

[Report]

Coordinated supervisory action on minors under 15 years old processed by Europol as suspects or potential criminals

A report by the Coordinated Supervision Committee ('CSC')

About the CSC:

The Coordinated Supervision Committee (CSC) is a group of national supervisory authorities and the European Data Protection Supervisor (EDPS) that together ensure coordinated supervision of large scale EU IT systems, as well as EU bodies, offices and agencies, in accordance with Article 62 of Regulation (EU) 2018/1725 or with the EU legal act establishing the large scale IT system or entity.

Today, the CSC acts as a forum for the coordination for the following EU information systems and entities:

- the European Union Agency for Law Enforcement Cooperation (Europol)
- the European Union Agency for Criminal Justice Cooperation (Eurojust)
- the European Public Prosecutor's Office (EPPO)
- the Schengen Information System (SIS)
- the Internal Market Information System (IMI)
- the Visa Information System (VIS)
- Prüm II
- the Entry/Exit System (EES)
- the Customs Information System (CIS)

Covered in the near future as well:

- the European Travel Information and Authorisation System (ETIAS)
- the European Criminal Records Information System on non EU-nationals (ECRIS-TCN)
- the European Asylum Dactyloscopy Database (EURODAC)
- the EU IT systems that will allow interoperability of EES, ETIAS, ECRIS-TCN, EURODAC, SIS, Prüm II and VIS

The CSC is a part of the European Data Protection Board ('EDPB'). You can find more information about the CSC and its work on the EDPB website:

https://www.edpb.europa.eu/csc/about-csc/who-we-are-coordinated-supervision-committee_en.

This CSC report concludes a coordinated set of actions by CSC Members that started in 2023, analysing transmissions of personal data about minors under the age of 15 by law enforcement authorities to Europol.

The processing of minors, particularly under 15 years old, at Europol

What does the law say?

The laws applicable to Europol, and in particular the Europol Regulation¹, limit the extent to which Europol can process personal data on individuals under the age of 18. Europol may only process personal data of these individuals where this is strictly necessary and proportionate for preventing or

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), published in the EU Official Journal L35, 24.5.2016, p. 53–114, and available here: <http://data.europa.eu/eli/reg/2016/794/oj>.

combating the set of crimes for which it is competent². These are serious crimes, affecting two or more Member States, including murder, organised crime, human and drug trafficking, and terrorism³.

Given the nature of the investigations that Europol assists Member States in, the Europol Regulation requires national authorities to carefully consider whether to send this personal data to Europol for inclusion in its information systems. The inclusion must be both strictly necessary and proportionate for the purposes of preventing or combating crime within the scope of Europol's objectives.

While there are valid reasons to include data from persons under the age of 18 in Europol's systems - such as when they are victims, witnesses, or suspects - law enforcement authorities must exercise sufficient care when transmitting this information. They should ensure that sharing the data is a proportionate measure for combating crime within Europol's mandate.

Furthermore, these data transmissions must be subject to legally established independent oversight mechanisms. This includes checks by Member State and Europol data protection officers, but also external reviews by supervisory authorities.

Why did the CSC focus on 'suspects and potential future criminals' under 15 years old?

In principle, the Europol Regulation does not differentiate between any groups under the age of 18, whether that be certain age ranges or groupings based on their status as a victim, a witness, a suspect, or any other role.

However, in order to further focus the CSC's actions, the CSC Members opted to specifically review transmissions of personal data on minors under 15 years old marked as either 'suspects' or 'potential future criminals'. These subcategories of minors were chosen based on the combination of the stigmatising effect of being labelled as 'under suspicion', as well as the age limit of 15 years old or younger being frequently applied as an age of minimum criminal responsibility across EU Member States.⁴ While the CSC focused for this report on this specific subgroup of minors, this does not change that every person under the age of 18 whose information is transmitted to Europol should benefit from enhanced scrutiny under the Europol Regulation.

Starting in 2020, the European Data Protection Supervisor began sharing information with the national supervisory authorities on a yearly basis regarding the number of contributions of minors under 15 as suspects or potential future criminals to Europol⁵. During the meeting of 22 March 2023, the CSC Members decided to take action in a more coordinated manner and to each follow-up on the contributions that stemmed from their Member State⁶.

² Article 30 of the Europol Regulation.

³ Annex I of the Europol Regulation.

⁴ <https://data.europa.eu/data/datasets/criminal-justice-sanctions?locale=en>

⁵ This information was originally distributed to the predecessor organisation to the CSC, as regards Europol matters, the Europol Cooperation Board (ECB). The Europol Cooperation Board was an advisory body composed of representatives of the national supervisory authorities of the European Union Member States and of the EDPS, cooperating on specific issues requiring national involvement and to ensure the consistent application of the Europol Regulation.

⁶ The European Data Protection Supervisor followed up on contributions Europol had received from third countries and international organisations.

Why is coordinated supervision needed?

Under Article 38 of the Europol Regulation, the responsibility for the legality of a transfer and of the quality of the personal data provided to Europol, including the responsibility to accurately mark a minor as being a ‘suspect’ or ‘potential future criminal’, lies with the Member States that provide the personal data to Europol. In other words, for EU Member States, when authorities collect personal data, it is their responsibility to make sure that this collection happens in accordance with Member State law, and that the information they transmit to Europol is correct. The independent supervisory authorities are competent to perform an external control function on these transmissions by police authorities.

Europol can also receive personal data from third countries (meaning non-EU countries), or through international organisations (for instance Interpol). In those cases, Europol has to assume responsibility itself for the personal data it receives, and make sure this data is accurate and meets the standard of what could be processed under EU law. Whenever Europol takes on this responsibility itself, the European Data Protection Supervisor performs the independent verifier role.

It is important for the independent supervisory authorities not only to be aware of what practices are carried out within their own country, but also to be able to compare and contrast with practices in other law enforcement authorities. This way they can together establish common best practices and recommendations, and can identify systemic issues that transcend country borders. While criminal law and especially the criminalisation of minors remains an area of great diversity between EU Member States, and even more so worldwide, EU law enforcement and supervisory authorities must cooperate to allow the Union to function effectively.

What data was looked at?

The coordinated actions taken by the CSC were based on data extracted by Europol from its information systems and received in January 2023. This did not include data obtained by Europol to prevent and combat child sexual abuse.

The dataset contained so-called ‘person entities’ that existed at that time in Europol’s Analysis System for whom a) a date of birth was recorded and b) the recorded date of birth was less than 15 years before their information was received by Europol⁷.

To illustrate: a person born in 2004, whose information was sent to Europol in 2018, would be 14 years old at the time where authorities sent their information to Europol. As time passes, this person in 2024 would be 20 years old and no longer a minor. Still, CSC Members verified whether at the time (in this example in 2018), and taking into account the context that existed then, it was necessary and proportionate to send the minor’s personal data to Europol as a suspect.

This report is based on findings of 10 CSC Members, following up on the data transmitted to them. As such, this report does not present a holistic view of all minors processed at Europol. While it remains unclear how widespread the findings are, they nonetheless cover critical topics that require further examination.

⁷ Due to the specific nature of child sexual abuse crimes, Europol’s AP TWINS was not included in the exercise.

Main findings and recommendations

As an important first finding, several of the supervisory authorities did not report any significant issues with the examined transmissions of minors' data to Europol.

Within the reports of the other supervisory authorities, the CSC identified the following topics that merit close attention:

1. **Instrumentalisation of minors and retention periods:** supervisory authority investigations revealed instances where individuals under the age of 15 were pushed to commit crimes specifically due to their age and either their lack of adult criminal liability or reduced penalties. Where competent authorities investigate and pursue these cases and transmit data on these minors, labelled as suspects, to Europol, that minor then becomes classified as a suspect in serious or organised crime (or terrorism) the EU level.

Since Member States do not appear to frequently request that Europol delete a minor's data before the standard retention period expires, a minor who was instrumentalised or coerced into committing offenses often risks being labelled a suspect across the EU for long periods of time, even after national investigations conclude.

2. **Categorisation of Minors:** Another concerning finding is that minors were transmitted to Europol as suspects even when their involvement appeared limited to accompanying the primary individuals under investigation. Similarly, minors who committed petty offences, such as pickpocketing, are given the 'suspect' label in the same manner as the primary suspects of the international organised crime.

In these cases, the needs of law enforcement may be balanced further with the best interests of the child. For instance, by classifying these minors as 'contacts' or 'associates' rather than suspects, the data's investigative value could be maintained while potentially protecting the minor from the severe implications of being labelled as suspect in Europol's databases. Furthermore, before transmitting data to Europol, the competent authorities should always assess whether the petty offences have sufficient links to serious crime to fall within Europol's mandate.

3. **National record-keeping (and logging) of transmissions to Europol:** CSC Members noted issues with record-keeping at national level on what data on minors have been transmitted to Europol, which creates significant challenges for data protection oversight. National supervisory authorities found in many cases that historical records of what data was sent to Europol were not available anymore, often due to expiration of messages in the SIENA communication solution (due to its retention period). It was noted that in those cases no corresponding transmission logs were available.

In such cases, sometimes there were also no other records on which persons' information was sent to Europol. This lack of records at national level makes it impossible for national supervisory authorities, or even DPOs, to investigate properly how many, and which, datasets were sent to Europol. Consequently, national authorities must rely on Europol's central records, which they often cannot verify against their own files.

The controllers, ideally in a coordinated manner, should assess how to improve their record-keeping to keep track of which minors' data still exist at Europol.

4. **Accuracy and quality of data on minors:** Certain cases were found where persons in fact were not minors but had been transmitted as minors to Europol due to a fake date of birth that had been provided to the police. In some of these cases, the aim of the transmission to Europol was partially an age verification exercise as police suspected that the person was providing a false date of birth. According to Article 38(2) of the Europol Regulation, Member States are responsible for the accuracy of the information provided to Europol.

In cases where data on a presumed minor were sent to Europol (including for age verification), the respective national authorities should inform Europol if the data turns out to be incorrect, e.g. regarding the age of the suspect.

Similarly, Europol has the direct obligation under Article 38(3) of the Europol Regulation, to inform the provider of data when it becomes aware that the data are factually incorrect and to correct the data immediately.

Where potentially inaccurate information is exchanged on minors, including for the purpose of age verification, this potential inaccuracy should be clearly communicated and documented. Once established, the correct date of birth should be communicated and reflected both nationally and in Europol's Analysis System.

5. **Documentation regarding the processing of personal data on minors:** In examining the documentation of decisions to process data on minors as suspects, the CSC Members found gaps in the clarity and consistency of the thresholds applied to decide on whether data related to minors should be processed at all, especially in terms of strict necessity and proportionality.

Due to the prerequisites of Article 30(1) Europol Regulation the processing of personal data of minors shall be allowed only if it is strictly necessary and proportionate for preventing or combating crime that falls within Europol's objectives. These prerequisites must be thoroughly assessed and documented.

Next steps

This initiative should not be viewed as an isolated exercise, but as a precursor to ongoing monitoring. Through the CSC, supervisory authorities have now established a framework that allows this topic to be addressed via a coordinated, EU-wide approach.

The CSC emphasises that the processing of minors as suspects will require continuous attention from competent authorities to ensure long-term compliance, and that further actions may be taken in the future.