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Implementation of actions specified in the EDPS prior consultation opinion on NCMEC

EDPS Opinion on the prior consultation on the process of automating the processing of data originating from the United States National Centre for Missing and Abused Children (NCMEC) for further dissemination to EU Member States (Case 2023-0142)¹

Introduction

On 20 April 2023, the European Data Protection Supervisor (EDPS) issued its opinion on the prior consultation of the processing of data from the U.S. based National Centre for Missing and Abused Children (NCMEC) for further dissemination, through Europol, to EU Member States.

Europol has thoroughly assessed the EDPS opinion and identified how to best prepare the envisaged processing in accordance with the guidance received from the EDPS. This document aims to provide the EDPS with clarification on certain elements of the referred opinion, and to inform about the concrete measures that Europol is implementing in order to comply with the expected actions that are specified in the EDPS opinion.

Further clarifications

The following clarifications are deemed relevant with regard to the NCMEC data flow process:

1. Data scope and visibility to Europol

[REDACTED]

[REDACTED] Any quality checks (e.g. with respect to the correct content of the referral) on the basis of the limitations of the data and underlying rules, at the point of receipt, are not feasible [REDACTED]

2. Current process and automation concerns

[REDACTED]. It is important to underline that this is not a

¹ Europol file no. EDOC #1302537

manual process per se, but only triggered manually by the analyst and automatically imported into the Europol data environment. [REDACTED]

Secondly, the reliability of the source and the accuracy of the information would not be improved at the moment of receipt by a validation carried out by Europol, as this requires further assessment and actions by Europol, relying on feedback from Member States and third country operational cooperation partners which receive NCMEC referrals. [REDACTED]

In the new solution, the goal is to have this process triggered automatically by a service, instead of an analyst. After rigorous testing of this functionality and considering the circumstance that only minimised data are returned in the cross-match reports, the practice to perform spot checks will nonetheless continue. Europol believes that this represents sufficient risk mitigation, including in light of the below explanations.

Responses and documentary evidence with regard to the required actions specified in the EDPS prior consultation opinion

Concerning Risk 1:

1. Europol has taken on board the EDPS recommendation and will mark the **entities as “unconfirmed”** in the Europol data environment (which translates to the classification of “X4” regarding the assessment of the reliability of the source and the accuracy of the information, with reference to Article 29 of the amended Europol Regulation). This change is prepared and will be operational with the first release of the new NCMEC data flow envisaged to go live in June 2023 (please refer to the section ‘Conclusion’ below). [REDACTED]

2. The new solution EU-CARES³ will have [REDACTED]
[REDACTED]
[REDACTED] This functionality is envisaged to be operational as of July 2023 (EU-CARES – Version 1.1) and will be triggered by an analyst upon receipt of the corresponding communication by NCMEC, Member States or third country operational cooperation partners outlining (an) erroneous referral(s).

In the transition period (i.e. before the deployment of EU CARES – Version 1.1), a [REDACTED] will be applied, which allows Analysis Project (AP) Twins analyst staff to trigger the removal of all retracted referrals related entities and

² [REDACTED]

³ European Union Child Abuse Referral Service (EU-CARES) is the solution name

files, in addition to the communication to the relevant Member States or third country operational cooperation partners, for them to become aware of the retraction of the erroneous referrals. The procedure is as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

3. Feedback about the NCMEC referrals is currently received via SIENA. This will remain to be the case in the short term. Upon receiving feedback of incorrect information (or in case of a stolen account), the respective Europol analyst staff initiate the retraction process and provide feedback to NCMEC as necessary.

In the long term, a feedback mechanism system is envisaged as part of the EU-CARES platform.

Concerning Risk 2:

1. To address the risk of an incorrect association of cross-match results, the output includes minimal information as a mitigation measure. The sample cross-match results were shared with the EDPS as part of the DPIA. There is no personal data in the reports, except for the entity identifier used [REDACTED]

The only purpose of the minimal information provided is to enable Member States to make further requests to Europol for additional information. Beyond this point, the analysts are involved and they will make the human assessment whether or not Europol should send further information.

2. Detailed acceptance tests of the cross-matching component have been conducted. These thorough tests were intended to detect any erroneous behaviour of the process. The test cases description⁵ are attached as an Annex to this document.
3. Manual spot checks of the system conducted at monthly intervals, overseen by the Data Quality Control Coordinator, verify the accuracy of the cross-match reports.

⁴ NCMEC Data Flows – Solution Blueprint (Europol file no. EDOC #1257710v6 – Updated version)

⁵ EU-CARES: Test cases description including expected results (Europol file no. EDOC #1305382)

4. A mechanism to interpret the number of cross-match results is already built into the EU-CARES solution. If the number becomes unexpectedly high or disproportionate (e.g. more than 500 cross-match results for a single entity), an alert will be generated in the EU-CARES dashboard, for the analysts to intervene in the processing, with a view to evaluating the reason for the results, and for deciding on the next steps.

In the longer term, as stated in the Solution Blueprint, [REDACTED]. Taking on board the EDPS opinion, the same solution will be utilised to:

- display process statistics and trends for analysis;
- deploy additional, enhanced trigger [REDACTED] alerts to the analyst staff as soon as thresholds are reached in case of suspected anomalies, e.g. sudden spikes or inconclusive rates of cross-matches (this functionality will thus expand the initial alert functionality in the EU-CARES dashboard, as referred to above).

Conclusion

With the submission of this document, Europol considers to have complied with the requirements of the EDPS opinion on NCMEC. It is Europol's intention to initiate the processing of NCMEC data with the **new EU-CARES solution** as of **26 June 2023**. In the event of a **material aspect** still considered by the EDPS, Europol would request feedback from the EDPS before the envisaged go-live of the new EU-CARES solution on 26 June 2023. At the same time, Europol is ready to refine the EU-CARES solution in future versions with respect to **further improvements identified**, including through EDPS supervisory activities.

Europol would like to express its appreciation for the constructive and cooperative approach in the prior consultation procedure.