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NOTE

from :	German delegation
to :	Working Party on Cooperation in Criminal Matters
No. prev. doc.:	10938/99 COPEN 35
Subject :	Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union – Data protection

Delegations will find enclosed a German proposal on the protection of personal data.

Title IV a

Protection of personal data

Article A

Data use

(1) Data communicated under this Convention may be used only for the purposes stipulated therein and for which they were communicated, subject to any conditions laid down by the communicating body in the individual case concerned. Such data may also be used:

(a) for other purposes for which the Convention would also have permitted the data to be communicated;

(b) for the prevention and prosecution of serious criminal offences;

(c) for judicial or administrative proceedings in connection with the purposes referred to in the first sentence and in (a) and (b) of the second sentence, and

(d) to avert any serious threat to security.

(2) Data may not be used for purposes other than those referred to in paragraph 1 without the prior consent of the communicating Member State.

Article B

Supplementary provisions

In addition, the communication and use of data shall be governed by the following provisions, with due regard to the relevant provisions of national law:

1. The recipient shall, upon request, inform the communicating body of the use made of the data and the results thus obtained. [1]

2. The communicating body shall be obliged to ensure that the data are accurate [2] and necessary [3] for the purpose for which they are to be communicated. Any ban on the communication of data under the relevant national law must be observed. Should it emerge that data have been provided that are inaccurate [4] or should not have been communicated, the recipient shall be notified forthwith. The recipient shall be obliged to correct or destroy the data.

3. The data subject shall, upon request, be given access to any data relating to him and notification of their intended use and the purpose of storage. Right of access may be denied if, on due consideration, the public interest in non-disclosure is judged to outweigh the data subject's interest in disclosure. Otherwise the data subject's right of access to data relating to him shall be governed by the national law of the Contracting State in whose territory the right is claimed.

4. The communicating and receiving bodies shall be obliged to record the communication and receipt of data in an appropriate manner.

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1 It will be made clear in the explanatory report that, given the nature of mutual assistance in criminal matters – assistance **for specific investigations, provided on request** – paragraph 1 will apply only in the case of a spontaneous exchange of information pursuant to Article 7.

2 It will be specified in the explanatory report that the duty on the communicating body to ensure the accuracy of the data to be communicated refers only to data from a register in the requested State.

3 The requirement to ensure that there is a need for the data to be communicated must not be taken to mean that the requested State has to check how important the data are for the proceedings in the requesting State. That would be impossible. Rather, it means that data are not to be communicated if they are obviously irrelevant to the request for legal assistance. This will be specified in the explanatory report.

4 The explanatory report will contain a statement to the effect that inaccurate data refers to data taken from registers.

5. The communicating and receiving bodies shall be obliged to ensure that data communicated [1] are effectively protected against unauthorised access, amendment or disclosure.

6. If an individual suffers unlawful injury as a result of communication under the Convention by way of data exchange from registers, the receiving body shall be held liable under its national law. It may not plead that the damage was caused by the communicating body in order to avoid its liability vis-à-vis an injured party. If damages are awarded against the receiving body because of its use of incorrectly communicated data, the communicating body shall refund in full to the receiving body the amount paid in damages.

Article C

Data processing in the territory of the other Contracting Party

(1) The rules of this Chapter shall also apply to data collected in the territory of another Member State in the course of cross-border activity. The special conditions laid down by the requested Member State in connection with the cross-border measure shall be observed. [2]

(2) Where officials are engaged in official duties in the territory of another Member State, that State may not allow them access to official data collections except under the control of one of its own officials.

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1 There will need to be more detailed discussion of this provision in the Working Party. When acting as the requested State, what do Member States do with the data they have been requested to collect? Do they keep duplicate copies in their own files or do they send everything to the requesting State? If necessary, paragraph 6 might read as follows: "The receiving body shall be obliged to ensure that the data communicated are effectively protected against unauthorised access and disclosure. The same shall apply to the communicating State, where it keeps copies of the data in mutual assistance files."

2 It could be made clear in the explanatory report that this provision applies particularly to joint investigation teams pursuant to Article 13. There would then be no need for specific data protection rules in that provision.