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REPORT

on the initiative by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime
(6566/2007 – C6-0079/2007 – 2007/0804(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Fausto Correia

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (6566/2007 – C6-0079/2007 – 2007/0804(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden (6566/2007)¹,
 - having regard to the Council's drafting amendments (7273/1/2007 of 17 April 2007)²,
 - having regard to Article 34(2)(c) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0079/2007),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 93, 51 and 35 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0207/2007),
1. Approves the initiative by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden as amended;
 2. Calls on the Council to amend the text accordingly;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

¹ Not yet published in OJ.

² Not yet published in OJ.

4. Calls on the Council to consult Parliament if it intends to amend the initiative by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden substantially;
5. Regrets the obligation imposed on Parliament by the Council to express its opinion as a matter of urgency, without adequate and appropriate time for Parliamentary review and the absence both of a comprehensive impact assessment and an evaluation of the application of the Prüm Treaty to date, and of an adequate framework decision for the protection of personal data in police and judicial cooperation, which it considers necessary before any legislation is adopted under the third pillar;
6. Instructs its President to forward its position to the Council and the Commission, and the governments of the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden.

Text proposed by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden

Amendments by Parliament

Amendment 1
Title

COUNCIL DECISION 2007/.../JHA of ... on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

COUNCIL **FRAMEWORK** DECISION 2007/.../JHA of ... on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

As the initiative relates to the purpose of approximation of laws and regulations of the Member States the appropriate instrument is a Framework Decision rather than a Decision.

Amendment 2

Citation 1

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (b), Article 31(1)(a), Article 32 and **Article 34(2)(c)** thereof,

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (b), Article 31(1)(a), Article 32 and **Article 34(2)(b)** thereof,

Amendment 3

Citation 2 a (new)

Having regard to the opinion of the European Data Protection Supervisor of 4 April 2007,

Amendment 4

Recital 1

(1) The Council of the European Union attaches fundamental importance to the ***establishment of an*** area of freedom, security and justice, which is ***a*** fundamental ***concern of*** the people of the ***States brought together in the*** Union.

(1) The Council of the European Union attaches fundamental importance to the area of freedom, security and justice, which is fundamental ***to*** the people of the ***European*** Union.

Amendment 5

Recital 10

(10) These requirements are satisfied by the Prüm Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. In order ***that*** the substantive

(10) These requirements are satisfied by the Prüm Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. In order ***to fulfil*** the substantive

requirements of the Hague Programme **can be fulfilled** for all Member States **and that its targets in terms of time-scale can be achieved**, the **essential parts of** the Prüm Treaty **need** to be made applicable to all Member States. This Council Decision **should therefore be based on** the main provisions of the Prüm Treaty.

requirements of the Hague Programme for all Member States, the Prüm Treaty **needs** to be made applicable to all Member States. This Council **Framework** Decision therefore **includes some of** the main provisions of the Prüm Treaty, **namely those related to the police and judicial cooperation in the European Union**.

Amendment 6
Recital 11 a (new)

(11a) These improvements in the exchange of data constitute a step forward in making the information available between law enforcement officers in the Member States. It is appropriate to ensure that there are reasons for automated searches in national DNA and fingerprint databases whenever personal data are concerned.

Justification

A two-level system in accessing personal data is a combination of the availability principle (automated and reciprocal searches in national databases) and a more traditional approach (search upon motivated request, after a 'hit').

Amendment 7
Recital 15

(15) Subject to certain conditions, Member States should be able to supply personal and non-personal data in order to improve the exchange of information in connection with major events with a cross-border dimension.

(15) Subject to certain conditions, Member States should be able to supply personal and non-personal data in order to improve the exchange of information in connection with major events with a cross-border dimension **and the purpose of which is to prevent terrorist offences. The supplying of the data should be necessary and proportionate and based on particular circumstances that give reason to believe that criminal offences will be committed.**

Justification

Both chapter 3 and 4 should be mentioned, because they are built on the assumption that

there are reasons to believe that data subjects will commit criminal offences, and not on the occurrence (or objective possibilities of occurring) of criminal offences.

Amendment 8
Recital 15 a (new)

(15a) Within the framework of its mandate, Europol should also be granted access to national databases.

Amendment 9
Recital 16

(16) As international cooperation, particularly in combating cross-border crime, is to be further improved, this Decision, in addition to improving the exchange of information, should allow, amongst other things, closer cooperation between police authorities, for example by means of joint security operations (e.g. joint patrols) ***and cross-border intervention in the event of immediate danger to life or limb.***

(16) As international cooperation, particularly in combating cross-border crime, is to be further improved, this ***Framework*** Decision, in addition to improving the exchange of information, should allow, amongst other things, closer cooperation between police authorities, for example by means of joint security operations (e.g. joint patrols).

Justification

Rules on cross-border intervention in the event of immediate danger to life or limb were excluded from this proposal.

Amendment 10
Recital 18

(18) ***Aware of the importance which this Decision has for protecting the rights of individuals, and aware*** that the supply of personal data to another Member State requires ***a sufficient standard*** of data protection on the part of the receiving Member State, ***Member States should provide for efficient implementation of all data protection rules contained in the Decision.***

(18) ***The hit/no hit system provides a structure for comparing anonymous profiles, where additional personal data is exchanged only after a hit, and guarantees an adequate system of data protection, it being understood*** that the supply of personal data to another Member State requires ***an adequate level*** of data protection on the part of the receiving Member State.

Justification

Although this initiative only allows data transmission between the Member States, the level of protection established must be adequate (and harmonised).

Amendment 11
Recital 18 a (new)

(18a) Special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

Amendment 12
Recital 18 b (new)

(18b) These specific rules on data protection are created in absence of an adequate third pillar legal instrument on data protection. When approved, that general legal instrument should be applied to the entire area of police and judicial cooperation in criminal matters provided always that its level of data protection is adequate and not lower than the protection laid down in the Council of Europe Convention for the Protection of Individuals with regard to automatic Processing of Personal Data of 28 January 1981 and its additional Protocol of 8 November 2001 and takes account of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers to Member States regulating the use of personal data in the police sector, also where data are not processed automatically.

Justification

The relationship between the Framework Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and the Framework Decision on data protection.

Amendment 13
Recital 18 c (new)

(18c) The European Parliament should be consulted on any measure implementing this Framework Decision.

Amendment 14
Recital 18 d (new)

(18d) It is necessary for the Council to adopt the Framework Decision on Procedural Rights as soon as possible in order to lay down certain minimum rules on the availability of legal assistance to individuals in the Member States.

Justification

In the absence of this FD, the only limits to national legislation are fundamental principles and rights referred to in article 7, paragraph. 2 (as amended).

Amendment 15
Recital 18 e (new)

(18e) With regard to the supply of information and assistance in connection with major events and mass gatherings, the overall framework must be reconciled with Joint Action 97/339/JHA of 26 May 1997 adopted by the Council on the basis of Art K.3 of the Treaty on European Union with regard to cooperation on law and order and security¹ and Council Resolution of 29 April 2004 on security at the European Council meetings and other comparable events² and the Initiative of the Kingdom of the Netherlands with a view to the adoption of a Council Decision on strengthening cross-border police cooperation with regard to meetings attended by large numbers of people from more than one Member State, at which policing is primarily aimed at maintaining

*law and order and security and preventing and combating criminal offences*³.

¹ OJ L 147, 5.6.1997, p. 1.

² OJ C 116, 30.4.2004, p. 18.

³ OJ C 101, 27.4.2005, p. 36.

Justification

This general framework must be coordinated with specific instruments.

Amendment 16

Recital 20

(20) This Decision respects the fundamental rights and observes the principles *set out* in particular *in the* Charter of Fundamental Rights of the European Union,

(20) This **Framework** Decision respects the fundamental rights and observes the principles **recognised**, in particular, **by the** Charter of Fundamental Rights of the European Union. **In particular, this Framework Decision seeks to ensure full compliance with citizens' fundamental rights to respect for their private life and communications and to the protection of their personal data as enshrined in Articles 7 and 8 of the Charter.**

Amendment 17

Recital 20 a (new)

(20a) The full review and evaluation of the functioning of the Prüm Treaty to date and the establishment of a third pillar data protection framework decision are prerequisites for the effectiveness and correct implementation of this Framework Decision.

Amendment 18

Article 1, paragraph 1, introductory part

By means of this Decision, the Member States intend to step up cross-border cooperation in matters covered by Title VI

By means of this **Framework** Decision, the Member States intend to step up cross-border cooperation in matters covered

of the EU Treaty, particularly the exchange of information between agencies responsible for the prevention and investigation of criminal offences. To this end, this Decision contains rules in the following areas:

by Title VI of the EU Treaty, particularly the exchange of information between agencies responsible for the prevention and investigation of criminal offences *as listed in Article 2 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States¹ as well as in Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism² while ensuring an adequate level of data protection.* To this end, this *Framework* Decision contains rules in the following areas:

¹ *OJ L 190, 18.7.2002, p. 1.*

² *OJ L 164, 22.6.2002, p. 3.*

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Restriction of the scope of the Framework Decision to criminal and terrorist offences listed in the European Arrest warrant and in the Decision which defines terrorist offences.

Amendment 19 Article 1, point 4

4) Provisions on the conditions and procedure for stepping up border police cooperation through various measures (Chapter 5).

4) Provisions on the conditions and procedure for stepping up border police cooperation through various **defined** measures (Chapter 5);

Amendment 20 Article 1, paragraph 1, point 4 a (new)

4a) Provisions on data protection (Chapter 6, Article 14(2) and Article 16(2) and (4).

Justification

To add the data protection rules in chapter 6 to the aim and scope of the Framework Decision

Article 1a

For the purposes of this Framework Decision:

1) "Criminal offences" shall mean the offences listed in Article 2 of Council Framework Decision 2002/584/JHA;

2) "terrorist offences" shall mean the criminal offences listed in Articles 1 to 4 of Council Framework Decision 2002/475/JHA;

3) "personal data" shall mean any information relating to an identified or identifiable natural person ('data subject'); an "identifiable person" means a person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical or physiological identity;

4) "processing of personal data" shall mean any operation or set of operations which is performed upon personal data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, alignment, combination, blocking, erasure or destruction of data; processing within the meaning of this Framework Decision shall also include notification of whether or not a hit exists;

5) "automated search procedure" shall mean direct access to the automated files of another body where the response to the search procedure does not require human intervention;

6) "referencing of data" shall mean the marking of stored personal data without the aim of limiting their processing in future;

7) "blocking of data" shall mean the marking of stored personal data with the aim of limiting their processing in future;

8) "non-coding part of DNA" shall mean chromosome zones containing no genetic expression, i.e. not known to provide information about specific hereditary characteristics; notwithstanding any scientific progress, no more information shall be revealed from the non-coding part of DNA either now nor in future.

Justification

This article includes the definitions laid down previously in Articles 26 and 16, par. 1, and also defines personal data (in the absence of a general framework on this subject) and criminal offences (to establish some level of harmonisation of the rules on accessing other Member States databases). The offences of the list of the European Arrest Warrant are more likely to violate the area of freedom, security and Justice than minor offences. Therefore, in order to fulfil the subsidiarity and proportionality requirements only those offences should be dealt with by this Framework Decision.

Amendment 22
Article 1 b (new)

Article 1b

Member States shall provide for a clear distinction to be made between the personal data of

- a person who is suspected of having committed or having taken part in a criminal offence,***
- a person who has been convicted of a criminal offence,***
- a person with regard to whom there are serious grounds for believing that he or she will commit a criminal offence,***
- a person who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings,***
- a person who has been the victim of a criminal offence or with regard to whom***

certain facts give reasons for believing that he or she could be the victim of a criminal offence,

– a person who can provide information about criminal offences,

– a contact or associate of one of the persons listed above, and

– a person who does not fall within any of the categories referred to above.

Amendment 23
Article 2, paragraph 1

1. Member States shall open and keep national DNA analysis files for the investigation of criminal offences. Processing of data ***kept*** in those files, under this Decision, shall be carried out in accordance with ***this Decision***, in compliance with the national law applicable to the processing.

1. Member States shall open and keep national DNA analysis files for the investigation of criminal offences. Processing of ***personal*** data in those files, under this ***Framework*** Decision, shall be carried out in accordance with ***the rules on data protection laid down in Chapter 6***, in compliance with the national law applicable to the processing.

Justification

The introduction of the wording “processing of personal data” as defined in article 2 bis intends to clarify that data protection provisions also apply to the collection of (new) data (not only to data already kept).

Amendment 24
Article 2, paragraph 2

2. For the purpose of implementing this Decision, the Member States shall ensure ***the availability of*** reference data from their national DNA analysis files ***as referred to in the first sentence of paragraph 1***. Reference data shall only include DNA profiles established from the non-coding part of DNA and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual ("unidentified DNA-profiles") shall be recognisable as

2. For the purpose of implementing this ***Framework*** Decision, the Member States shall ensure ***access to*** reference data from their national DNA analysis files ***opened for the investigation of criminal offences***. Reference data shall only include DNA profiles established from the non-coding part of DNA and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual ("unidentified DNA-profiles") shall be recognisable as

such.

such.

Justification

The wording “access” instead of “availability” clarifies that both systems are not similar, as referred to in recital 11bis. The reference to “national DNA analysis files opened for the investigation of criminal offences” stresses that search in other types of DNA files, such as the ones established for health and research purposes, is inadmissible.

Amendment 25
Article 3, paragraph 1

1. For the investigation of criminal offences, Member States shall allow other Member States' national contact points **as referred to in Article 6**, access to the reference data in their DNA analysis files, with the power to conduct automated searches by comparing DNA profiles. Searches may be conducted only in individual cases and in compliance with the requesting Member State's national law.

1. For the investigation of criminal offences, Member States shall allow other Member States' national contact points, access to the reference data in their DNA analysis files, with the power to conduct automated searches by comparing DNA profiles. Searches may be conducted only in individual cases and in compliance with **the rules on data protection laid down in Chapter 6 and** the requesting Member State's national law.

Amendment 26
Article 5

Should the procedures referred to in Articles 3 and 4 show a match between DNA profiles, the supply of **any available** further personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State.

Should the procedures referred to in Articles 3 and 4 show a match between DNA profiles, the supply of further personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State **and the rules on data protection laid down in Chapter 6.**

Justification

The reference regarding data protection is particularly relevant since Chapter 6 defines which personal data can be accessed, as a way to establish common rules to all Member States (and not rely exclusively on each Member State national law)

Amendment 27
Article 6

Article 6

deleted

National contact point and implementing measures

- 1. For the purposes of the supply of data as referred to in Articles 3 and 4, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.**
- 2. Details of technical arrangements for the procedures set out in Articles 3 and 4 shall be laid down in the implementing measures as referred to in Article 34.**

Justification

This provision is moved to chapter 7 (implementing and final provisions)

Amendment 28

Article 7, paragraph 1, introductory part

Where, in ongoing investigations or criminal proceedings, there is no DNA profile available for a particular individual present within a requested Member State's territory, the requested Member State shall provide legal assistance by collecting and examining cellular material from that individual and by supplying the DNA profile obtained, if:

1. Where, in ongoing investigations or criminal proceedings ***relating to the commission of criminal offences***, there is no DNA profile available for a particular individual ***who is suspected of having committed such a criminal offence and who is*** present within a requested Member State's territory, the requested Member State shall provide legal assistance by collecting and examining cellular material from that individual and by supplying the DNA profile obtained, if:

Amendment 29

Article 7, paragraph 1 a (new)

1a. The collection of cellular material shall take place only on the basis of national law and only for a specific purpose and shall meet the requirements of necessity and proportionality.

Justification

The respect for fundamental principles and rights should be stressed in cases where the collection of cellular material is at stake.

Amendment 30

Article 8

For the purpose of implementing this Decision, Member States shall ensure ***the availability of*** reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offences. Reference data shall only include dactyloscopic data and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual ("unidentified dactyloscopic data") must be recognisable as such.

For the purpose of implementing this ***Framework*** Decision, Member States shall ensure ***access to*** reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offences. Reference data shall only include dactyloscopic data and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual ("unidentified dactyloscopic data") must be recognisable as such.

Amendment 31

Article 9, paragraph 1

1. For the prevention and investigation of criminal offences, Member States shall allow other Member States' national contact points, as referred to in Article 11, access to the reference data in the automated fingerprint identification systems which they have established for that purpose, with the power to conduct automated searches by comparing dactyloscopic data. Searches may be conducted only in individual cases and in compliance with the requesting Member State's national law.

1. For the prevention and investigation of criminal offences, Member States shall allow other Member States' national contact points, as referred to in Article 11, access to the reference data in the automated fingerprint identification systems which they have established for that purpose, with the power to conduct automated searches by comparing dactyloscopic data. Searches may be conducted only in individual cases and in compliance with ***the rules on data protection laid down in Chapter 6 and*** the requesting Member State's national law.

Amendment 32

Article 10

Should the procedure referred to in

Should the procedure referred to in Article

Article 9 show a match between dactyloscopic data, the supply of **any available** further personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State.

9 show a match between dactyloscopic data, the supply of further personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State **and the rules on data protection laid down in Chapter 6.**

Justification

The reference regarding data protection is particularly relevant since chapter 6 (if amended) defines which personal data can be acceded, as a way to establish common rules to all Member-States (and not rely exclusively on each Member State national law)

Amendment 33

Article 11

Article 11

deleted

National contact point and implementing measures

- 1. For the purposes of the supply of data as referred to in Article 9, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.**
- 2. Details of technical arrangements for the procedure set out in Article 9 shall be laid down in the implementing measures as referred to in Article 34.**

Justification

This provision is moved to Chapter 7 (implementing and final provisions)

Amendment 34

Article 12, paragraph 1

1. For the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the searching Member State, **as well as in maintaining public order and security**, Member States shall allow other Member States' national contact points, as referred

1. For the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the searching Member State, Member States shall allow other Member States' national contact points, as referred to in paragraph 2, access to the following

to in paragraph 2, access to the following national vehicle registration data, with the power to conduct automated searches in individual cases:

- 1) data relating to owners or operators, and
- 2) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number. Searches may be conducted only in compliance with the searching Member State's national law.

national vehicle registration data, with the power to conduct automated searches in individual cases:

- 1) data relating to owners or operators, and
- 2) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number. Searches may be conducted only in compliance with ***the rules on data protection laid down in Chapter 6 and*** the searching Member State's national law.

Justification

The deletion of “public order and security” as autonomous grounds for automated searching of vehicle registration data is due to the vagueness of the concepts (when not related to a specific event) and the fact that relevant concerns on public order and security are already covered by the need to investigate criminal or other types of offences (namely of administrative order).

Amendment 35 Article 12, paragraph 2

2. For the purposes of the supply of data as referred to in paragraph 1, each Member State shall designate a national contact point for incoming requests. The powers of the national contact points shall be governed by the applicable national law. Details of technical arrangements for the procedure shall be laid down in the implementing measures as referred to in Article 34. ***deleted***

Justification

This provision is moved to chapter 7 (implementing and final provisions)

Amendment 36 Article 14, paragraph 1

1. For the prevention of criminal offences

1. For the prevention of criminal offences

and in maintaining public order and security for major events with a cross-border dimension, in particular for sporting events or European Council meetings, Member States shall, both upon request and of their own accord, supply one another with personal data if any final convictions or other circumstances give reason to believe that the data subjects will commit criminal offences at the event or pose a threat to public order and security, in so far as the supply of such data is permitted under the supplying Member State's national law.

and in maintaining public order and security for major events with a cross-border dimension, in particular for sporting events or European Council meetings, Member States shall, both upon request and of their own accord, supply one another with personal data if any final convictions or other circumstances give reason to believe that the data subjects will commit criminal offences at the event or pose a threat to public order and security, in so far as the supply of such data is permitted under the supplying Member State's national law **and when necessary and proportionate in a democratic society, for a specific purpose and on a case-by-case basis.**

Amendment 37
Article 15

Article 15

deleted

National contact point

For the purposes of the supply of data as referred to in Articles 13 and 14, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.

Justification

This provision is moved to chapter 7 (implementing and final provisions)

Amendment 38
Article 16, paragraph 1

1. For the prevention of terrorist offences, Member States may, in compliance with national law, in individual cases, even without being requested to do so, supply other Member States' national contact points, **as referred to in paragraph 3**, with the personal data and information specified in paragraph 2, in so far as is necessary because particular circumstances give

1. For the prevention of terrorist offences, Member States may, in compliance with national law, **basic principles of law and fundamental rights**, in individual cases, even without being requested to do so, supply other Member States' national contact points with the personal data and information specified in paragraph 2, in so far as is necessary because particular

reason to believe that the data subjects will commit **criminal** offences **as referred to in Articles 1 to 3 of EU Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism..**

circumstances give reason to believe that the data subjects will commit **terrorist** offences.

Justification

The parameter for supplying information must be international and EU Law, not only national legislation.

Amendment 39
Article 16, paragraph 2

2. The data to be supplied shall comprise **surname, first names, date and place of birth and** a description of the circumstances giving rise to the belief referred to in paragraph 1.

2. The data to be supplied shall comprise **only personal data and** a description of the circumstances giving rise to the belief referred to in paragraph 1.

Justification

Better definition on personal data that can be supplied is proposed in article 1a (as amended).

Amendment 40
Article 16, paragraph 3

3. Each Member State shall designate a national contact point for exchange of information with other Member States' national contact points. The powers of the national contact points shall be governed by the applicable national law.

deleted

Justification

This provision is moved to chapter 7 (implementing and final provisions)

Amendment 41
Article 16, paragraph 4 a (new)

4a. Regardless of those conditions, personal data may be processed only for the purposes specified in paragraph 1. The data supplied shall be deleted without

delay once the purposes specified in paragraph 1 have been achieved or can no longer be achieved, and in any event after no more than two years from the date of supply.

Justification

Due to the special need to protect individuals from data supplying under this article, a similar restrictive rule on data retention and deletion as the one laid down for major events is necessary.

Amendment 42
Article 17, paragraph 2

2. Each Member State may, as a host Member State, in compliance with its own national law, and with the seconding Member State's consent, confer executive powers on the seconding Member States' officers involved in joint operations ***or, in so far as the host Member State's law permits, allow the seconding Member States' officers to exercise their executive powers in accordance with the seconding Member State's law.*** Such executive powers may be exercised only under ***the guidance*** and, as a rule, in the presence of officers from the host Member State. ***The seconding Member States' officers shall be subject to the host Member State's national law. The host Member State shall assume responsibility for their actions.***

2. The seconding Member States' officers shall be subject to the host Member State's national law. Each Member State may, as a host Member State, in compliance with its own national law, and with the seconding Member State's consent, confer executive powers on the seconding Member States' officers involved in joint operations. Such executive powers may be exercised only under ***instructions from*** and, as a ***general*** rule, in the presence of officers from the host Member State.

Justification

The clear definition of the law applicable to joint operations is essential to achieve results. The provisions on the executive powers given to the seconding Member States' officers are not clear enough. Moreover, the possibility of executive powers being used without the presence of officers from the host State must be strictly limited.

Amendment 43
Article 17 a (new)

Article 17a

Measures in the event of imminent danger

1. In urgent situations, officers from one Member State may, without another Member State's prior consent, cross the border between the two so that, within an area of the other Member State's territory close to the border, in compliance with the host Member State's national law, they can take any provisional measures necessary to avert imminent danger to the physical integrity of individuals.

2. An urgent situation as referred to in paragraph 1 shall be deemed to arise if there is a risk that the danger will materialise in the event of waiting for the host Member State's officers to act or to take charge as stipulated in Article 17(2).

3. The officers crossing the border must notify the host Member State without delay. The host Member State shall confirm receipt of that notification and without delay take the necessary measures to avert the danger and take charge of the operation. The officers crossing the border may operate in the host Member State only until the host Member State has taken the necessary protective measures. The officers crossing the border shall be required to follow the host Member State's instructions.

4. The Member States shall specify in a separate agreement the authorities to be notified without delay, as stipulated in paragraph 3. The officers crossing the border shall be required to comply with the provisions of this Article and with the law of the Member State within whose territory they are operating.

5. The host Member State shall assume responsibility for the measures taken by the officers crossing the border.

Justification

This amendment is identical to Article 25 of the Prüm Convention. Provisions on measures in the event of imminent danger should also be included in the Council Framework Decision in order to ensure more efficient police cooperation in border areas.

Amendment 44
Article 18 a (new)

Article 18a

Cooperation upon request

1. The Member States' competent authorities shall provide one another with assistance, upon request, within the scope of their powers and in compliance with their own national law.

2. The Member States' competent authorities shall provide one another with assistance, in accordance with the first sentence of Article 39(1) of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, in particular by:

(1) identifying owners and operators of vehicles and providing information on drivers, masters and captains of vehicles, vessels and aircraft, in so far as not already provided for in Article 12;

(2) supplying information on driving licences, navigation licences and similar permits;

(3) ascertaining individuals' whereabouts and place of residence;

(4) checking on residence permits;

(5) ascertaining the identity of telephone subscribers and subscribers to other telecommunications services, where publicly accessible;

(6) establishing the identity of individuals;

(7) investigating the origin of items such as arms, motor vehicles and vessels (enquiries via trade channels);

(8) supplying data from police databases and police records and supplying information from official records accessible to the public;

(9) issuing urgent alerts concerning arms and explosives and alerts concerning currency counterfeiting and securities fraud;

(10) issuing urgent alerts concerning arms and explosives and alerts concerning currency counterfeiting and securities fraud;

(11) ascertaining an individual's willingness to make a statement.

3. If the requested authority is not empowered to deal with a request, it shall pass the request on to the authority empowered to do so. The requested authority shall notify the requesting authority of the passing on of the request and of the authority empowered to deal with it. The latter authority shall deal with the request and send the requesting authority the result.

Justification

This amendment is identical to Article 27 of the Prüm Convention. Provisions on cooperation upon request should also be included in the Council Framework Decision in order to ensure more efficient police cooperation in border areas.

Amendment 45

Article 19, paragraph 1

1. Officers from a seconding Member State ***who are involved in a joint operation within another Member State's territory may wear their own national uniforms there. They may carry such arms,***

1. Officers from a seconding Member State may carry ***such service weapons,*** ammunition and equipment as they are allowed to under the seconding Member State's national law. The host Member

ammunition and equipment as they are allowed to under the seconding Member State's national law. The host Member State may prohibit the carrying of **particular arms**, ammunition or equipment by a seconding Member State's officers.

State may prohibit the carrying of **certain service weapons**, ammunition or equipment by a seconding Member State's officers **provided its own legislation applies the same prohibition to its own officers**.

Justification

The deleted part moved to paragraph 2 a (new) of the present article. The provisions on the carrying of service weapons for seconding Member States officers should be aligned to those related to national officers.

Amendment 46
Article 19, paragraph 2 a (new)

2a. Officers from a seconding Member State who are involved in a joint operation in another Member State's territory shall wear their own national uniforms. A common distinctive sign must be carried by all members of the joint operation. The host Member State must deliver an accreditation document to the seconding Member States' officers, including the name, rank and a digitised photograph of the officer.

Justification

These rules, inspired by the "Rapid Border Intervention Teams" compromise, seem relevant in order to identify a "joint" operation, that is much more than just a sum of its elements.

Amendment 47
Article 24, paragraph 1

1. For the purposes of this Chapter:
1) "processing of personal data" shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, alignment, combination, blocking, erasure or destruction of data. Processing within the

deleted

meaning of this Decision shall also include notification of whether or not a hit exists;

2) "automated search procedure" shall mean direct access to the automated files of another body where the response to the search procedure is fully automated;

3) "referencing" shall mean the marking of stored personal data without the aim of limiting their processing in future;

4) "blocking" shall mean the marking of stored personal data with the aim of limiting their processing in future.

Justification

Definitions are now in Chapter 1.

Amendment 48
Article 24, paragraph 2

2. The following provisions shall apply to data which are or have been supplied pursuant to this Decision, save as otherwise provided in the preceding Chapters.

2. The following provisions shall apply to the collection and processing of DNA material and fingerprints in a Member State and to the supply of further personal data within the scope of this Framework Decision.

The following provisions shall also apply to data which are or have been supplied pursuant to this Framework Decision.

Justification

More clear and also in line with the proposal of the EDPS.

Amendment 49
Article 25, paragraph 1 a (new)

1a. Member States shall take into account the various categories of personal data and the various purposes for which they are collected with a view to laying down time limits for their storage and appropriate

conditions for their collection, further processing and transfer. Personal data relating to those who are not suspected of having committed or taken part in a criminal offence may be processed only for the purpose for which they were collected and for a limited period. Member States shall lay down appropriate limitations on access to and transmission of such data.

Justification

Depending on the level of involvement, appropriate data protection provisions must apply (corresponds to Amendment 14 of the text adopted by Parliament on 14 June 2006 on the COM proposal for a Council framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters).

Amendment 50
Article 25, paragraph 3

3. Paragraph 2 shall not apply to those Member States where the supply of personal data as provided for in this Decision has already started pursuant to the Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, in particular in combating terrorism, cross-border crime and illegal migration ("Prüm Treaty"). ***deleted***

Justification

This exemption is unnecessary, because all it takes is a unanimous decision from the Council that verifies that the conditions have been met.

Amendment 51
Article 25, paragraph 3 a (new)

3a. Data processed under this Framework Decision shall not be transferred or made available to a third country or to any international organisation.

Amendment 52
Article 26, paragraph 1

1. Processing of personal data by the receiving Member State shall be permitted solely for the purposes for which the data have been supplied in accordance with this Decision. Processing for other purposes shall be permitted solely with the prior authorisation of the Member State administering the file and subject only to the national law of the receiving Member State. Such authorisation may be granted provided that processing for such other purposes is permitted under the national law of the Member State administering the file.

1. Processing of personal data by the receiving Member State shall be permitted solely for the purposes for which the data have been supplied in accordance with this **Framework** Decision. Processing for other purposes shall be permitted solely with the prior authorisation of the Member State administering the file and subject only to the national law of the receiving Member State. Such authorisation may be granted provided that processing for such other purposes is permitted under the national law of the Member State administering the file **and on a case-by-case basis.**

Amendment 53
Article 27

Personal data supplied may be processed only by the authorities, bodies and courts with responsibility for a task in furtherance of the aims mentioned in Article 26. In particular, data may be supplied to other entities only with the prior authorisation of the supplying Member State and in compliance with the law of the receiving Member State.

Personal data supplied may be processed only by the authorities, bodies and courts with responsibility for a task in furtherance of the aims mentioned in Article 26. In particular, data may be supplied to other entities only with the prior authorisation of the supplying Member State **on a case-by-case basis** and in compliance with the law of the receiving Member State.

Amendment 54
Article 28, paragraph 2 a (new)

2a. Special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

Justification

The supply of personal data should contain only individual data. All other data must be specifically asked for by the authorities of the requesting Member State and be necessary.

Amendment 55

Article 28, paragraph 3, point (2)

2) following the expiry of the maximum period **for keeping data laid down in the national law of the supplying Member State where the supplying body informed the receiving body of those maximum periods at the time of supplying the data.**

2) following the expiry of the maximum period **of two years, except in the cases laid down in Articles 14 and 16.**

Justification

A harmonisation of data retention period is necessary to avoid differences in protection of personal data.

Amendment 56

Article 29, paragraph 2, point (1)

1) **state-of-the-art** technical measures are taken to ensure data protection and data security, in particular data confidentiality and integrity;

1) **the best available** technical measures are taken to ensure data protection and data security, in particular data confidentiality and integrity;

Justification

The criteria of best available techniques (and not only the use of usual instruments) must be used in the data protection area.

Amendment 57

Article 30, paragraph 2, introductory part

2. The following shall apply to automated searches for data based on Articles 3, 9, 12 and automated comparison pursuant to Article 4:

deleted

Justification

Rules on logging and registration must be generally applicable to all types of data supply (automated and non automated) and to all sorts of grounds for data requesting (including in

cases of major events and the prevention of terrorist offences).

Amendment 58
Article 30, paragraph 4

4. The recorded data shall be protected with suitable measures against inappropriate use and other forms of improper use and shall be kept for **two** years. After the conservation period the recorded data shall be deleted immediately.

4. The recorded data shall be protected with suitable measures against inappropriate use and other forms of improper use and shall be kept for **three** years. After the conservation period the recorded data shall be deleted immediately.

Amendment 59
Article 31, paragraph 1

1. ***At the request of the data subject under national law, information*** shall be ***supplied*** in compliance with national law to the data subject ***upon production of proof of his identity***, without unreasonable expense, in general comprehensible terms and without unacceptable delays, on the data processed in respect of his person, the origin of the data, the recipient or groups of recipients, the intended purpose of the processing and the legal basis for the processing. Moreover, the data subject shall be entitled to have inaccurate data corrected and unlawfully processed data deleted.

The Member States shall also ensure that, in the event of violation of his rights in relation to data protection, the data subject shall be able to lodge an effective complaint to an independent court or a tribunal within the meaning of Article 6(1) of the European Convention on Human Rights or an independent supervisory authority within the meaning of Article 28 of Directive 95/46/EC of the European Parliament and of the

1. ***Information about data collected, data supplied to other Member States and authorisations concerning those data*** shall be ***dealt with*** in compliance with national law to the data subject without unreasonable expense, in general comprehensible terms and without unacceptable delays, on the data processed in respect of his person, the origin of the data, the recipient or groups of recipients, the intended purpose of the processing and the legal basis for the processing. Moreover, the data subject shall be entitled to have inaccurate data corrected and unlawfully processed data deleted, ***of which right the data subject shall also be informed.***

Member States shall also ensure that, in the event of violation of his rights in relation to data protection, the data subject shall be able to lodge an effective complaint to an independent court or a tribunal within the meaning of Article 6(1) of the European Convention on Human Rights or an independent supervisory authority within the meaning of Article 28 of Directive 95/46/EC of the European Parliament and of the

Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and that he is given the possibility to claim for damages or to seek another form of legal compensation. The detailed rules for the procedure to assert these rights and the reasons for limiting the right of access shall be governed by the relevant national legal provisions of the Member State where the data subject asserts his rights.

Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and that he is given the possibility to claim for damages or to seek another form of legal compensation. The detailed rules for the procedure to assert these rights and the reasons for limiting the right of access shall be governed by the relevant national legal provisions of the Member State where the data subject asserts his rights.

Amendment 60
Article 32 a (new)

Article 32a

Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Chapter and shall lay down effective, proportionate and dissuasive sanctions to be imposed in the event of infringement thereof, notably those provisions aimed at ensuring the confidentiality and security of personal data processing.

Justification

In the absence of a FD, a provision on criminal sanctions is desirable, in order to prevent or repress offences to data protection rules.

Amendment 61
Article 32b (new)

Article 32b

- 1. For the purpose of the supply of data as referred to in Articles 3, 4, 9, 12, 14 and 16, each Member State shall designate one or several national contact points.***
- 2. The powers of the national contact points shall be governed by the applicable national law. National contact points shall***

be available at all times.

3. The list of all national contact points shall be sent by each Member State to the other Member States and shall be published in the Official Journal of the European Union.

Amendment 62
Article 33, paragraph 2

2. Declarations submitted in accordance with paragraph 1 may be amended at any time by means of a declaration submitted to the General Secretariat of the Council. The General Secretariat of the Council shall forward any declarations received to the Member States and the Commission.

2. Declarations submitted in accordance with paragraph 1 may be amended at any time by means of a declaration submitted to the General Secretariat of the Council. The General Secretariat of the Council shall forward any declarations received to the Member States, **the European Parliament** and the Commission.

Justification

The European Parliament should play a more important role in the implementation of this Framework Decision.

Amendment 63
Article 33, paragraph 2 a (new)

2a. Declarations, except for those referred to in Article 19(4), shall be published in the Official Journal of the European Union.

Justification

All declarations, except the ones relating to specific operational plans must be published in order to allow its scrutiny.

Amendment 64
Article 34

The Council shall adopt measures **necessary to implement this Decision at the level of the Union in accordance with the procedure laid down in the second sentence**

1. The Council shall adopt implementing measures only after consulting the European Parliament.

of Article 34(2)(c) of the EU Treaty.

2. The implementing measures shall also be communicated to the European Data Protection Supervisor, who may give his or her opinion thereon.

Amendment 65
Article 35

Each Member State shall bear the operational costs incurred by its own authorities in connection with the implementation of this Decision. ***In special cases, the Member States concerned may agree on different arrangements.***

Each Member State shall bear the operational costs incurred by its own authorities in connection with the implementation of this ***Framework Decision. However, the general budget of the European Union shall bear the costs relating to the functioning of TESTA II (Trans European Services for Telematics between Administrations) or any other network used to exchange the data referred to in the Chapter 2 of this Framework Decision.***

Amendment 66
Article 36, paragraph 2

2. Member States may conclude or bring into force bilateral or multilateral agreements or arrangements which concern the scope of this Decision after it has entered into force in so far as such agreements or arrangements provide for the objectives of this Decision to be extended or enlarged.

2. Member States may conclude or bring into force bilateral or multilateral agreements or arrangements which concern the scope of this ***Framework Decision*** after it has entered into force in so far as such agreements or arrangements provide for the objectives of this ***Framework Decision*** to be extended or enlarged, ***including the data protection objectives of this Framework Decision.***,

Amendment 67
Article 36, paragraph 4

4. Member States shall inform the Council and the Commission within [... years] of

4. Member States shall inform ***the European Parliament***, the Council and the

entry into force of this Decision of existing agreements or arrangements within the meaning of the first paragraph which they wish to continue to apply.

Commission within [... years] of entry into force of this **Framework** Decision of existing agreements or arrangements within the meaning of the first paragraph which they wish to continue to apply.

Justification

Parliament must likewise be involved as regards other measures affecting the Council framework decision.

Amendment 68
Article 36, paragraph 5

5. Member States shall also inform the Council and the Commission of all new agreements or arrangements within the meaning of paragraph 2 within 3 months of their signing or, in the case of instruments which were signed before adoption of this Decision, within three months of their entry into force.

5. Member States shall also inform **the European Parliament**, the Council and the Commission of all new agreements or arrangements within the meaning of paragraph 2 within 3 months of their signing or, in the case of instruments which were signed before adoption of this **Framework** Decision, within three months of their entry into force.

Justification

Parliament must likewise be involved as regards other measures affecting the Council framework decision.

Amendment 69
Article 37, paragraph 2

2. Member States shall transmit to the General Secretariat of the Council **and the Commission** the text of the provisions transposing into their national law the obligations imposed on them under this Decision. When doing so, each Member State may indicate that it will apply immediately this Decision in its relations with those Member States which have given the same notification.

2. Member States shall transmit to the General Secretariat of the Council the text of the provisions transposing into their national law the obligations imposed on them under this **Framework** Decision. When doing so, each Member State may indicate that it will apply immediately this **Framework** Decision in its relations with those Member States which have given the same notification. **The General Secretariat of the Council shall forward the notifications received to the Member States, the European Parliament and the Commission.**

Justification

Coordination of article 37 with article 33

Amendment 70
Article 37 a (new)

Article 37a

1. The Council shall carry out an evaluation of the administrative, technical and financial application and implementation of this Framework Decision every two years.

2. The modalities of the automated searching and comparison of DNA and dactyloscopic data shall be evaluated six months after the date on which this Framework Decision takes effect. For vehicle registration data, this first evaluation shall take place three months after that date.

3. Evaluation reports shall be transmitted to the European Parliament and the Commission.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Jean-Marie Cavada
Chairman
Committee on Civil Liberties, Justice and Home Affairs
BRUSSELS

Subject: Opinion on the legal basis of the initiative for a Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (2007/0804(CNS))

Dear Mr Chairman,

By letter of 19 April 2007 you asked the Committee on Legal Affairs pursuant to Rule 35(2), to consider whether the legal basis of the proposed decision was valid and appropriate.

The committee considered the above question at its meeting of 02 May 2007.

The legal basis proposed is Article 34(2)(c) of the EU Treaty. The lead committee's rapporteur, Mr Correia, considers, however, that it would be more appropriate to adopt a framework decision under Article 34(2)(b), rather than a decision pursuant to Article 34(2)(c).

The crucial difference, as far as the European Parliament is concerned, between decisions pursuant to Article 34(2)(c) and framework decisions adopted under Article 34(2)(b) is that whereas Parliament is consulted on the decision or framework decision itself pursuant to Article 39(1) of the EU Treaty, Article 34(2)(c) empowers the Council subsequently to adopt implementing measures by a qualified majority without consulting Parliament.

Pertinent provisions of the EU Treaty

Article 34

1. In the areas referred to in this title, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:

- (a) adopt common positions defining the approach of the Union to a particular matter;*
- (b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the*

Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;

- (c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;*
- (d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.*

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the Contracting Parties

Aim and content of the initiative for a Council Decision

The proposed Council Decision intends to combat terrorism and cross-border crimes by facilitating and strengthening cross-border cooperation through the exchange of information between agencies responsible for the prevention and the investigation of criminal offences.

The reasoning behind the instrument may be inferred as follows from the preamble: For effective international cooperation in the field of combating terrorism and cross-border crime, it is of fundamental importance that precise information may be exchanged swiftly and efficiently. The aim is to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. For the joint use of data those procedures should be subject to accountability and incorporate appropriate guarantees as to the accuracy and security of the data during transmission and storage as well as procedures for recording data exchange and restrictions on the use of information exchanged. These requirements are satisfied by the Prüm Treaty of 27 May 2005 between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. In order that the substantive requirements of the Hague Programme can be fulfilled for all Member States and that its targets in terms of timescale can be achieved, the essential parts of the Prüm Treaty need to be made applicable to all Member States. This Council Decision should therefore be based on the main provisions of the Prüm Treaty.

The aim and content of the document, according to the preamble, may be analysed as follows:

Recital 2 makes it plain that that one of the goals of the European Union is to give citizens a high degree of security in the area of freedom, security and justice "by developing common procedures among the Member States in the field of police and judicial cooperation in criminal matters".

Recital 9 points out that precise information for "an effective international cooperation" needs procedures in the Member States for "promoting fast, efficient and inexpensive means of data exchange".

The preamble goes on to explain the need for a "hit/no hit" system to enable searching Member States to access data from other Member States' national DNA analysis files and automatic dactyloscopic identification systems. Member States are to have access rights to each other's DNA analysis files. All this should be achieved by networking national databases.

It is further intended that this should allow close cooperation between police authorities, including joint security operations and cross-border intervention.

The preamble further refers to guaranteeing the right to privacy and the protection of personal data. Since prior checks cannot be carried out in this regard in the case of cross-border on-line access to data bases, post hoc monitoring is to be carried out. Recital 18 makes it clear that it will be for Member States to provide for "efficient implementation of all data protection rules contained in this Decision".

Chapter II deals with on-line access and follow-up requests and contains rules concerning the DNA Profiles and the Dactyloscopic Data and Vehicle Registration Data. All sections refer to "national contact points" competent for the supply of data and governed by the "applicable national law" (Article 6, Article 11 and Article 12).

Chapter III, treating "major events", makes it clear that the supply of non-personal data must be "permitted under the supplying of the Member State's national law" (Article 13).

Chapter IV refers to the supply of information to prevent terrorist offences and states that the supplying Member State imposes the conditions on the use made of the data by the receiving Member State - which will be bound by them - "in compliance with national law" (Article 16).

Chapter V is concerned with other forms of cooperation, such as joint operations, for which it is necessary to refer to what "Member States' law permits" and, for the rules of civil liability, to "the law of the Member State in whose territory they are operating" (Article 17 and Article 21).

Chapter VI sets out the general provisions on data protection and makes it plain that each Member State is to guarantee a level of protection "in its national law" at least equal to that resulting from the Council of Europe Convention for the Protection of Individuals (Article 25 and Article 27).

The problem

The letter from the Chair of the lead committee states as follows:

"The initiative seeks to achieve approximation of the laws and regulations of the Member States. Under those circumstances, the rapporteur considers that it would be more appropriate to adopt a framework decision pursuant to Article 34 (2)(b) rather than a decision pursuant to Article 34 (2)(c)".

The question is therefore whether the proposed instrument is for the purpose of approximating the laws and regulations of the Member States, if so the instrument should take the form of a framework decision within the meaning of Article 34(2)(b) and not a decision pursuant to

Article 34(2)(c), since that provision expressly excludes any approximation of the laws and regulations of the Member States.

General considerations on legal basis from the case-law

All Community acts must be founded upon a legal basis laid down in the Treaty (or in another legal act which they are intended to implement). The legal basis defines the Community's competence *ratione materiae* and specifies how that competence is to be exercised, namely the legislative instrument(s) which may be used and the decision-making procedure.

It is clear from settled case-law of the Court of Justice that the choice of legal basis is not at the discretion of the Community legislator but must be determined by objective factors which can be subject to judicial review¹, such as the aim and content of the measure in question². Furthermore, the decisive factor should be the main object of a measure³.

Appraisal

Two preliminary remarks are worth making, although the first has no direct bearing on the appropriateness of the legal basis selected by the Council, but is worth making all the same.

At the Edinburgh Summit, the Member States agreed that the principle of proportionality codified in Article 3B (third paragraph) of the EC Treaty (now Article 5) should imply that wherever legislative intervention by the Community is required, preference should be given to directives over regulations and to framework directives over detailed measures. The same view was later endorsed in the Protocol on subsidiarity and proportionality to the Treaty of Amsterdam and in the White Paper on European Governance⁴.

Secondly, and this observation is highly relevant to the question of the appropriateness of the legal basis selected, the Court of Justice made it clear in its judgment of 16 June 2005 in Case C-105/03 *Pupino*, that "the wording of Article 34(2)(b) EU is very closely inspired by that of the third paragraph of Article 249 EC. Article 34(2)(b) EU confers a binding character on framework decisions in the sense that they 'bind' the Member States 'as to the result to be achieved but shall leave to the national authorities the choice of form and methods'" (para. 33). Consequently, a framework decision is the equivalent of a first-pillar directive, but without direct effect.

Since "decisions" within the meaning of Article 34(2)(c) expressly exclude any approximation of national laws and regulations, it goes without saying that if the initiative under consideration involves any such approximation, it should be take the form of a framework decision pursuant to Article 34(2)(b) instead.

It is noted in this connection that in his Opinion of 12 September 2006 in Case C-303/05 *Advocaten voor de Wereld v. Leden van de Ministerraad*, Advocate General Ruiz-Jarabo Colomer considered that the framework decision on the European arrest warrant was a harmonising provision on the ground that "Arrest warrants are well established under the

¹ Case 45/86, *Commission v. Council* [1987] ECR 1439, para. 5.

² Case C-300/89, *Commission v. Council* [1991] ECR I-287, para. 10, and Case C-42/97, *European Parliament v. Council* [1999] ECR I-869, para. 36.

³ Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27.

⁴ See Prechal, *Adieu à la Directive?* *European Constitutional Law Review*, 1: 481–494, 2005.

criminal procedure laws of the Member State and, in certain circumstances, subject to specified conditions, the Framework Decision affords them cross-border effect, an objective which requires approximation of the relevant national rules" (para. 49). He noted (at para. 55) that "the remaining acts – framework decisions, decisions and conventions – are suitable for measures which require transposition into national law. However, the present proceedings do not call for an analysis of decisions, which are referred to in Article 34(2)(c) EU, because the article excludes their adoption for the purposes of harmonisation, which is vital to ensure the functioning of the European arrest warrant procedure."

By the same token, the initiative under consideration takes existing mechanisms - procedures for access rights to automated DNA files, automated dactyloscopic identification systems and vehicle registration data - and, in certain circumstances, subject to specified conditions, affords them cross-border effect, which, as is abundantly clear from an analysis of the text, requires approximation of the relevant national rules. Moreover, the text as it is currently being considered by the Council contains a substantial chapter on data protection, which can also be regarded as constituting an approximation of national laws and regulations.

It is therefore considered that the initiative for a Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, should take the form of a framework decision and be based on Article 34(2)(b) of the EU Treaty and not the form of a decision based on Article 34(2)(c).

At its meeting of 2 May 2007 the Committee on Legal Affairs accordingly decided, unanimously¹, to recommend that in the light of the foregoing the initiative for a Council Decision on the stepping up of the cross-border cooperation, particularly in combating terrorism and cross-border crime (2007/0804(CNS)) should be based on Article 34(2)(b) of Treaty on the European Union.

Yours sincerely,

Giuseppe Gargani

¹ The following were present for the final vote: Giuseppe Gargani (chairman), Cristian Dumitrescu, Francesco Enrico Speroni (vice-chairmen), Manuel Medina Ortega (draftsman), Mario Borghezio, Mogens N.J. Camre, Carlo Casini, Bert Doorn, Klaus-Heiner Lehne, Eva Lichtenberger, Antonio Masip Hidalgo, Aloyzas Sakalas, Gary Titley, Diana Wallis, Jaroslav Zvěřina.

PROCEDURE

Title	Treaty of Prüm: The stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime			
References	6566/2007 - C6-0079/2007 - 2007/0804(CNS)			
Date of consulting Parliament	1.3.2007			
Committee responsible Date announced in plenary	LIBE 13.3.2007			
Rapporteur(s) Date appointed	Fausto Correia 20.3.2007			
Legal basis disputed Date of JURI opinion	JURI 2.5.2007			
Discussed in committee	20.3.2007	11.4.2007	23.4.2007	7.5.2007
	21.5.2007			
Date adopted	21.5.2007			
Result of final vote	+: -: 0:	32 0 1		
Members present for the final vote	Alexander Alvaro, Giusto Catania, Mladen Petrov Cherveniyakov, Carlos Coelho, Fausto Correia, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Claudio Fava, Kinga Gál, Patrick Gaubert, Lilli Gruber, Jeanine Hennis-Plasschaert, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Kartika Tamara Liotard, Sarah Ludford, Javier Moreno Sánchez, Martine Roure, Károly Ferenc Szabó, Søren Bo Søndergaard, Adina-Ioana Vălean, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Inés Ayala Sender, Simon Busuttil, Iratxe García Pérez, Sylvia-Yvonne Kaufmann, Bill Newton Dunn, Herbert Reul, Rainer Wieland			