those provisions before the General Court of the European Union. However, that court dismissed his action as inadmissible.

In its judgment, delivered today, the Court of Justice confirms that the action is inadmissible: unlike the institutions of the Union, the EDPS must demonstrate that he or she has standing to bring proceedings. In particular, the EDPS must demonstrate that the provisions being contested are of direct and individual concern to him or her. However, the Court of Justice finds that those provisions have no effect on the nature or the scope of the tasks entrusted to the EDPS, inasmuch as they have not altered the rights, the obligations or the powers of the EDPS. They have also not altered the guarantees of the independence of the EDPS; nor have they annulled the decision taken by him in respect of Europol. The provisions being contested therefore do not directly affect the legal situation of the EDPS. The General Court was thus correct to rule that the action brought by the EDPS was inadmissible.

On 3 January 2022, following an investigation, the European Data Protection Supervisor (EDPS), responsible for ensuring that the rules on data protection are complied with by the institutions and bodies of the Union, adopted a decision in respect of the European Union Agency for Law Enforcement Cooperation (Europol).

That decision concerned the storage, by Europol, of personal data received in connection with its activities. While the regulation which governed the activities of Europol at the time [1] authorised it to collect and analyse such data, Europol was required to comply with certain rules, in particular as regards the categorisation of data subjects and of personal data relating to those data subjects.

The EDPS found that Europol was continuing to store sets of personal data without having determined whether the data subjects fell within the categories laid down by that regulation. According to the EDPS, that practice was contrary to the rules on data minimisation and storage limitation. He therefore ordered Europol to proceed to data subject categorisation within a period of six months in respect of the data newly received, and within a period of twelve months in respect of the data already in its possession. Once those periods had elapsed, Europol was required to erase those data.

On 8 June 2022, the European Parliament and the Council of the European Union amended the rules applicable to

Europol. [2] In particular, they introduced transitional provisions [3] authorising Europol, under certain conditions, to continue processing data already received in the context of ongoing criminal investigations.

Being of the view that those transitional provisions amounted to a retroactive legalisation of the personal data retention practices of which he had complained and a *de facto* annulment of his decision of January 2022, the EDPS brought proceedings before the General Court of the European Union, claiming that those provisions should be annulled. According to the EDPS, the intervention by the EU legislature undermined his independence as a supervisory authority.

By order of 6 September 2023,[4] the General Court dismissed that action as inadmissible. It held that the EDPS did not have standing to bring an action in respect of the transitional provisions at issue.

The EDPS then brought an appeal before the Court of Justice, seeking the setting aside of that order and the annulment of the provisions in question.

In its judgment, **the Court of Justice dismisses that appeal as unfounded**, confirming that the action brought by the EDPS before the General Court is inadmissible.

The Court of Justice recalls that, while he or she is an independent supervisory authority, **the EDPS is not an institution of the Union within the meaning of the Treaties.** [5] Unlike, *inter alia*, the Parliament, the Council, or the European Commission, the Treaties do not confer on the EDPS the right to bring an action for the annulment of an act of the Union without having demonstrated that he or she has standing to bring such an action.

Nor does such a right, on the part of the EDPS, to bring proceedings derive from the principle of institutional balance, [6] which is intended to ensure compliance with the system for distributing powers among the institutions of the Union. Indeed, that principle does not apply to bodies, offices or agencies of the Union other than the institutions of the Union.

The EDPS does however have the status of a **legal person**. He or she may, therefore, seek the annulment of an act of the Union under the conditions laid down by the Treaties in respect of actions for annulment brought by legal persons. [7] To that end, the EDPS must demonstrate, *inter alia*, that the act being contested is of direct and individual concern to him or her. The condition relating to direct concern presupposes, in particular, that that act directly affects his or her legal situation.

The Court of Justice finds that the transitional provisions at issue amended the rules applicable to the processing of data held by Europol. By contrast, they had no effect on the nature or the scope of the tasks entrusted to the EDPS, inasmuch as they did not alter the rights, obligations or powers of the EDPS. Those provisions also did not alter the guarantees of the independence of the EDPS; nor did they annul his decision of 3 January 2022. Furthermore, the Court of Justice notes that the procedure which led to the adoption of the transitional provisions at issue has not brought to light any elements that are such as to affect the independent exercise by the EDPS of his powers.

In those circumstances, the Court of Justice confirms the findings of the General Court, according to which the transitional provisions at issue do not directly affect the legal situation of the EDPS. **Therefore, the General Court did not err in law in ruling that his action was inadmissible**.

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 decision 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.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The full text and, as the case may be, an abstract, of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355.

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[1] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol).

[2] Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation.

[3] Articles 74a and 74b of Regulation 2016/794, as amended by Regulation 2022/991.

[4] Case T-578/22, *EDPS* v *Parliament and Council* (see also Press Release No 134/23).

[5] Article 13(1) TEU. The Court of Justice also emphasises that, when the Treaty of Lisbon was adopted, the Member States deliberately chose not to include all the bodies, offices or agencies of the Union, such as the EDPS, among the entities who are entitled to seek the annulment of an act of the Union without having to demonstrate that they have standing to bring proceedings.

[6] As interpreted by the Court of Justice in its judgment of 22 May 1990, *Parliament* v *Council*, C-70/88.

[7] In accordance with the fourth paragraph of Article 263 TFEU.