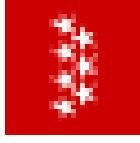




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Data Protection and Law Enforcement in the European Union

Council of Europe Seminar on
Data Protection and Criminal Intelligence
8-9 June 2006 - Bitola

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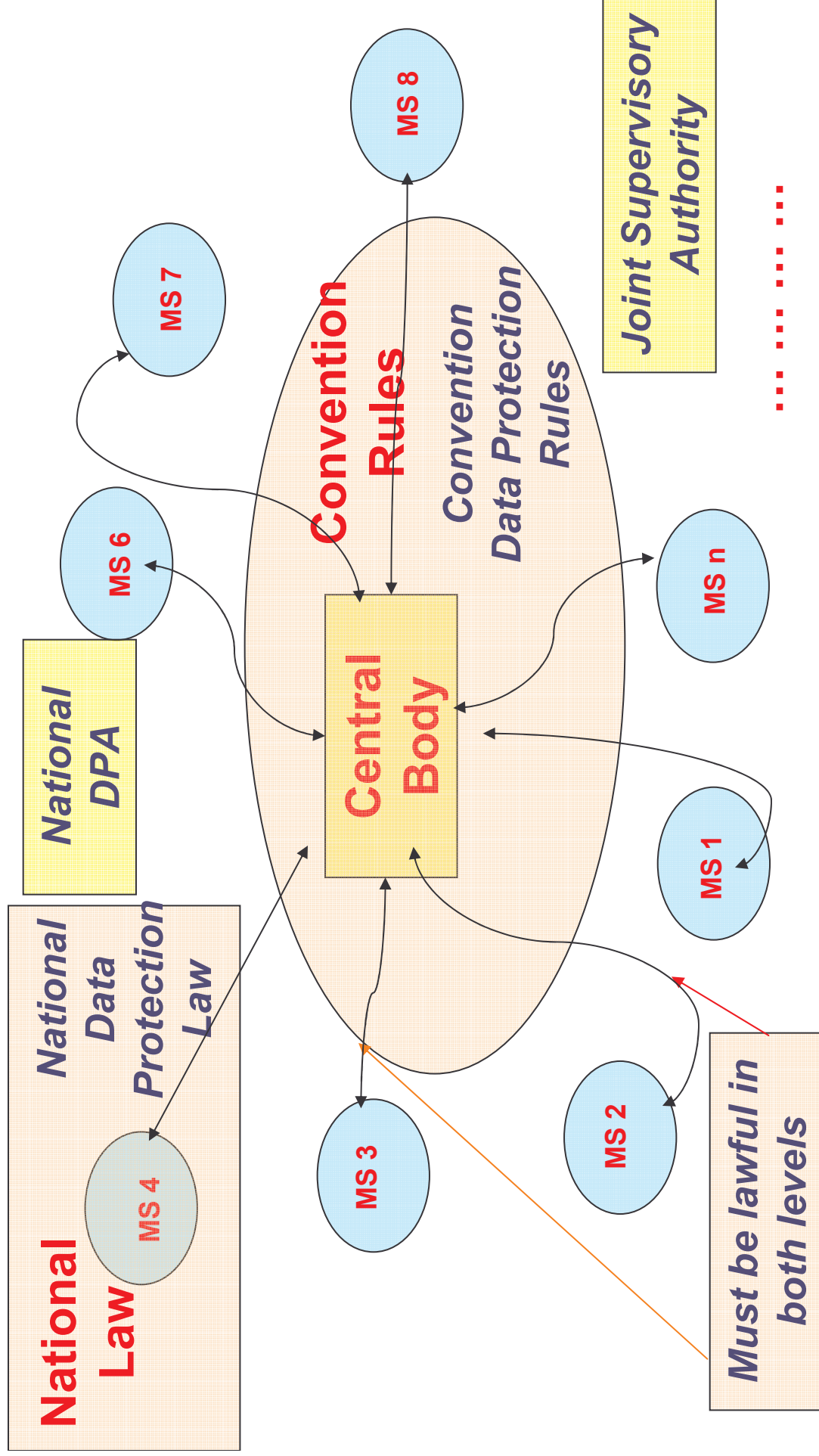
- III Pillar of the EU
- Outside the scope of Community Law (I Pillar)
- No uniform regulation in the EU
- Rules based on Criminal Law of MS
- Sharing of information on particular areas
 - Regulated by specific conventions
 - Schengen
 - Europol
 - CIS

Police Cooperation in the EU

- **Data Protection standards**
 - Not harmonised in the EU
 - Defined at the national level
 - Based on those from the Council of Europe
 - Convention 108
 - Recommendation (87) 15
 - Recognised as a Fundamental Right by the:
 - Charter of Fundamental Rights of the EU
 - Constitutional Treaty
 - Work in progress for a Framework Decision



Common Elements





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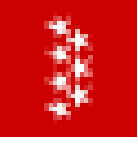
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Schengen Information System (1)



- **Central Body**
 - **Technical Support Unit (C.SIS-Strasbourg)**
- **National SIS (N.SIS)**
- **Identical national copies of the central file**
- **Further exchanges through SIRENE offices**
- **Use only for purposes of the Convention:**
 - **Border checks**
 - **Other police and customs checks**
 - **Issuing of visas and residence permits (Art. 96)**
- **Hit / No Hit system**

Schengen Information System (1)



- **Contains data on:**
 - **Persons (Fixed items)**
 - Extradition
 - Summoned
 - Aliens refused entry
 - Missing
 - Witnesses
 - **Objects**
 - Vehicles
 - Trailers and caravans
 - Firearms
 - Stolen official blank documents
 - Stolen or lost Identity papers
 - Banknotes

Schengen Information System (2)

- **Data used only for Convention purposes**
- **Duplication only if technically needed**
- **Use only for police and judicial purpose**
 - **Derogation:**
 - **Data on aliens refused entry can be accessed by Visa and immigration authorities**
- **No copy of foreign alerts on other national files**
- **No administrative use of data allowed**
- **Recording of every 10th transmission**
- **Every Party responsible for the information sent**



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Schengen Information System (3)

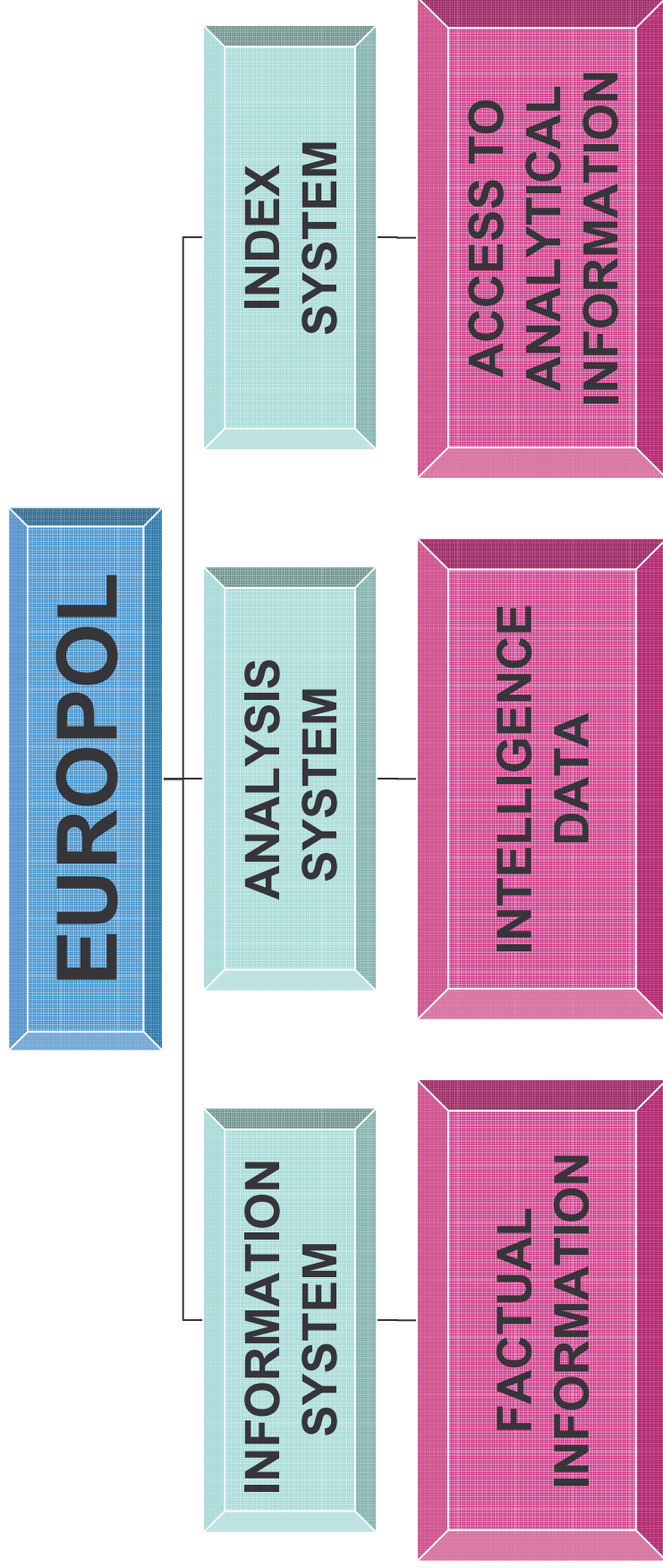
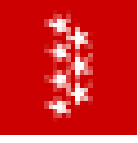
- **Access, rectification and cancellation**
 - Before National Parties
 - Regulated by National Law
- **Possible restriction of the rights**
- **Limited retention periods**
- **National Control Authority (N.SIS)**
+
- **Joint Supervisory Authority (C.SIS)**

Europol Convention (1)

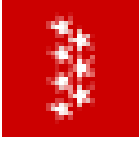


- **Europol**
 - It is mainly an European Union organization that process information (little operational powers)
 - Most of the data refer to identified or identifiable individuals, so that, they can be considered personal data
 - When processing personal data, it is subject to strict rules aimed to avoid mismanagement of the information
 - Unlawful or negligent processing of personal data can have very harmful effects for individuals
 - Depends on Member States for working with adequate, relevant, updated and accurate information

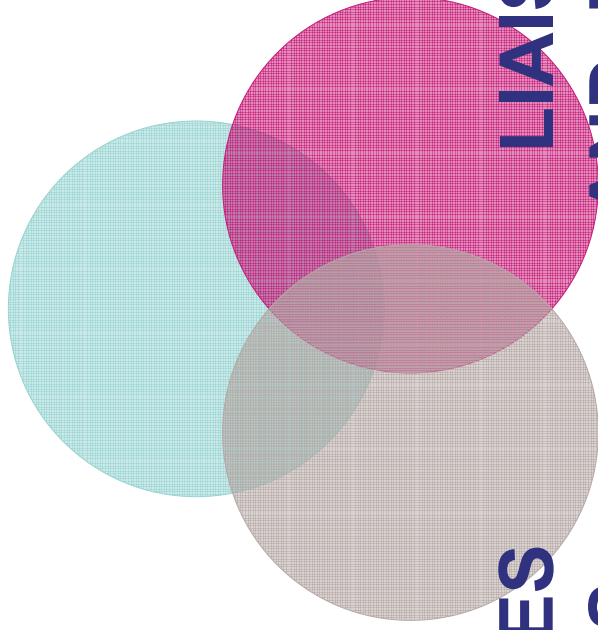
Europol Information Systems



Exchanges of Information (1)



EUROPOL



**THIRD STATES
AND BODIES**

**LIAISON OFFICERS
AND MEMBER STATES**

Exchanges of Information (2)

- **Member States**
 - Among
 - National Law Enforcement Agencies
 - National Law Enforcement and Europol National Units
- **Members States** ↔ **Europol**
 - Through the ENUs
 - Through the Analysis Groups
- **Members States** ↔ **Third Countries**
- **Member States** ↔ **Member States**
 - At the National Level
 - Through the ELOs
 - It is the channel most used to exchange information
 - Using Europol facilities (Info-Ex)

Europol Convention (2)



- What are the rules?
 - Europol must process data with full respect to the principles of the Council of Europe Convention 108 and Recommendation (87) 15
 - Exchange of information with MS through National Units (ENU) and Liaison Officers (ELO)
 - Convention defined computerised system with no links to other systems apart from the ones in the National Units
 - Computerised systems with three clearly defined information systems with different kind of data
 - Information System
 - Analysis System (Opening Orders)
 - Index System

Europol Convention (3)



- What are the rules?
 - Each Party is responsible for its information
 - Logging of the retrievals of information
 - Special rules for the disclosure of information to third parties
 - Individuals have the right to:
 - Access
 - Check
 - Correct or delete incorrect data
 - Limits to data retention
 - Independent supervision both at National and European level including possibility to appeal Europol decisions on individuals
 - Obligations on data security

Europol Convention (4)

- **Independent supervision:**
 - **National level:**
 - Authority appointed by Member States
 - In most cases, the existing Data Protection Authority
 - Supervision based on National legislation
 - **Europol Level**
 - Joint Supervisory Body
 - Appeals Committee
 - Representatives of the National Authorities (max. 2 per Member State appointed for 5 years)
 - One vote per national delegation
 - Applies Europol Convention and Council of Europe rules on data protection

Europol Convention (5)



Joint Supervisory Body

The Joint Supervisory Body shall have the task of **reviewing**, in accordance with the Convention, the **activities of Europol** in order to ensure that the **rights of the individual are not violated** by the storage, processing and utilisation of the data held by Europol. In addition, it shall monitor the **permissibility of the transmission** of data originating from
Europol

Europol Convention (6)



- **JSB tasks:**
 - **Examination of:**
 - Orders opening a data file
 - Provisions concerning the drawing up of reports on the retrieval of personal data
 - General rules for the communication of personal data to third States and bodies
 - Questions relating to:
 - the implementation and interpretation of the Convention
 - checks by the national supervisory bodies of the MS
 - the exercise of the right to information
 - harmonised proposals for common solutions to problems
 - Lawfulness and accuracy of a possible collection, storage, processing and utilisation of personal data by Europol at the request of an individual
 - **Drawing up of activity reports at regular intervals**



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Europol Convention (7)

- **JSB Powers:**
 - To obtain information from Europol (with due respect to the confidentiality rules)
 - To have access to all documents and paper files
 - To have access to data stored by Europol
 - Free access to all Europol premises
 - Information on and access to Europol's hardware and software (guidelines between the JSB and the Management Board)

Europol Convention (8)




- Appeals Committee
 - Examines the appeals against Europol decisions on request for:
 - Access
 - Checking of the information
 - Rectification
 - Deletion
 - even for manual files
 - Committee's decisions are final
 - Europol's failure to comply with them shall be considered as a violation of the Convention



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Europol Convention (9)

- JSB main areas of work
 - Advice on Opening Orders
 - Advice on Agreements between Europol and Third States and Third Parties
 - Audits to Europol
 - Issue of opinions on different legal problems regarding the interpretation of the Europol Convention and the current Europol's practice
 - Review of the cases lodged in front of the Appeals Committee 



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The Future

- **Increased exchanges of information**
 - **Availability principle**
 - **Defined in The Hague Programme**
 - **Exploiting synergies among databases**
 - **Access to SIS and VIS databases by Europol and Eurojust**
- **Directive on traffic data retention**
- **Framework Decision on Data Protection in the III Pillar**



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Traffic Data Retention



- Establishes derogations of Articles 5, 6 and 9 of Directive 95/46/EC
- Goals:
 - Harmonise data retention provisions in MS
 - Make them available for
 - Investigation, detection and prosecution of serious crime
- Applies to:
 - Traffic data
 - Location data
 - On both legal and natural persons
- Access only by competent national authorities
 - Procedures defined by MS
- Retention between 6 months and 2 years
- Possible moratoria for Internet until 15 March 2009
 - 16 MS have announced they will apply the moratoria



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Framework Decision (1)



- **Goals:**
 - Create common standards for data protection
 - Create a kind of “single market” for police data
- **Scope:**
 - **Personal data processed by competent authorities for**
 - Prevention,
 - Investigation
 - Detection
 - Prosecution
 - **of criminal offences.**
- **Shall not apply to:**
 - **Europol**
 - **Eurojust**
 - **CIS**



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Framework Decision (2)



- Based on the principles of Directive 95/46/EC
- Adjusted to the nature of police work
- Clear distinction between data on different kinds of persons
 - Suspects
 - Convicted
 - Contacts or Associated
 - Informants
 - Witnesses
 - Victims
 - Any other category

Framework Decision (3)

- Processing of personal data only if
 - Reasonable grounds (facts) to believe that the
 - personal data would make possible, facilitate or accelerate the
 - prevention, investigation, detection or prosecution of a criminal offence, and
 - There is no other means less affecting the data subject and
 - The processing of the data is not excessive in relation to the offence concerned

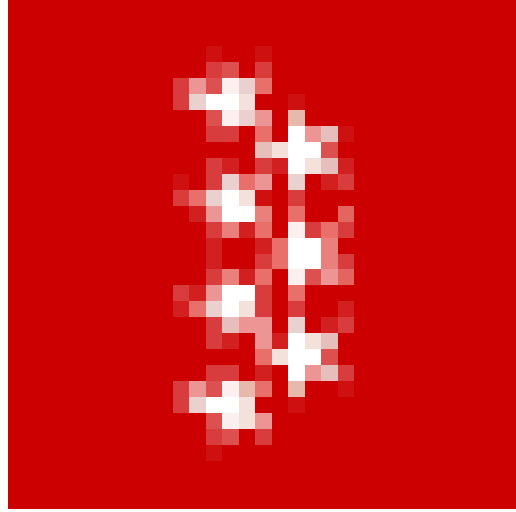
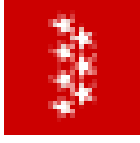
Framework Decision (4)

- Criteria for making data processing legitimate
- Rules for sensitive data
- Data retention rules
- Transmission of personal data between MS
- Further processing of data from another MS
- Rights of the data subject
- Confidentiality and security
- Registration and prior checking
- Judicial remedies and liability
- Supervisory authority and Joint Working Party
- Replaces DP provisions of Schengen Convention



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