COUNCIL OF THE EUROPEAN UNION

Council conclusions on preventing and combating identity-related crimes¹ and on identity management, including the establishment and development of permanent structured cooperation between the Member States of the European Union

3051st JUSTICE and HOME AFFAIRS Council meeting
Brussels, 2 and 3 December 2010

The Council adopted the following conclusions:

"THE COUNCIL,

RECALLING that identity-related crimes, as such or as a constituent element of other criminal offences, are serious criminal phenomena and constitute a threat to the area of freedom, security and justice;

NOTING that, although this criminal phenomenon has always existed, the introduction and use of new technologies have compounded its international repercussions;

RECALLING the necessity to prevent and punish identity-related crimes in accordance with the UN Convention against Transnational Organised Crime and its two protocols thereto on "Trafficking in Persons" and "Smuggling of Migrants", the UN ECOSOC Resolution Nº E/2004/26 on "International cooperation in the prevention, prosecution and punishment of fraud, the criminal misuse and falsification of identity and related crimes", and the Council of Europe Convention on Cybercrime;

¹ The concept of “identity-related crimes”, also used at UN level (UN ISPAC working group), is considered broad enough to encompass all kind of offences related to identity (including identity theft and identity fraud) and makes it possible to avoid further discussions on definitions.
CONSIDERING that indirect threats must also be taken into account when combating identity-related crimes;

NOTING that the collection, storage and sharing of personal data, no matter how legitimate and justified, may be undermined by the increase in criminal activities;

RECALLING that personal data protection is a fundamental right;

CONSIDERING that one of the most serious infringements of that right are identity-related crimes;

NOTING that such crimes may affect all sectors of society and concern the public sector as well as the private sector;

CONSIDERING that, in order to prevent and combat crime, including identity-related crimes, effectively and with due regard for fundamental rights, Member States cannot confine their activities to maintaining their own security, but must also focus their activities on the security of the Union as a whole. This objective of solidarity is even more crucial in an area where the free movement of people is the rule, now that controls at internal borders have been discontinued;

AWARE of the constant evolution of the modi operandi used to defraud a person's identity, such as "lookalike", the forging of "source" documents, false certification and "declare to be";

CONSIDERING that much identity-related crime is committed by using (blank) identity documents that have been stolen or lost. Those stolen or lost identity documents could be forged or – without falsifications – used by someone who resembles the legitimate owner ("lookalike” fraud);

CONSIDERING that in practice it is difficult to detect either falsifications by checking insufficient authenticity features of the document or lookalike fraud by checking only the photograph on the document under bad lighting conditions;

EMPHASISING the need to strengthen in particular the management procedures relating to the identity chain in the Member States of the Union and to develop a joint strategy on the matter;

EMPHASISING the pragmatic and concrete approach that has been adopted in recent work in the area of combating crime in general and which has underlined the need to analyse, promote and exchange good prevention practices and policies;

CONSIDERING the need to develop such exchanges in the area of identity-related crimes in order to identify the risks that give rise to this type of fraud, taking into account the identity chain as a whole, and to improve prevention of this type of crime at national and European level;

CONSIDERING that checking whether a document was reported and registered as stolen or lost is an important measure to detect the use of stolen or lost documents;
CONSIDERING that travel and identity documents as well as residence permits are issued on the basis of source documents. New travel documents, identity documents and residence permits are often well secured and equipped with biometrical and electronic security features, which makes it more difficult to falsify these documents without detection, in particular by electronic signature validation. Consequently the risk of fraud moves from the end (falsifying identity documents, travel documents and residence permits) to the beginning of the chain, that is the process of applying for such a document based on a fraudulent source document. The issuing of source documents that meet certain minimum security and content standards, which at the moment do not exist, could therefore significantly limit document and identity-related crimes;

TAKING INTO ACCOUNT the Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol;

NOTING that there is currently no legal definition of identity theft, identity fraud or identity offences within the Union;

NOTING that Member States have different approaches to tackling identity-related crimes and only a limited number of Member States have passed specific legislation criminalising identity theft and that most Member States apply different legal terms to this type of conduct (forgery of documents, fraud, unlawful access to an IT system etc.) depending on the circumstances of the case;

TAKING INTO ACCOUNT the Council conclusions of 30 November 2009 on model provisions, guiding the Council’s criminal law deliberations;

TAKING NOTE that these conclusions are without prejudice to Member States' identity policies;

CONSIDERING that victims of identity-related crimes theft generally receive little information on how to report identity abuse and have to devote considerable time to restoring their name and reputation;

WELCOMING the European Commission's continued readiness to pursue an active policy on combating crime, focusing mainly on financial support for activities and projects to combat identity-related crimes.

RECALLING:

1. The Council Decision of 12 February 2007\(^2\) establishing for the period 2007 to 2013, as part of the General Programme on Security and Safeguarding Liberties, the Specific Programme "Prevention of and Fight against Crime", which consists of four themes, including crime prevention and criminology;

\(^2\) OJ L 58, 24.2.2007
2. The Stockholm Programme\(^3\) adopted by the European Council on 10 and 11 December 2009, which sets the priorities for the European area of freedom, security and justice over the next five years and establishes a framework to provide a global response to the challenges that Europe faces in the area of freedom, security and justice despite the important advances made in this area. Further efforts are therefore needed in order to improve coherence between policy areas. If the next multi-annual programme is to be implemented successfully, several tools are important, including: "A Europe that protects". Among the topics discussed to attain this outcome, "The Union must reduce the number of opportunities available to organised crime as a result of a globalised economy and allocate appropriate resources to meet these challenges effectively." In this regard, the European Council calls "upon the Member States and, where appropriate, the Commission to facilitate the exchange of best practice in prevention and law enforcement, in particular within the framework of the Asset Recovery Office Network and the Anti-Corruption Network";

3. The Commission's Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 which establishes the Action Plan implementing the Stockholm Programme\(^4\). The communication recalls that "The establishment of a strategic agenda for the exchange of information requires an overview of existing data collection, processing and data-sharing systems, with a thorough assessment of their usefulness, efficiency, effectiveness, proportionality and their respect of the right to privacy. It should also lay the ground for a coherent development of all existing and future information systems" and, among the specific actions to combat economic crime and corruption, provides, in 2012, for: a "European strategy on identity management, including legislative proposals on criminalisation of identity theft and on electronic identity (eID) and secure authentication systems";

4. In the context of the Commission 2010 Annual Work Programme, the “Call for proposals 2010 restricted to framework partners”, which provides among the eligible actions for framework partners: "Projects analysing the possibilities for use of privately held information for law enforcement purposes, including in the field of passenger data, especially focusing on the aspects of achieving higher security without compromising human rights and privacy. Projects analysing the possibilities for use of modern technologies to detect new forms of crime, such as transnational cybercrime, identity theft, fraud. And projects identifying and implementing privacy protection measures for consumers (privacy enhancing technologies), protecting citizens against cybercrime vulnerability, identity theft, fraud, etc." and the targeted call for proposals “Financial and Economic Crime”, Action Grants 2010, which identifies among 11 eligible actions "Identity theft: Preventing and combating identity theft and identity fraud and promoting identity management; Facilitating the investigation and prosecution of identity related crimes; Developing a data collection module on identity related crimes.".

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\(^3\) OJ C 115, 4.5.2010

\(^4\) COM (2010) 171 final
TAKING INTO CONSIDERATION:

1. The Commission's action plans for the periods 2001-2003 and 2004-2007 on fraud on non-cash means of payment, identity fraud as regards payments, which frequently relates to the act of impersonation, notably through the misuse and illegal processing of personal data;

2. The conference held by the European Commission in Brussels on 22 and 23 November 2006 in the context of the 2004-2007 action plan entitled "Maintaining the integrity of identities and payments: two challenges for fraud prevention";

3. The conference held in Tomar on 7 to 9 November 2007 during the Portuguese Presidency entitled "Identity fraud and theft: the logistics for organised crime" focusing on exchanging experiences and developing an integrated approach to identity theft and identity fraud;

4. The comparative study on identity management carried out as a follow-up to the Tomar conference and the subsequent report drawn up mainly on the basis of the replies to a questionnaire by the ID Management Centre in the Netherlands entitled "European Identity Systems: a comparative study", which underlined the diversity of identity management systems;

5. The conference hosted by Belgium on 27 and 28 May 2010 on the subject of "Identity Fraud", which was attended by several speakers on the subject of identity fraud, particularly in the financial world and in cyberspace;

6. The preliminary findings of the Commission's comparative analysis on national legislation applicable to identity theft, complaint mechanisms and aid for victims in the Member States,

CALLS ON THE EUROPEAN COMMISSION:

In the context of its action plan implementing the Stockholm Programme, with particular regard to the establishment of a European identity management strategy, to:

1. SUPPORT the Member States' efforts to reinforce personal identification procedures within the EU by:

   – taking note of the findings of the Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis carried out in several Member States, which:
     • lists the personal identity management systems in those Member States;
     • sets out the inherent strengths and weaknesses of the procedures applied in each of the systems as regards the creation, registration, use and verification of identity;
lists the threats and risks that might compromise the security of information and of information processes, that is, the integrity of the information and of the processes for processing it, the confidentiality of the information, the availability of the information and of the processes for processing the information and the traceability of activities carried out in the context of identity management;

– supporting the extension of such work to list and analyse the risks to all Member States with a view to making it possible to use the findings of that analysis at European level;

– assessing, on the basis of the findings of the work done to compile such lists, the need to make the reinforcement of personal identity management systems within the Member States a priority in the area of identity-related crime prevention.

2. SUPPORT cooperation between Member States by setting up a platform for the exchange of good practices in the area of managing the personal identity chain as a whole and, in due course, a European experts' network.

3. SUPPORT the establishment of effective complaint mechanisms in the Member States that could provide adequate help to victims, and analyse how to ensure optimal cross-border cooperation between those mechanisms.

4. SUPPORT Member State initiatives on preventing and combating identity-related crimes in the identity chain as a whole, which may include combating these crimes in the criminal justice chain, immigration chain and private sector.

5. SUPPORT and ENCOURAGE efforts to exchange information about identity documents that were registered as stolen or lost, both within Member States (i.e. to all authorities that want to check whether a document has been reported as stolen or lost), and between Member States.

INVITES THE MEMBER STATES TO:

1. Contribute to the SWOT work listing and analysing risks to facilitate the exchange of information and good practice on personal identity management.

2. Coordinate their activities, within the appropriate Council structures, by the exchange of information and good practices, with a view to improving the prevention of and fight against identity-related crimes, taking into account the identity chain as a whole.

3. Ensure that, in accordance with the Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol, data are regularly exchanged with Interpol and that their competent law enforcement authorities query the Interpol database for Stolen Travel Documents;

4. Consider issuing source documents, such as birth certificates, that meet certain minimum security and content standards."

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