

**OPINION 98/1 ON ARCHIVING DOCUMENTS AFTER THE
ALERT HAS BEEN DELETED**

Re.: Archiving documents after the alert has been deleted

At its meeting of 3 February 1998, pursuant to Art 115(3) of the Schengen Convention implementing the Schengen Agreement (hereafter referred to as the Convention), the Joint Supervisory Authority adopted the following opinion :

Conscious that national police departments in certain Contracting Parties keep documents relating to alerts even after alerts issued pursuant to Article 95 f) of the Convention have been deleted and do so for the purpose of creating criminal records.

Aware that in order to do this the police authorities invoke provisions in national data protection law (see Point 2.1.3. b of the Sirene Manual), whereby the provisions of Title VI of the Convention shall also be applicable.

The Joint Supervisory Authority has studied these practices and underscores the following data protection requirements first and foremost.

The Joint Supervisory Authority confirms the fundamental principles and provisions laid down in the Convention with regard to data protection, in particular :

- a. data may be supplied and used solely for the purposes laid down for the alert itself (Article 102(1) and Article 94(1) of the Convention). A derogation may only be made to this general principle if there is a need to prevent an imminent serious threat to law and order and safety or for serious reasons of State security or for the purposes of preventing a serious offence (Art. 102(3)).
- b. Any use of data which does not comply with Article 102 (1 to 4) shall be considered as misuse (Art. 102(5)).
- c. Pursuant to Art. 112 of the Convention, personal data saved in the Schengen Information System for the purposes of locating persons shall be stored no longer than necessary for the intended purpose.

- d. These basic principles shall apply by way of a complementary interpretation of legally binding texts for all types of data processing relating either directly or indirectly to alerts in the Schengen Information System.

The Joint Supervisory Authority therefore believes the following measures should be taken :

- a. after an alert issued for the purpose of locating an individual has been deleted, every Contracting Party to the Schengen Convention shall, pursuant to Art. 112 of the Convention, destroy all its accompanying documents immediately.
- b. the Schengen bodies shall revise the Sirene Manual with a view to deleting the provisions 2.1.3 b) which are incompatible with the Schengen Convention.