

EDPS Action for Annulment against Parts of New Europol Regulation



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News

On 16 September 2022, the European Data Protection Supervisor (EDPS) brought an [action for annulment](#) under Art. 263 TFEU before the CJEU regarding Arts. 74a and 74b of the newly amended [Europol Regulation \(EU\) 2022/991](#) that entered into force on 28 June 2022 (→ [eucrim 2/2022, 98-100](#)). The provisions confer on Member States the possibility to retroactively authorise Europol to process large data sets already shared with Europol prior to the entry into force of the amended Regulation. They are contrary to the order that the EDPS issued on 3 January 2022 (→ [eucrim 1/2022, 18](#)) requesting Europol to delete data concerning individuals with no established link to a criminal activity within a predefined, clear time limit. With the amended Europol Regulation, the co-legislators, however, chose to retroactively make this type of data processing legal and, hence, to override the EDPS' order.

As a consequence, the EDPS sees the need to apply for annulment of these provisions in order to safeguard legal certainty for individuals in the field of law enforcement and to ensure independent supervision from undue political influence. The EDPS first argued that, based on his order, individuals could be supposed that their data are erased by January 2023 at the very latest. The amended Europol Regulation, however, authorises the continuation of the data processing. Second, the EDPS puts forth that decisions of supervisory authorities such as the EDPS could otherwise be retrospectively overridden at (political) will, which would make them subject to political pressure and undermine their independence as enshrined in the EU Charter of Fundamental Rights.

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