

INTERPOL's Committee on the Processing of Data

Re: Call for contributions from civil society concerning draft amendments to the Statute of the Commission for the Control of INTERPOL's Files

March 11, 2026

VIA EMAIL

Dear Sir or Madam,

The CCF plays a vital role in protecting INTERPOL's systems from misuse and safeguarding its immunity. The European Criminal Bar Association (ECBA) and Lawyers Against Transnational Repression make these submissions jointly. We welcome the opportunity to contribute to the consultation on the review of the Statute of the Commission for the Control of INTERPOL's Files (CCF).

This response draws upon and incorporates the detailed analysis set out in the ECBA's report *Safeguarding INTERPOL's Systems: Recommendations for Reform* dated 13 February 2026 (the February 2026 report), to which we respectfully refer the CPD for greater context.

1 Topic 1: Articles 5 and 34 of the Statute

1.1 Article 5 ("Cooperation of the Members of the Organization") of the Statute currently in force provides as follows:

The Members of the Organization shall:

1. *respect the competence and independence of the Commission;*
2. *respond diligently to requests from the Commission in accordance with their national laws;*
3. *to the extent permitted by their national laws, ensure that no national authority within their territories interferes in the Commission's work or attempts to take decisions directed at the Organization in matters falling within the Commission's competence.*

1.2 Article 34 ("Consultations") of the Statute currently in force provides as follows:

1. *If additional information is required to examine the request, the Requests Chamber shall seek information or clarification from the source of data and/or the General Secretariat.*
2. *The Requests Chamber may also seek information or clarification from any other entity in accordance with Article 21 of the present Statute.*

- 1.3 In its call for contributions concerning proposed amendments to Articles 5 and 34 of the Statute, the CPD writes:

Some member countries have suggested that these provisions should not be limited to Members of the Organization, since all parties involved in the proceedings – including applicants – should also have the obligation to cooperate with the Commission to ensure the effective functioning of its mandate. As a key stakeholder in CCF proceedings, applicants are not explicitly mentioned in Articles 5 and 34.

While the Statute does not currently reference applicants directly, their cooperation and respect for the Commission's independence are essential to the effective functioning of the review process.

This item seeks to examine whether explicitly referencing applicants in Articles 5 and 34 of the CCF Statute could enhance cooperation, reinforce respect for the Commission's independence, and strengthen the overall effectiveness of its mandate.

2 Our comments on the proposal to amend Articles 5 and 34 of the Statute

- 2.1 We note the proposal to explicitly reference applicants in Articles 5 and 34 of the Statute put forward by some INTERPOL member countries. We are not, however, aware of any evidence that applicant non-cooperation poses a systemic problem. Applicants have strong inherent incentives to engage constructively with the CCF: their prospects of success depend upon it. The documented challenges to the CCF's authority and effectiveness arise instead from member state non-compliance with its decisions and from procedural frameworks that create structural imbalances favouring member states over applicants.
- 2.2 It is also clear from the wording of Article 5 that it is explicitly designed to prevent the greater powers of member countries being used to frustrate the proper function of the CCF. It requires member countries, for example, *"to the extent permitted by their national laws, ensure that no national authority within their territories interferes in the Commission's work or attempts to take decisions directed at the Organization in matters falling within the Commission's competence."* It would be non-sensical to apply such restrictions to applicants who do not have the power (as individuals) to influence the decision of national authorities in order to take decisions on matters falling within the CCF's competence.
- 2.3 Any concerns about applicant cooperation with the CCF should be evidenced before any meaningful input from civil society can be sought. The resolution of legitimate concerns regarding the CCF's independence and the effective functioning of its mandate and review process should instead focus on: (a) the significant deficiencies in the principle of equality of arms when it comes to the rights of applicants; and (b) the effective implementation and enforcement of CCF decisions (or decisions of the NDTF) by member countries.
- 2.4 We urge the CPD to prioritise amendments to the CCF Statute to restrict the current ability of member countries to restrict access to information recorded in INTERPOL's files, based on vague justifications which the CCF evaluates behind closed doors and often without any input from the applicant in question. This lack of access to information fundamentally undermines applicants' ability to prepare comprehensive and effective complaints against government use of INTERPOL's channels. Before imposing obligations on applicants to cooperate with the CCF, it is essential to address these fundamental deficiencies in

applicants' access to information - genuine cooperation requires that applicants have the means to engage meaningfully with the review process.

- 2.5 Another priority (before addressing the concerns of some member states to include references to applicants in Articles 5 and 34) is the apparent lack of a mechanism of enforcement of INTERPOL's own decisions. In this regard, in its activity report for 2017, the CCF wrote that it "dealt with cases where [member countries] have sent a diffusion to INTERPOL members to request the arrest of an individual, whereas a request for a Red Notice has previously been refused." According to the same report, the CCF also had to deal with cases "which highlighted the use of the [INTERPOL Stolen and Lost Travel Documents] database where a diffusion or a notice to arrest a person was considered not to comply with INTERPOL's rules." That is, some member countries, whose Red Notices INTERPOL had rejected due to their non-compliance with its rules, were able to put the same individuals back on the INTERPOL wanted list by disseminating diffusions. If diffusions were deleted as non-compliant, they utilized the INTERPOL Stolen and Lost Travel Documents database to target the same individuals. To this day, it is unclear whether INTERPOL has fixed this loophole or not.
- 2.6 Additionally, as documented in the February 2026 report, NCBs do not always implement CCF decisions requiring deletion or correction of data. In some cases, individuals find that data removed from INTERPOL's files remains live in national databases, affecting their ability to travel and, in the worst cases, leading to their unnecessary detention. There is currently no systematic verification process to ensure compliance with CCF deletion decisions.
- 2.7 We strongly believe that before imposing explicit cooperation obligations on applicants through amendments to Articles 5 and 34, it is essential to address the systemic non-compliance by member states (and the restrictions on applicants' access to information) that undermine the CCF's authority, the effectiveness of its mandate and the integrity of the Red Notice and Red Diffusion processes.
- 2.8 Regarding the concerns about the CCF's independence expressed in the CPD call for contributions, we note that independence must be assessed from multiple perspectives. Whilst the formal structures of independence are important, our experience suggests that the practical challenges to procedural fairness in CCF proceedings arise not from any lack of independence vis-à-vis applicants, but rather from structural features that may inadvertently favour member state interests. The issues detailed in our response concerning Article 35 (below) - including timing of disclosure, inadequate justification requirements, and restrictions on access to information - all operate to the systematic disadvantage of applicants whilst member states retain full access to the decision-making process.
- 2.9 Additionally, with regard to the concern, expressed in the CPD call for contributions, for the CCF's independence, competence, mandate and attempts to interfere in the CCF's work, we consider it necessary to remind all INTERPOL member countries, the CPD, the CCF and INTERPOL in general that, despite our objections, in November 2025, during its 93rd session, the INTERPOL General Assembly adopted several amendments to the Statute that undermine the CCF's independence guaranteed by Article 36 of the INTERPOL Constitution, deprive it of its exclusive power to examine requests from individuals and render decisions

on them, as well as make the CCF's exclusive powers dependent on the will and actions (or inaction) of the INTERPOL General Secretariat (see our April 5, 2025 submission addressed to the CPD).

3 Topic 2: Article 35 of the CCF Statute

- 3.1 We welcome the opportunity to contribute to the review of Article 35 of the CCF Statute concerning the communication of information connected with requests. This provision is fundamental to ensuring procedural fairness and equality of arms in CCF proceedings, which are essential both for the protection of individual rights and for maintaining confidence in INTERPOL's immunity from national jurisdiction challenges.
- 3.2 Article 35 is crucial to ensuring that the CCF can fulfil its oversight function effectively and that INTERPOL maintains its immunity from national jurisdiction challenges. However, the current framework requires substantial reform to achieve genuine procedural fairness and equality of arms. The recommendations outlined below and detailed more fully in the February 2026 report would strengthen the CCF's role as an independent oversight body whilst maintaining appropriate protections for legitimate confidentiality concerns.
- 3.3 Inadequate Justification Requirements:
- 3.3.1 Article 35(4) requires that requests to restrict disclosure be supported by "clear justification." However, as the February 2026 report demonstrates, current practice reveals significant deficiencies in how this requirement operates.
- 3.3.2 First, there is insufficient guidance on what constitutes "clear justification." The absence of detailed standards allows requesting states to provide generic or formulaic justifications that do not genuinely address the necessity and proportionality of restriction in the specific case.
- 3.3.3 Second, and critically, applicants currently have no meaningful opportunity to challenge inadequate justifications. Under the present system, an applicant may be informed that information has been restricted but receives no details about the justification provided by the requesting state. This not only encourages member states to provide superficial and vague justifications as the likelihood that these might be challenged is close to zero, but it also creates a fundamental inequality of arms: the requesting state can advance reasons for secrecy that the applicant cannot see, let alone contest.
- 3.4 **We recommend that Article 35 be amended to provide that:**
- Justifications must be specific to the particular information being withheld, explaining precisely why disclosure would cause the harm alleged and why less restrictive alternatives (such as redaction or summary) are insufficient;
 - Unless the justification itself contains information that would cause the harm alleged, applicants must be provided with the justification and given an opportunity to respond before the CCF makes its determination on restriction. This is essential to

procedural fairness and reflects established principles in comparable data protection and judicial review contexts;

- Where even the justification cannot be disclosed, the CCF should apply heightened scrutiny to the requesting state's claims and should consider appointing an independent advocate to review the restricted materials and represent the applicant's interests.

3.5 Timing of Disclosure:

3.5.1 As documented in the February 2026 report, the most serious deficiency in the current operation of Article 35 concerns the timing of disclosure. Under present practice, beyond the basic disclosure pertaining to the notice of the diffusion, the NCB's observations are only disclosed to applicants when the CCF issues its final decision, rather than at an earlier stage that would allow meaningful engagement. This defeats the purpose of Article 35(1)'s guarantee that information "shall be accessible to the applicant."

3.5.2 The typical process unfolds as follows: the applicant submits a request; the CCF consults the NCB regarding disclosure; the NCB may consent to full disclosure, partial disclosure, or no disclosure; if the NCB restricts information, the applicant learns of this restriction but receives no details about what has been withheld or why; the CCF then proceeds to decide the case, with the applicants unable to respond to materials they have not seen; finally, when the decision is issued, previously unrestricted information may be disclosed - but by then it is too late for the applicant to comment upon it.

3.5.3 This sequence fundamentally undermines equality of arms. The requesting state has the opportunity to present its case fully to the CCF, whilst the applicant is denied access to key materials and cannot respond effectively. The applicant remains in the dark about what the Requests Chamber is being told at the international level and cannot respond to it. This is particularly concerning given that NCBs currently allow unrestricted information to be seen by applicants (albeit only at the decision stage), meaning that earlier disclosure would involve no additional compromise of confidentiality. As long as there is no appeal available against the decision of the CCF, such a disclosure is obviously too late because the damage caused by potentially inaccurate and challengeable information submitted by the NCBs and leading to the CCF's decision cannot be remedied. The availability of an application for revision under Article 42 of the Statute is not an adequate alternative remedy to address unfairness, for the reasons explained at §9.2 of the February 2026 report.

3.5.4 Indeed, if the national file is open, there is little principled basis to insist on secrecy of what is said to the CCF. The CCF has suggested that access to the national criminal file offers a "counter-balancing factor" that may mitigate the disadvantage to applicants when information is restricted. However, we respectfully disagree. Access to the national file does not compensate for the inability to see and respond to what the NCB tells the CCF at the international level, but, quite the contrary, is a strong indication that there is no justification to restrict the access to INTERPOL's stored data.

3.5.5 We recommend that Article 35 be amended to require that unrestricted information be disclosed to applicants at a stage that allows them to comment upon it before the CCF reaches its decision. This would align with the principle that both parties should have a fair

opportunity to argue for or against data processing. Equality of arms is especially important because the applicant may be detained as a result of the Red Notice and may have difficulty communicating with counsel due to the applicant's detention.

3.6 Summaries and Partial Disclosure:

3.6.1 Where full disclosure is restricted, Article 35 currently provides that the CCF may provide summaries or partial information. However, as the February 2026 report notes, the process for determining the content of summaries lacks transparency and applicant input. Many applicants who are concerned about disclosure of information by the CCF to the NCB are equally concerned about summaries where they have no insight into what will be revealed.

3.6.2 We recommend that applicants (and NCBs) be invited to provide suggested summaries when they refuse consent to full disclosure, or that the CCF introduce a process to consult the relevant party on the content of summaries before they are shared.

3.7 Restoration of Pre-2017 Access Rights:

3.7.1 The 2008 Operating Rules of the Commission for the Control of INTERPOL's Files established that whilst the CCF required government consent before disclosing information to individuals, there was a critical safeguard: individuals could access their data without such consent if they could demonstrate sufficient evidence of their inclusion in INTERPOL's databases. This provision served a useful function, enabling individuals to obtain information necessary to mount effective challenges against potentially abusive Red Notices and diffusions.

3.7.2 The 2017 reforms abolished this safeguard. Under current procedures, NCBs' consent is required in all circumstances before individuals can access information about themselves. This creates a problematic situation where persons with legitimate reasons to believe they are subjects of INTERPOL data processing may be unable to obtain even confirmation of their inclusion in the system. Such restrictions are difficult to reconcile with established data protection principles, including Article 15 of the EU's General Data Protection Regulation, which guarantees data subjects the right to obtain confirmation from controllers as to whether personal data concerning them is being processed.

3.7.3 We strongly recommend reinstating and enforcing the pre-2017 safeguard, whereby individuals who can provide reasonable evidence that they are subjects of INTERPOL data processing should be entitled to access their data without requiring consent from the requesting state. This reform would bring INTERPOL's practices into alignment with international data protection standards whilst preserving appropriate protections through the evidentiary requirement for database inclusion.

3.8 Conclusion:

These deficiencies in Article 35 do not operate in isolation but interact to create compounding disadvantages for applicants. The vagueness of restriction grounds enables requesting states to invoke broad justifications; the inadequacy of justification requirements means these claims go unchallenged; the timing problems ensure that even unrestricted

information arrives too late to be useful; and the absence of pre-2017 access rights means individuals may be unable to confirm they are even in INTERPOL's systems. Together, these issues fundamentally undermine the CCF's ability to provide an effective remedy and maintain the equality of arms essential to procedural fairness. Addressing these problems comprehensively, rather than in isolation, is crucial to ensuring that Article 35 fulfils its intended purpose of balancing legitimate confidentiality concerns with the fundamental rights of individuals subject to INTERPOL data processing.

Sincerely,

The European Criminal Bar Association and Lawyers Against Transnational Repression