

File ST3

page 1 of German document

European Union
The Council

Brussels, 14 January
1994

4206/94

Confidential

Europol 3

Notice

from the German delegation

12 January 1994

to the ad hoc working group on Europol

subject: structure of the Europol system after the implementation
of the Convention

The delegations will find herewith a document from the German
delegation for the ad hoc working group 'Europol'.

page 2 of German document

I introduction

At the sitting of the European Council on 29 October 1993, the heads of states and government decided that the work on the Europol Convention should be completed by October 1994.

As for the future work on the Convention, it is necessary to clarify the question of the structure of the system in the context of data protection requirements. The Project Team put forward some proposals on this subject in its document 3-1 of 10 March 1993. These proposals concern the storing and access of data, and propose a model for the central storing of data by Europol (Option 1, B of the accompanying document).

It is the opinion of the German delegation that Europol would favour a model of central data holding. Such a model would have two components (logistic and physical), which could be realised gradually:

- the first component would be known as 'Europol Datei' (Europol database). It would consist of central work and research including 'soft' data. Such data would be handled exclusively by Europol itself, which would be responsible for data protection. The immediate input and retrieval of data would be done exclusively by Europol itself.

- the other component, known here as the 'information system' could be undertaken as the second step - and would be a limited information system of 'hard' data for the participating states, which could feed data into the system (such as criminal records, for example) or 'interrogate' the system on line. Here the responsibility for data protection would rest mainly with the ~~inputting stations~~ *sales of administration?*

Page 3 of German document

With the help of working and research data Europol can safeguard its central position in information, under Article 2 of the convention, which authorizes the collecting, assessing and transmitting (to participating states) of information in the sphere of crime. The aim of the Information System for the participating states is primarily to make information available quickly, rather than to rely on on-going enquiries for further knowledge.

For both systems, it is intended that there should be relevant provisions in the Convention, to determine to what extent the police and customs are to be tied up in the system.

The two components will also differ in as much as they will be underpinned by separate technical requirements.

II Europol data (Work and Research data)

1. Fundamental structure of the data base

In this system Europol would gather and store data in individual data bases? (Fallkomplexen). The data would be supplied by the participating states, third parties or obtained through the analysis of data, and stored. Europol could store the information in data form, but also additionally in files (actual retaining of files in Europol). The input or transmission of data would be done exclusively by Europol. An on line 'input' or access by the participating states is not planned. The supply or transmission of information to the participating states or third parties would be exclusively as directed in the Convention, mostly by the means of electronic mail (x 400), more than through the NC. A fast reaction time should be aimed at. A comprehensive on line possibility of access must also be aimed at for all participating states. Such an information orientated system which gathers data on that scale will tend to encounter technical and legal difficulties in what is required of it. This is even more the case in this instance because the confidential nature of the data 'goes against the grain' of the on line access nature of such a centralised information system.

page 4 of German document

2. Processing and utilization of data

a. Supply of data

The data can be transmitted by request from participating state for 'further details', or without any such opening. Europol should also be prepared to approach participating states or third parties in order to seek information. The transmission can be done through electronic mail, (x 400). An immediate access by Europol of national data should not be planned, if only because the Europol officials are not 'on the spot' to use the national systems, nor to assess the data - without knowledge of the files.

b. Storing

The storing of data by Europol should then take place, all Europol and Convention requirements having been fulfilled. An important stipulation, which should be won, would be that the data supplied should be given separate storing, which could be used by the participating state. When considering these prerequisites, Europol should show determination but act in accordance with data protection.

A bringing together of all the relevant data from the participating states would be with a view to avoiding the disproportionate cost of holding a parallel storing of data for the national data bases. Storing in a such a way, still bound up with technical and legal problems, makes it unnecessary that this data should be held in individual participating states, and make them are available every time they are requested by Europol or by participating states.

The advantage in limiting of the storing of data in this way by Europol has the advantage that, in practice, there is scarcely any difference between national and new data. Similarly in the Europol-Datei stored data, there are a few Europol data.

page 5 of German text

It is the duty of participating states to inform Europol of any amendments or corrections to the data already stored (see also 3c). Should the data base (storing) be destroyed, then the data would also be destroyed. To ensure that this does not occur, data from participating or third parties should be put on a specific database (Themenkomplex), and that archives should be kept separately for a specified length of time.

c. Transmission of data

The transmission of data can take place as a result of a request from participating or third states, or as a result of an initiative from Europol. The requests from the participating states will be adjusted to the communication needs of Europol rather than the NC. The NC often dispose of more knowledge on more topics. It can therefore often answer questions more fully, and render a reply from Europol obsolete, or contribute to the replies it gives (made possible by the participating states). The same goes for replies in return transmissions.

The requirements for the transmission of data from the participating and third states are to be laid down in the Convention. As third parties are to be understood not only as third countries but also international organisations.

3. Data protection: apportioning responsibility

a. introduction

The storing of data by Europol in Europol Datei, and the keeping of files raises the question of apportioning data protection responsibility.

Europol carries the responsibility for the content of deletions, for the checking of time limits and the imparting of information. The participating states apply the duty to their sources, and Europol over the amendments or corrections following instructions.

b. deletions and time limits

In the event of storing of data, then Europol has to apply the provisions in the Convention relating to the checking of time limits and deletions - an area where Europol will also self regulate. Should data be deleted, it is up to the supplying participating state to issue instructions for corrections.

Page 6 of German text

c. Duty to make and communicate corrections

It is the duty of a participating state, when Europol holds data which is incorrect, to remedy this without delay. Europol has the data in question to correct. Should the data have already been passed to third parties, then Europol also has to advise them.

d. Imparting information

Requests for the giving of information must only be validated by Europol. The requests must comply with the relevant provisions in the Convention.

e. Indemnification

Applications for compensation should only be made to Europol in external relations cases. In internal relations - cases against the participating states - legal remedies should be available when the application for compensation arises from a mistake from one of those responsible.

f. Redress

The Convention must include provisions for the enforcement of provisions concerning access to information, corrections, deletions and indemnification.

III Information System (criminal records)

1. Introduction

A second step would be an information system for 'hard' data with an on line input and access for all participating states. The technology involved in this second step would be considerable. The stipulations for such an information system should be regulated by the Convention. The decision to implement such a system would come not only from the Convention, and its realisation would need the help of an authoritative body.

Page 7 of German text

2. Basic structure of the data base

The input of data and the access to data from the participating states differ from that the Europol Data on line system in as much as it could only be done through Europol itself. Basic data only would be stored in the system. For this purpose, a standardised, uniform registration screen (screen display?) would be necessary, which would also take into account and facilitates the language aspect of data handling. The following entries could then be made:

- personal data of convicted persons, and as far as necessary, identifying marks
- places of administration, police station involved, and crime number
- date of crime
- nature of crime and
- indications of availability of further knowledge from the country

This data base, unlike the Schengen Information System, would not contain investigation data, only indications of existing concrete knowledge in the participating states of Europol. The technical 'relationship' of participating states with the Information System should take precedent over their relationship with the NC. In view of the ease of getting information from the system, the facilities for input and access should not be geared to the limitation of the NC. In a federal country the possibility of accessing information from the depths of the Landeskriminalemter (Land Criminal Investigation Offices) should be given. Sites of authorised input and access must be made known by the participating states.

2. Processing and utilization of data

a. Data supply, storing and access

The data entry comes directly from the participating states sites authorised by Europol. The presumption being, that the data are meant for the fulfillment of Europol's purpose.

... The possibility remains of a request for on-going enquiries.

Page 8 of German text

b. Transmission of data

In accordance with the Convention, the transmission of data to a third party is possible through Europol or the individual participating states. Europol has sought to bear these requirements in mind in the Convention. In the case of a reservation from an individual country, its acceptance should be sought.

Data from other parties should not be obtained from the Information System without their consent in other national databes. Otherwise the quality of the data could no longer be guaranteed (in terms of its up to date ness, correctness and general contents).

3. Responsibility for data protection

a. introduction

The data stored in the system remain at the individual 'supply stations'. Amendments and deletions can be done there exclusively. The individual station carries the responsibility for data protection (irrespective of the data protection measures in operation at Europol level) for the carrying out of deletions and time limits relating to them, etc.

b. Deletions and time limits

The individual participating states are responsible for the deletions and keeping to time limits, and for entering the data in the information system. The system could be set up in such a way, that it could distinguish between the different deletions from the individual participating states. Each participating state could check their data and make deletions. Collective time limits can be set for this purpose.

c. Duty to make and communicate corrections

Europol could correct incorrect data, should a station realise that this had been the case. If this incorrect data had ben transmitted to third parties through Europol, then it is the duty of Europol to contact the recipient of data and transmit the correction.

Page 9 of German text

d. Imparting of Information

The imparting of information from the information system should be regulated in the same way as Europol- Datei. Because the data remain the possession of the participating states, there may be a possibility that data would be supplied not through Europol before the station had had the opportunity to give a decision.

e and f

Provisions dealing with indemnification and redress are also necessary in relation to this information system.