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LIMITE

April 97

EUROPOL 10

NOTE

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from : the Presidency

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to : K.4 Committee

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No. prev. doc. : 4038/8/96 EUROPOL 2 REV 8 ; 6100/97 EUROPOL 10

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Subject : Proposal for rules applicable to analysis files

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Please find attached the text of the above mentioned rules resulting from the discussions in the K.4 Committee of 26 March 1997.

6100/2/97  
DG H II

JV/dp

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RULES APPLICABLE TO ANALYSIS FILES

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Convention on the Establishment of a European Police Office (Europol Convention)<sup>(1)</sup>, and in particular Article 10(1) thereof;

Taking account of the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data adopted by the Council of Europe on 28 January 1981;

Taking account of Recommendation No R(87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector,

HAS ADOPTED THE FOLLOWING RULES.

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taken up by Council Act of 28 July 1995, O.J. C 316/1 of 22.11.95.

## CHAPTER I

### GENERAL PRINCIPLES

#### ARTICLE 1: DEFINITIONS

For the purposes of this document:

- (a) "personal data" means any information relating to an identified or identifiable individual; an identifiable individual shall be a person whose identity can be determined, directly or indirectly, particularly through an identification number or one or more specific characteristics of his/her physical, physiological, mental, economic, cultural or social identity;
- (b) "analysis work file" means a file opened for the purpose of analysis as referred to in Article 10 (1) of the Convention;
- (c) "analysis" means the assembly, processing or utilisation of data with the aim of helping a criminal investigation (in accordance with Article 10 (2) of the Convention);
- (d) "processing of personal data" ("processing") means any operation or set of operations which is performed on personal data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (e) "Convention" means the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention).

## ARTICLE 2: SCOPE

The rules laid down in this text shall apply to the processing of data for analysis purposes, as referred to in Article 10 (1) of the Convention.

## ARTICLE 3: DATA SUPPLIED FOR THE PURPOSES OF ANALYSIS

1. Data may be offered for inclusion in an analysis work file both in structured and unstructured forms. The Member State supplying the data shall notify Europol of the purpose for which the data is supplied and of any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms. The Member States may also inform Europol of such restrictions at a later stage.

Europol must ensure that third parties supplying such data notify Europol of the purpose for which the data is supplied and of any restriction on its use.

After receipt, it shall be determined as soon as possible in which analysis work file the data may be included, and to what extent the data shall be included in that file.

2. In accordance with Article 15 (1) of the Convention, such data shall remain under the responsibility of the Member State which supplied the data, and subject to its national legislation, until they have been included in an analysis work file, without prejudice to Europol's responsibilities for the data as outlined in this paragraph.

Europol shall be responsible for ensuring that such data may only be accessed by the Member State which supplied the data, or by a Europol analyst duly authorised in accordance with Article 10 (2)(1) of the Convention, for the purpose of determining whether or not the data may be included in an analysis work file.

If Europol, after appraisal, has reason to assume that data supplied are not accurate or no longer up-to-date, it shall inform the Member State which supplied the data.

- 3.- Data which, after appraisal, have not been selected for inclusion in an analysis work file, as well as paper files or documents containing data which have been included, shall remain under the responsibility of the Member State which supplied the data in accordance with Article 15 (1) of the Convention, and subject to its national legislation, without prejudice to Europol's responsibilities for the data as outlined in this paragraph.

Europol shall be responsible for ensuring that such data, paper files or documents are stored separately from the analysis work file, and may only be accessed by the Member State which supplied the data, or by a Europol analyst duly authorised in accordance with Article 10 (2)(1) of the Convention, for the purpose of:

- a. their later inclusion in an analysis work file;
- b. verifying whether the data which already have been included in the analysis file are accurate and relevant;
- c. verifying whether the requirements contained in these regulations or the Convention have been met.

Such data may also be accessed in the interests of the data subject which require protection. In this case the data may only be used with the consent of the individual concerned.

Such data, paper files and documents have to be returned to the Member State which supplied them, or to be deleted or destroyed, if they are no longer necessary for the purposes outlined above. They must be deleted or destroyed in any case after the closure of an analysis work file.

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4. Where the data as referred to in this Article have been supplied by a third Party, Europol shall be responsible for ensuring that the principles laid down in this Article shall be applied to such data, following the rules laid down by the Council in accordance with Article 10(4) of the Convention.

## ARTICLE 4: PROCESSING OF DATA

1. Where this is necessary to achieve the objective laid down in Article 2 of the Convention, personal data as outlined in Articles 5 and 6 may be processed by Europol to the extent that they are adequate, accurate, relevant, and not excessive in relation to the purpose of the analysis work file in which they are included, and provided that they are stored for no longer than necessary for this purpose. The necessity of keeping the data stored for the purpose of the analysis work file shall be reviewed regularly in accordance with Article 7 of these regulations and Article 21 of the Convention.
2. Each Member State involved in an analysis project shall, in accordance with its national legislation as specified in Article 10 (3) of the Convention, decide on the extent to which it can supply such data.

## ARTICLE 5: ORDERS OPENING ANALYSIS WORK FILES

1. In each order opening an analysis work file as mentioned in Article 12 of the Convention, Europol shall specify which of the categories of data mentioned in Article 6 it considers to be necessary for the purpose of the analysis work file concerned.
2. Europol shall also specify in this order whether data related to racial origin, religious or other beliefs, political opinions, sexual life or health may be included in the analysis work file under the categories mentioned in Article 6, and why such data are considered to be strictly necessary for the purpose of the analysis work file concerned<sup>(1)</sup>.

Where the data mentioned above relate to the categories of persons mentioned in Article 6, paragraphs 4 to 6, specific grounds must be supplied for this in the order opening the file and such data shall only be processed at the explicit request of two or more of the Member States participating in the analysis project.

3. The orders mentioned in this Article, including later amendments, shall require the approval of the Management Board of Europol, taking account of any comments thereon by the Joint Supervisory Body, in accordance with Article 12. (1) and (2) of the Convention.

<sup>(1)</sup> The Danish delegation has expressed a general political reservation on this Article with regard to the use and storage of sensitive personal data. The Austrian, Greek, Portuguese and Spanish delegations have made a scrutiny reservation.

## ARTICLE 6: PERSONAL DATA IN ANALYSIS WORK FILES

1. Whenever personal data are stored in work files for the purposes of analysis, a note should be added which refers to the category of persons under which the storage is made.
2. The following categories of personal data, including associated administrative data, may be processed on the categories of persons mentioned in Article 10 (1) (1) of the Convention:

a) Personal details:

1. Present and former surnames
2. Present and former forenames
3. Maiden name.
4. Father's name (where necessary for the purpose of identification)
5. Mother's name (where necessary for the purpose of identification)
6. Sex
7. Date of birth
8. Place of birth
9. Nationality
10. Marital status
11. Alias
12. Nickname
13. Assumed or false name
14. Present and former residence and/or domicile

b) Physical appearance:

1. Physical description
2. Distinguishing features (marks/scars/tattoos etc.)

c) Identification means:

1. Identity documents
2. National identity card/passport numbers
3. National identification numbers, if applicable
4. Visual images and other information on appearance
5. Forensic identification information such as fingerprints, DNA evaluation results (to the extent necessary for identification purposes and without information characterizing personality), voice profile, blood group, dental information

1. Present employment and occupation
2. Former employment and occupation
3. Education (school/university/professional)
4. Qualifications
5. Skills and other fields of knowledge (language/other)

e) Economic and financial information:

1. Financial data (bank accounts and codes, credit cards etc.)
2. Cash assets
3. Share holdings/other assets
4. Property data
5. Links with companies
6. Bank and credit contacts
7. Tax position
8. Other information revealing a person's management of their financial affairs

f) Behavioural data:

1. Lifestyle (such as living above means) and routine
2. Movements
3. Places frequented
4. Weapons and other dangerous instruments
5. Danger rating
6. Specific risks such as escape probability, use of double agents, connections with law enforcement personnel
7. Criminal related traits and profiles
8. Drug abuse

g) Contacts and associates, including type and nature of contact of association

h) Means of communication used, such as telephone (static/mobile), fax, pager, electronic mail, postal addresses, internet connection(s)

i) Means of transport used, such as vehicles, boats, aeroplanes, including information identifying these means of transport (registration numbers)

2 of the Convention:

1. Previous convictions
2. Suspected involvement in criminal activities
3. Modi operandi
4. Means which were or may be used to prepare and/or commit crimes
5. Membership of criminal groups/organisations and position in the group/organisation
6. Situation and function in the criminal organisation
7. Geographical range of criminal activities
8. Material gathered in the course of an investigation, such as video and photographic images

k) references to other databases in which information on the person is stored:

1. Europol
2. Police/customs agencies
3. Other enforcement agencies
4. International organisations
5. Public bodies
6. Private bodies

l) Information on legal persons associated with the financial data mentioned under point (e) or with the criminal activities mentioned under (j):

1. Designation of the legal person
2. Location
3. Date and place of establishment
4. Administrative registration number
5. Legal form
6. Capital
7. Area of activity
8. National and international subsidiaries
9. Directors
10. Links with banks.

limited to persons who have other than accidental contacts with the persons under paragraph 2 to the extent that there is sufficient reason to believe that information which relates to the persons under paragraph 2 and which is relevant for the analysis can be gained through them, and provided they are not included in one of the categories of persons mentioned under paragraphs 2 or 4 to 6.

Regarding contacts and associates the data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of their role as contact or associate.

In this context, the following should be taken into account:

- the relationship of these persons with the persons under paragraph 2 has to be clarified as rapidly as possible;
- If the assumption pursuant to the first sentence of this paragraph turns out to be unfounded, the data shall be deleted without delay;
- If such persons are suspected of committing an offence for which Europol is competent under Article 2 of the Convention, or have been convicted for such offenses, or there are serious grounds under national law for believing they will commit such offenses, all data pursuant to paragraph 2 may be stored;
- if a clarification pursuant to the previous indents is not possible, this shall be taken into account when deciding on the necessity and the extent of storage for the further analysis;
- data on contacts and associates of contacts and associates must not be stored, except for data on the type and nature of their contacts or associations with the persons mentioned under paragraph 2.

4. With regard to persons who have been victims of one of the offenses under consideration or with regard to whom certain facts give reason for believing that they could be the victims of such an offence as mentioned in Article 10 (1)(3) of the Convention, data may be stored pursuant to paragraph 2, points (a) to (c)(3), as well as the following categories of data:

- a. Victim Identification data
- b. Reason for victimisation
- c. Damage (physical/financial/psychological/other)
- d. Anonymity to be guaranteed
- e. Participation in court hearing possible
- f. Crime related information provided by or through such persons, including information on their relationship with other persons where necessary to identify the persons as mentioned in paragraph 2.

Other data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of their role as victim or potential victim.

Data not required for any further analysis shall be deleted.

5. With regard to persons who might be called upon to testify in investigations in connection with the offenses under consideration or in subsequent criminal proceedings as mentioned in Article 10 (1)(2) of the Convention, data may be stored pursuant to paragraph 2, points (a) to (c)(3), as well as the following categories of data:

- a) Crime related information provided by such persons, including information on their relationship with other persons included in the analysis work file
- b) Anonymity to be guaranteed
- c) Protection is guaranteed and by whom
- d) New identity
- e) Participation in court hearing possible

Other data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of their role as witnesses.

Data not required for any further analysis shall be deleted.

... implemented in Article 10 (1)(b) of the Convention data may be stored pursuant to paragraph 2, points (a) to (c)(3), as well as the following categories of data:

- a. Coded personal details
- b. Type of information supplied
- c. Anonymity to be guaranteed
- d. Protection to be guaranteed and by whom
- e. New identity
- f. Participation in court hearing possible
- g. Negative experiences
- h. Rewards (financial/favours).

Other data pursuant to paragraph 2 may be stored as necessary, provided there is reason to assume that they are required for the analysis of their role as informant.

Data not required for any further analysis shall be deleted.

7. If, at any moment during the course of an analysis, it becomes clear on the basis of serious and corroborating indications, that a person included in an analysis work file should be included in a different category of persons, as laid down in this Article, than the one in which he was initially included, Europol may only process data on such a person allowed under this new category - all other data must be deleted.

If, on the indications specified above, it becomes clear that a person should be included in two or more different categories as specified in this Article, all data allowed under such categories may be processed by Europol.

#### ARTICLE 7: TIME LIMITS FOR EXAMINATION AND DURATION OF STORAGE

1. When deciding whether personal data continue to have to be stored under Article 6 within the meaning of Article 21 of the Convention, the interests of Europol in performing its tasks need to be weighed against the legitimate data protection interests of the data subject concerning whom data are stored.