

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL COMMON POSITION 2005/69/JHA
of 24 January 2005
on exchanging certain data with Interpol

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30(1)(b) and 34(2)(a) thereof,

Having regard to the proposal from the Commission,

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' competent law enforcement 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' law enforcement authorities competent in criminal matters, as well as with international partners.
- (3) Issued and 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 taken at Union level by reason of the very nature of the threat. Action by the Member States individually could not achieve the abovementioned objective. This Common Position does not go beyond what is necessary to achieve that objective.
- (4) All Member States are affiliated to the International Criminal Police Organisation — Interpol. To fulfil its mission, Interpol receives, stores, and circulates data to assist competent law enforcement authorities to prevent and combat international crime. The Interpol database on Stolen Travel Documents permits Interpol's members 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 (SIS) and the Interpol

database. This Common Position is a first response to that request that should be followed-up by the setting up of the technical functionality in the SIS to achieve that aim.

- (6) The exchange of Member States' data on stolen, lost or misappropriated passports with the Interpol database on Stolen Travel Documents as well as the processing of these data, should respect applicable data protection rules both of the individual Member States and of Interpol.
- (7) This Common Position obliges Member States to ensure that their competent authorities will exchange the aforementioned data with the Interpol database on Stolen Travel Documents, in parallel to entering them in the relevant national database, and the SIS, 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.
- (8) The conditions of the exchange shall be agreed with Interpol in order to ensure that the data exchanged will respect the data protection principles that lie at the heart of data exchange within the Union, in particular with regard to the exchange and automatic processing of such data.
- (9) This Common Position respects the fundamental rights and observes the principles recognised in particular by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Purpose

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 competent law enforcement authorities and between them and such authorities in third Countries by exchanging passport data with Interpol.

*Article 2***Definitions**

For the purpose of this Common Position, the following definitions shall apply:

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 exchanged with 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 3***Common action**

1. The competent law enforcement authorities of the Member States shall exchange all present and future passport data with Interpol. They shall only share them with other Interpol members 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. Member States may decide that they shall only share their data with other Interpol members that have committed themselves to exchange at least the same data.
2. Each Member State may, subject to the requirements set forth in paragraph 1, agree with Interpol the modalities for exchanging all present passport data in its possession with Interpol. Such data are contained in the relevant national database, or in the SIS, if it participates.
3. Each Member State shall ensure that immediately after data have been entered in its relevant national database or in the SIS, if it participates, these data are also exchanged with Interpol.
4. Member States shall ensure that their competent law enforcement 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 shall

ensure that they set up the infrastructures required to facilitate consultation as soon as possible but at the latest by December 2005.

5. The exchange of personal data in compliance with the obligation laid down in this Common Position shall take place for the purpose set out in Article 1, ensuring 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 exchange and sharing of data takes place on the appropriate conditions and subject to the above requirements.

6. Each Member State shall ensure that if a positive identification (hit) occurs against the Interpol database its competent authorities shall take action in accordance with their national law, e.g. verify, when appropriate, the correctness of the data with the country that introduced the data.

*Article 4***Monitoring and evaluation**

On the basis of information provided by the Member States, the Commission shall, by December 2005, 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, 24 January 2005.

For the Council
The President
F. BODEN