



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From: General Secretariat
To: Law Enforcement Working Party

Subject: Resolution on ensuring an adequate level of data protection at Europol

Delegations will find enclosed a Resolution on ensuring an adequate level of data protection at Europol, issued from the Conference of European Data Protection Authorities held in Lisbon on 16-17 May 2013.



**Conference of European Data Protection Authorities
Lisbon, 16-17 May 2013**

**Resolution
on ensuring an adequate level of data protection at Europol**

Sponsors:

**Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit (BfDI),
Germany**
College Bescherming Persoonsgegevens (CBP), The Netherlands
Garante per la protezione dei dati personali (Garante), Italy
Comissão Nacional de Protecção de Dados (CNPd), Portugal

On 27 March 2013 the European Commission presented a proposal for a regulation pursuant to Article 88 paragraph 2 of the Treaty on the Functioning of the European Union (TFEU). This Draft Regulation fundamentally changes the content, with far-reaching consequences, of the current legal basis for the European Police Office (Europol): the Council Decision of 6 April 2009 establishing Europol (2009/371/JHA - OJ L 121/37.). In this regard, the Conference declares:

The new legal basis is intended to give Europol new tasks and additional powers. It is the Commission's intention that Europol should no longer process data in accordance with the systems and data files defined in the applicable law in order not to impede the possibilities for Europol to link data from and/or with different systems. The Draft Regulation is intended to make Europol's analysis more flexible in the best possible way, since, according to the Commission, the analysis is the "cornerstone"¹ of the modern, "intelligence-led"² law enforcement activity.

Given the enhanced possibilities for the processing of personal data, it is necessary to guarantee a high level of data protection for Europol. This also follows from Article 8 of the European Charter of Fundamental Rights, which imposes high standards on the protection of privacy and personal data. EU bodies such as Europol which process personal data on a large scale are particularly obliged to comply with these requirements.

¹ "Cornerstone" (public memo of the European Commission of 27 March 2013, (Memo/13/286) "Questions and Answers: Enhancing Europol's support to law enforcement cooperation and training", p. 1).

² "intelligence-led" (reference as above).

Under no circumstances would it be acceptable if the new legal basis lowered the existing level of data protection. However, this is precisely what has to be feared – if the proposal submitted by the Commission is taken as a basis. Eliminating the existing Europol systems and files would result in the removal of system-specific safeguards, such as the strict purpose limitation and provisions for the processing of personal data in analysis files, as laid down in the Europol Decision and in the accompanying regulations. It thus seems to be the intention of the Commission proposal to limit existing procedural safeguards and to lift current restrictions on the data transfer to third countries and third bodies.

The Conference of the European Data Protection Commissioners therefore calls on the European Parliament, the Council and the Commission to ensure that the new legal basis for Europol meets the following requirements and that the Commission's proposals will be amended in this respect.

1. Data of innocent persons (victims, witnesses, contact persons, etc.) may only be processed under very strict conditions and, in this connection, require special protection.
2. Data subjects' rights.
3. Procedural safeguards.
4. Independent and effective oversight of data protection, both externally and within Europol, in order to ensure efficient data protection, with the active involvement of national data protection authorities.
5. An adequate level of data protection when cooperating with third countries and other bodies outside the EU.
6. A strict purpose limitation for the processing of personal data.