



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Sylvain BISARRE, Director

date of receipt: 8 June 2004

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Proposal for a Council Common Position on the transfer of certain data to
Interpol

Delegations will find attached Commission document COM(2004) 427 final.

Encl.: COM(2004) 427 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.6.2004
COM(2004) 427 final

Proposal for a

COUNCIL COMMON POSITION

On the transfer of certain data to Interpol

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

In its Declaration on combating terrorism of 25 March 2004, the European Council instructs the Council among other things to take forward work on the creation of an integrated system for the exchange of information on stolen and lost passports having recourse to the Schengen Information System and the Interpol database; the present Common Position is a first response to that request and will be followed-up by the setting up of the second generation of the Schengen Information System (SIS II) which will *inter alia* have the technical capacity to transfer data to Interpol.

The protection of the Union against internal and external threats requires not only that data that are relevant to police authorities competent in criminal matters (hereafter referred to as law enforcement authorities) are circulated within the EU, but are made available to international law enforcement partners too, to assist them to identify the persons that are set to use stolen passports from an EU Member State to perpetrate criminal acts directed against Member States or a third country. Reciprocity requires that other Interpol Member Countries make the same data available through the Interpol database to the EU law enforcement community.

The applicable data protection rules must be respected at each stage of the transfer or processing of the data, if personal data are transferred.

It is intended that the next generation of the Schengen Information System (SIS II) will contain the functionality of direct data transfer to the Interpol database.

Finally, it should be noted that the European Police Office (Europol) plays a fundamental role in the security architecture of the Union; Europol shall within its mandate and at its own expense have the right to have access to, and to search directly, data entered into the Schengen Information System concerning lost and stolen passports and other official documents mentioned in Article 100 of the Convention Implementing the Schengen Agreement of 1985 as provided for [in the not yet accepted] article 1(9) of the Council Decision 2003/.../JHA of .../2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism.

2. LEGAL BASIS

The proposed undertakings relate to common action, in conformity with Articles 34, paragraph 2, point a) TEU, to be taken by EU law enforcement authorities. They aim at improving operational cooperation between these authorities to prevent and combat serious and organised crime, including international terrorism. This improvement is brought about by imposing a number of obligations on Member States to improve the exchange and processing of passport data.

3. THE COUNCIL COMMON POSITION

Article 1 – definitions

Three definitions have been introduced to facilitate the drafting of the current Common Position.

Article 2– Purpose and objective

The purpose of this Common Position is in line with the general scope of Article 29 TEU and appropriate to address the security concerns expressed by the European Council of 25 March 2004 in its Declaration on combating terrorism.

Article 3 – Common action

This article lays down all the obligations that taken together will result in better availability of data via the Interpol Stolen Travel Document database. The need to respect applicable data protection rules has been highlighted. A distinction has been made between transfer of data to the Interpol database and the reciprocal sharing of data only with those Interpol Member Countries that undertake to share data on the same conditions as EU Member States. The data sharing conditions should be enshrined in an appropriate instrument.

The conclusion of an appropriate instrument with Interpol and the relevant Interpol Member Countries means that no data will be shared with any Interpol Member Country which itself is not willing to share at least the same data with Member States of the European Union and to ensure an adequate level of protection of the personal data concerned.

Article 4 – Monitoring and evaluation

The proper use of information tools, in operational terms as well as in terms of respect of the applicable rules, is promoted by peer review mechanisms. In the aftermath of major terrorism attacks, the exchange of data on stolen passports and taking decisive law enforcement action on that basis is of the utmost political importance. For that reason, reporting on the implementation of this draft Common Position is necessary.

Proposal for a

COUNCIL COMMON POSITION

On the transfer of certain data to Interpol

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(a) thereof,

Having regard to the proposal of the European Commission¹,

Whereas:

- (1) One of the Union's objectives is to provide citizens with a high level of safety within an area of freedom, security and justice; closer cooperation between Member States' police authorities is essential for the achievement of that objective.
- (2) The protection of the Union against threats posed by international and organised crime, including terrorism, requires that common action includes the exchange of information between Member States' police authorities competent in criminal matters as well as with international partners.
- (3) Issued, and in particular blank stolen, lost or misappropriated passports are used to elude law enforcement with the object of carrying out illicit activities capable of jeopardising the security of the Union and of each one of the Member States; meaningful action can only be achieved at Union level by reason of the very nature of the threat; action by the Member States individually could not achieve this objective; this Common Position does not go beyond what is necessary to achieve that objective.
- (4) All Member States are member to the International Criminal Police Organization – Interpol; to fulfil its mission, Interpol receives, stores, and circulates data to assist law criminal police to prevent and combat international crime. The Interpol database on Stolen Travel Documents permits Interpol's Member Countries to share between themselves the data on lost and stolen passports.
- (5) The European Council of 25 March 2004 in its Declaration on combating terrorism instructed the Council to take forward work on the creation by end 2005 of an integrated system for the exchange of information on stolen and lost passports having recourse to the Schengen Information System and the Interpol database; the present Common Position is a first response to that request that will be followed-up by the setting up of the second generation of the Schengen Information System (SIS II) that will contain the technical functionality allowing transfer of data to Interpol.

¹ OJ L of .../2004

- (6) The relations between the Union and the International Criminal Police Organisation - Interpol – should be developed in order to enhance international cooperation in the fight against serious and organised crime, including terrorism.
- (7) The transfer of Member States' data about stolen, lost and misappropriated passports to the Interpol database on Stolen Travel Documents as well as the processing of these data, shall respect applicable data protection rules which implies the setting of appropriate conditions on the data exchange with Interpol.
- (8) Article 100 of the Convention Implementing the Schengen Agreement provides for the integration in the Schengen Information System of data on stolen, lost and misappropriated passports by the Member States that are bound by the Convention Implementing the Schengen Agreement.
- (9) This Common Position obliges Member States to ensure that their competent authorities will transfer the aforementioned data to the Interpol database on Stolen Travel Documents in parallel to entering them in the relevant national database, and the Schengen Information System as regards the Member States participating in it. The obligation arises from the moment the national authorities become aware of the theft, loss or misappropriation. A further requirement to set up the necessary infrastructure to facilitate the consultation of the Interpol database acknowledges the law enforcement relevance of the latter.
- (10) The conditions of the transfer shall be agreed with Interpol in order to ensure that the data transferred will only be shared with other Interpol Member Countries in a reciprocal manner and under equivalent conditions, and will respect the data protection principles that lie at the heart of data exchange within the Union, in particular with regard to the transfer and automatic processing of such data.
- (11) This Common Position respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

HAS ADOPTED THIS COMMON POSITION:

Article 1- Definitions

1. “Passport data” shall mean data on issued and blank passports that are stolen, lost or misappropriated and formatted for integration in a specific information system. Passport data that will be transferred to the Interpol database shall consist only of the passport number, country of issuance and the document type.
2. “Interpol database” shall mean the Automatic Search Facility – Stolen Travel Document database managed by the International Criminal Police Organisation - Interpol.
3. “Relevant national database” shall mean the police or judicial database or databases in a Member State that contain data on issued and blank passports that are stolen, lost or misappropriated.

Article 2 – Purpose and objective

The purpose of this Common Position is to prevent and combat serious and organised crime, including terrorism, by ensuring that Member States take the measures necessary to improve cooperation between their police authorities competent in criminal matters and between them and such authorities in third Countries through the transfer of passport data to the Interpol database.

Article 3 – Common action

1. The competent police authorities of the Member States shall transfer all present and future passport data to the Interpol database. They will only share them with other Interpol Member Countries that have committed themselves to transfer at least the same data and that ensure an adequate level of protection of personal data. It shall also be ensured that fundamental rights and liberties regarding the automatic processing of personal data shall be respected. These requirements relating to reciprocity, adequate data protection and automatic processing will be laid down in an appropriate instrument to be concluded with the International Criminal Police Organisation – Interpol - and the other relevant Interpol Member Countries.
2. Each Member State may, subject to the requirements set forth in paragraph 1, agree with the International Criminal Police Organization – Interpol - the modalities for the transfer of all present passport data in its possession to the Interpol database; such data are contained in the relevant national database, or if it participates, in the Schengen Information System.
3. Each Member State shall ensure that immediately after passport data have been entered in its relevant national database or, if it participates, in the Schengen Information System, these data are also transferred to the Interpol database.
4. Member States shall ensure that their police authorities will query the Interpol database for the purpose of this Common Position each time when appropriate for the performance of their task. Member States will ensure that they set up the infrastructures required to facilitate on-line consultation at the latest by December 2004.
5. The transfer of personal data in compliance with the obligation laid down in this Common Position shall take place for the purpose set out in article 2, on the basis of reciprocity, the ensuring of an adequate level of protection of personal data in the relevant Interpol Member Country and the respect for fundamental rights and liberties regarding the automatic processing of personal data. To that end, Member States shall ensure that the transfer and sharing of passport data takes place on the appropriate conditions and subject to the above requirements.
6. Each Member State shall ensure that if a positive identification occurs against the Interpol database and before action is taken in respect of the holder of a passport, its competent authorities will verify the correctness of the data with the Interpol Member Country that introduced the data.

Article 4 – Monitoring and evaluation

On the basis of monitoring reports and of other information, the Commission shall, no later than three years after the present Common Position takes effect, submit a report to the Council on the operation of this Common Position. The Council shall assess the extent to which Member States comply with this Common Position and take the appropriate action.

Article 5 – Taking effect

This Common Position shall take effect on the date of its adoption

Article 6 – Publication

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*