



## I. **Contribution Regarding Article 34 – Participation of Applicants**

1. This contribution is submitted in response to the question of whether Article 34 of the Statute of the Commission for the Control of INTERPOL's Files (CCF) should expressly include applicants among those from whom the CCF may seek additional information when examining requests.
2. From the perspective of legal practitioners who regularly assist individuals bringing requests before the CCF, this question is an important one. In practice, the CCF does on occasion invite applicants to provide supplementary documents or explanations, or to authorize the CCF to share certain materials with the source country. Explicitly referencing applicants in Article 34 would therefore largely formalize an approach that already exists in practice and could provide helpful clarity about how the CCF gathers information during its review.
3. At the same time, any amendment to Article 34 should preserve the features that make the CCF's procedures both effective and accessible. Many applicants appear before the CCF without legal representation and often have limited access to information created and held by national authorities. It is therefore important that any change maintains a fair balance between encouraging useful participation from applicants and preserving the primary responsibilities of the authorities that control the data.
4. If applicants are explicitly referenced in Article 34, it would therefore be helpful for the provision to reflect several practical safeguards that support both fairness for applicants and the efficient functioning of the CCF's review process.

### A. Participation by Applicants Should Remain Voluntary

5. Applicants may often be able to provide useful information for the CCF's review, including publicly-available records and documents related to their protective status in another country. In some situations, these documents can help clarify issues quickly and assist the CCF in understanding the context of a request.
6. However, many applicants face significant practical barriers when trying to obtain relevant documentation from national authorities, particularly from authorities within the country that controls the data concerning them in INTERPOL's Information System. Court records may only be available locally, authorities may not respond to individuals living abroad, or applicants may not know which authority holds the relevant information. In other situations, contacting authorities in the source country may raise safety concerns for the applicant or their family, particularly in cases involving alleged political persecution and retaliation. Applicants may also be asked to provide documentation from their country of residence, such as decisions on refugee or asylum status, court

rulings, or other official records. While such materials may be more readily accessible, they can involve their own complications – proceedings may still be pending, records may be subject to confidentiality restrictions, or applicants may be reluctant to disclose sensitive protection decisions. In addition, many applicants submit requests to the CCF without legal representation and may not be familiar with national procedures to secure requested documents.

7. For these reasons, applicants should be encouraged to provide additional information when they are able to do so, but a lack of response or limited documentation should not be interpreted negatively. The CCF should continue to assess requests based on the information available to it from the General Secretariat and relevant National Central Bureaus (NCBs).

B. The Responsibility to Provide Underlying Information Should Remain with the Source Country

8. It is also important to recognize that applicants and source countries are in very different positions when it comes to access to information. Applicants generally do not have access to investigative files, arrest warrants, or other official records that form the basis of the data entered into INTERPOL's Information System. In many cases, they have only partial information about the proceedings against them.
9. By contrast, the source country and its authorities created the data and maintain the underlying records. National authorities are in the best position to provide the information needed for the Commission to determine whether the data complies with INTERPOL's rules. For example, the source country is the entity that can confirm whether an arrest warrant remains valid, whether charges are still pending, whether proceedings have been suspended or closed, or whether a conviction has been overturned.
10. Moreover, the CCF has in recent years made it clear that it is incumbent upon national authorities – and in particular, the relevant NCB – to cooperate with the CCF in its deliberations. In 2024, the CCF decided 50 requests in favor of the applicant on the grounds of a “total lack of cooperation” by the requesting states. This reflects both the obligation of cooperation incumbent upon the requesting state and the fact that a facially meritorious submission to the CCF requesting deletion of data from INTERPOL's Information System can only be rebutted by information from the requesting state.
11. For that reason, the primary responsibility for providing the underlying information should remain with the source country that entered the data. The CCF should not decide against applicants on grounds of a “total lack of cooperation,” as applicants will already have made a submission to the CCF. Where an applicant does not respond to a request for additional information, the CCF should simply proceed on the basis of the materials already before it, including the applicant's original submission, any information provided by the General Secretariat, and any response from the source country. The

stronger cooperation obligations that already apply to NCBs and other responsible authorities should remain clearly distinct from the more limited role of applicants.

C. Coordination with Applicants Should Not Add to Existing Delays

12. The CCF's 2024 Annual Activity Report shows that the Commission is already managing a significant and growing workload. According to the report, 70 percent of access requests exceeded the four-month statutory deadline, and 30 percent of deletion requests exceeded the nine-month deadline. The report also notes that delays are often linked to the time required to obtain cooperation and information from other actors involved in the process, particularly NCBs.
13. Introducing additional rounds of exchanges with applicants could risk further extending these timelines. Delays can have serious consequences for individuals subject to INTERPOL data and lead to prolonged detention, denial of critical immigration relief (including life-saving asylum protections), and reputational or financial harm.
14. To avoid exacerbating these delays, any cooperation with applicants under Article 34 should be structured so as not to extend the timeframes already applicable to the CCF's review. In particular, the CCF should not delay its deliberations to await additional information from an applicant where the applicant has already had a reasonable opportunity to submit it. At the same time, applicants should not be precluded from submitting relevant materials that become available only after their initial request, such as a favorable asylum decision, a court ruling, or the outcome of related proceedings in their country of residence. In such cases, the CCF should retain discretion to consider late submissions where they are plainly material to the outcome, without reopening its review process or resetting statutory deadlines. The new online portal that the CCF plans to launch in 2026 may offer a practical means of facilitating the timely and orderly submission of such materials.

D. Applicants' Submissions Should Be Treated Confidentially in Accordance with Existing Provisions

15. When applicants provide additional information to the CCF, maintaining the confidentiality of their submission(s) is of paramount importance. Such information, if shared with the national authorities of the requesting country, could expose applicants and/or their family members to serious harm. Cooperation with the CCF under Article 34 must therefore not be automatically interpreted as consent to broader disclosure.
16. The CCF's existing confidentiality framework under Article 20 of the Statute of the CCF and Rule 13 of the CCF's Operating Rules should continue to apply fully to all materials and information submitted by applicants, whether in their initial request, in supplementary submissions, or in the context of cooperation under Article 34. Any sharing of this information with the national authorities of the

requesting country should occur only in accordance with these existing confidentiality provisions or with the explicit consent of the applicant.

17. Reaffirming these protections in the context of Article 34, whether within the amendment itself or through accompanying guidance, will maintain trust in the CCF's review process and support voluntary cooperation from applicants.

E. Conclusion

18. We support the addition of applicants to Article 34, as it could provide much-needed clarity about the CCF's review process and formalize a practice that the CCF already utilizes. It is critical, however, that the following safeguards are implemented to ensure the CCF's review remains fair, accessible, and efficient:

- a. participation by applicants should remain voluntary;
- b. the absence of additional information from an applicant should not be interpreted negatively;
- c. the primary responsibility for providing underlying information should remain with the source country that created the data;
- d. cooperation with applicants should not add to existing delays; and
- e. confidentiality protections for applicants' submissions should be clear and consistently upheld.

**II. Contribution Regarding Article 35 – Communication of Information**

19. This contribution is submitted in response to the question of whether Article 35 of the CCF's Statute should be maintained, adjusted, or elaborated upon.

A. Reconciling the Principles Underlying Confidentiality and Communication of Information

20. When INTERPOL member nations act through the INTERPOL system, they do so on the understanding that they retain control of their data. But they also act in the knowledge that their use of the INTERPOL system is subject to challenge, including through the CCF. If they do not wish to disclose their data in response to a challenge made through the CCF, they can delete the data, or they can use the grounds set out in Article 35(3) to oppose disclosure of the data.

21. That is how national control of data is reconciled with the CCF's obligation of confidentiality and the need for an effective remedy for abuses – which stems ultimately from the Universal Declaration of Human Rights, respect for which is incumbent on INTERPOL through the overriding obligation created by Article 2(1) of its Constitution. The national right to use INTERPOL, and to control data contributed to it, is not unlimited: it is conditioned by respect for INTERPOL's rules, and ultimately by the requirement set out by INTERPOL's Constitution.

## B. The Challenge of Restrictions in Practice

22. According to the CCF's reporting, approximately 60 percent of cases involve restrictions imposed by NCBs, and around 20 percent involve restrictions requested by applicants. The scale of this practice means that restrictions are now a defining feature of the CCF's proceedings rather than a narrow exception, and they represent a substantial burden on the CCF's resources.
23. Article 35(4) requires that any restriction be properly justified and that the restricting party indicate whether some information, such as summaries, may be provided instead. In practice, however, the CCF frequently receives justifications that are general in nature and not linked to the specific circumstances of the case under review. The CCF's consistent position, reflected across multiple annual reports, is that general justifications applicable to any case without individual explanation do not constitute proper justification. When justifications fall short, the CCF engages in further exchanges with the restricting party to seek adequate reasoning and to explore whether minimum information can be shared with the affected party. These exchanges, while necessary, are a significant contributor to the delays that already affect the CCF's ability to meet its statutory deadlines.
24. The distinction between access requests and deletion requests is also relevant. In the context of deletion requests, the CCF has greater latitude to weigh the impact of restrictions on the overall compliance assessment, and restrictions may contribute to a finding that the data should be removed. In access requests, the effect of NCB-imposed restrictions is more direct: the restricted data will not be disclosed to the applicant unless the CCF determines the justification is inadequate. This difference means that the practical protection offered by Article 35 varies depending on the nature of the request, a distinction that is not immediately apparent from the text of the provision itself.

## C. Proposed Amendments

25. First, where an NCB fails entirely to respond to the CCF's request for justification of a restriction, this should be treated as tacit authorization to disclose the information to the applicant. The obligation to cooperate with the CCF is incumbent upon all NCBs. Silence in the face of a specific and targeted request regarding restrictions should not operate to the detriment of the applicant, nor should it require the CCF to engage in protracted follow-up exchanges that consume its limited resources. A clear rule on this point would be consistent with the CCF's existing approach in practice and would remove any ambiguity.
26. Second, where an NCB provides a justification that is generic in nature and not tailored to the circumstances of the case at hand, this should not be treated as satisfying the requirements of Article

35(4). The CCF's consistent position across multiple reporting periods is that general justifications, applicable to any case without individual explanation, do not constitute proper justification. We believe that a generic justification should be treated as equivalent to an absence of justification and should result in the disclosure of the restricted information. The alternative, repeated exchanges aimed at obtaining adequate reasoning, is a principal driver of the delays that already affect the CCF's statutory deadlines and does not serve the interests of any party.

27. Third, where an NCB provides a properly motivated, case-specific justification that falls within the grounds set out in Article 35(3), the restriction should be upheld. This is the scenario for which Article 35 was designed, and the existing framework operates appropriately in such cases.
28. Fourth, the review should address a particular form of partial restriction that arises frequently in practice. In many cases, an NCB will consent to the disclosure of the existence of data - confirming, for example, that a Red Notice has been published against the applicant - but will restrict the communication of the summary of facts underlying that notice or diffusion. This creates a significant practical difficulty. The summary of facts sets out the factual basis for the data as recorded by the requesting state, and it is the primary document against which compliance with INTERPOL's rules can be assessed, including the requirements of Article 83 of the Rules on the Processing of Data. Without access to the summary of facts, the applicant knows that data exists but cannot meaningfully challenge its content, its accuracy, or its compliance with applicable rules. The adversarial character of the proceedings is undermined not by a complete restriction, which at least carries clear consequences under the current framework, but by a selective one that gives the appearance of transparency while withholding the substance the applicant actually needs. Where an NCB restricts the summary of facts specifically, the Statute should require a rigorous, case-specific justification that addresses why the factual content of the notice, as distinct from its existence, must be withheld.
29. Finally, Article 35 should not apply in circumstances where no data concerning the applicant is recorded in the INTERPOL Information System. The grounds for restricting disclosure set out in Article 35(3) presuppose the existence of data that could, if disclosed, cause harm to a legitimate interest. Where there is no data, there is nothing to protect, and an NCB should not be in a position to prevent the CCF from informing the applicant that no data exists. This should be stated expressly.

#### D. Limiting the Conditions for Restricting Disclosure

30. The justification cited in Article 35(3)(a) is "To protect public or national security or to prevent crime." INTERPOL is barred by Article 3 of its Constitution from involvement in military affairs, which are commonly classified as "national security." It has consistently found that offenses such as espionage or treason that may be held to endanger "national security" are political in nature, from which it is also barred by Article 3. Finally, under the principle of "predominance" it works against terrorism that is not predominantly political, and as an aspect of the suppression of criminal activity. In short, INTERPOL cooperates in the suppression of ordinary crime, not the protection of national security. It is therefore inappropriate to allow INTERPOL member nations to cite "national security" as a reason

to refuse to disclose information, as INTERPOL has defined “national security” considerations as being political in nature. Paragraph (a) should therefore read “To protect public security or to prevent crime.”

31. The justification cited in paragraph (b) is “To protect the confidentiality of an investigation or prosecution.” Article 10 of the UDHR, to which INTERPOL is committed by Article 2(1) of its Constitution, requires that all stages of a trial be public. It is contrary to Article 2(1) for the CCF to give implicit sanction to confidential prosecutions by citing such proceedings as a potentially legitimate reason to refuse disclose of information.

#### E. Conclusion

26. The practical operation of Article 35 has revealed significant gaps between the framework on paper and its application. The volume of restriction-related exchanges, the prevalence of inadequately justified restrictions, and the resulting delays all indicate that the current text does not provide sufficient clarity about the consequences of non-cooperation or poor justification. We therefore advocate for amendments that introduce a clear graduated framework distinguishing between a total failure to respond, which should be treated as tacit authorization to disclose; generic justifications not tailored to the case, which should result in disclosure; and properly motivated restrictions, which should be upheld. We further advocate for express provisions addressing the particular importance of the summary of facts to any meaningful exercise of the right of effective remedy, and confirming that Article 35 does not apply where no data is recorded in the INTERPOL Information System. Finally, we advocate changes to the grounds for restrictions on confidentiality in Article 35 to bring these grounds into line with the requirements of Articles 2(1) and 3 of INTERPOL’s Constitution.
27. These amendments would not alter the principles on which Article 35 rests. They would ensure those principles are given practical effect.

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