

# EUROPEAN PARLIAMENT

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## **REPORT**

on the proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters  
(16069/2007 – C6-0010/2008 – 2005/0202(CNS))

(Renewed consultation)

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Martine Roure

### ***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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (16069/2007 – C6-0010/2008 – 2005/0202(CNS))**

**(Consultation procedure - renewed consultation)**

*The European Parliament,*

- having regard to the Council proposal (16069/2007),
  - having regard to the Commission proposal (COM(2005)0475),
  - having regard to its position of 27 September 2006<sup>1</sup>,
  - having regard to its position of 7 June 2007<sup>2</sup>,
  - having regard to Article 34(2)(b) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0010/2008),
  - having regard to Rules 93, 51 and 55(3) of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0322/2008),
1. Approves the Council proposal 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;
  4. Calls on the Council to consult Parliament again if it intends to amend the proposal substantially;
  5. Calls upon the Council and the Commission, following the entry into force of the Lisbon Treaty, to treat as a priority any subsequent proposal designed to amend this text pursuant to Article 10 of the Protocol on the transitional provisions to be annexed to the Treaty on European Union, to the Treaty on the functioning of the European Union, to the Treaty establishing the European Atomic Energy Community and to Declaration No 50 relating thereto, in particular with respect to the jurisdiction of the European Court of Justice;
  6. Instructs its President to forward its position to the Council and the Commission, and the

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<sup>1</sup> OJ C 306E, 15.12.2006, p. 263.

<sup>2</sup> OJ C 125E, 22.5.2008, p. 154.

governments of the Member States.

## Amendment 1

### Proposal for a Council Framework Decision Recital 4 a (new)

*Text proposed by the Council*

*Amendment*

***(4a) Article 16 of the Treaty on the functioning of the European Union as introduced by the Treaty of Lisbon will enable data protection rules for the purposes of police and judicial cooperation in criminal matters to be strengthened.***

## Amendment 2

### Proposal for a Council Framework Decision Recital 5

*Text proposed by the Council*

*Amendment*

(5) The exchange of personal data in the framework of police and judicial cooperation in criminal matters, notably under the principle of availability of information as laid down in the Hague Programme, should be supported by clear (...) rules enhancing mutual trust between the competent authorities and ensuring that the relevant information is protected ***in a way excluding any discrimination of this cooperation between the Member States while*** fully respecting fundamental rights of individuals. ***Existing instruments at the European level do not suffice. 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<sup>4</sup> does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such***

(5) The exchange of personal data in the framework of police and judicial cooperation in criminal matters, notably under the principle of availability of information as laid down in the Hague Programme, should be supported by clear (...) rules enhancing mutual trust between the competent authorities and ensuring that the relevant information is protected fully respecting fundamental rights of individuals.

*as those provided for by Title VI of the Treaty on European Union, or, in any case, to processing operations concerning public security, defence, State security and the activities of the State in areas of criminal law.*

<sup>4</sup> OJ L 281, 23.11.1995, p. 31.

### Amendment 3

#### Proposal for a Council Framework Decision Recital 5 a

*Text proposed by the Council*

(5a) The Framework Decision applies only to data gathered or processed by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. ***The Framework Decision leaves it to Member States to determine more precisely at national level which other purposes are to be considered incompatible with the purpose for which the personal data were originally collected.*** In general, further processing for historical, statistical or scientific purposes is not incompatible with the original purpose of the processing.

*Amendment*

(5a) The Framework Decision applies only to data gathered or processed by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. In general, further processing for historical, statistical or scientific purposes is not incompatible with the original purpose of the processing.

### Amendment 4

#### Proposal for a Council Framework Decision Recital 6 b

*Text proposed by the Council*

***(6b) This Framework Decision shall not apply to personal data which a Member State has obtained within the scope of this Framework Decision and which originate in that Member State.***

*Amendment*

***deleted***

*Justification*

*It is of crucial importance that this Framework Decision also applies to national data*

*processing as to avoid different levels of data protection throughout the European Union.*

## **Amendment 5**

### **Proposal for a Council Framework Decision Recital 7**

*Text proposed by the Council*

(7) The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union.

*Amendment*

(7) The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union ***in accordance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereinafter referred to as "Convention 108")***.

## **Amendment 6**

### **Proposal for a Council Framework Decision Recital 8 b**

*Text proposed by the Council*

(8b) Archiving in a separate data set is permissible only if the data are no longer required and used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Archiving in a separate data set is also permissible if the archived data are stored in a database with other data in such a way that they can no longer be used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. The appropriateness of the archiving period depends on the purposes of archiving and the legitimate interests of the data subjects. ***In the case of archiving for historical purposes a very long period may also be envisaged.***

*Amendment*

(8b) Archiving in a separate data set is permissible only if the data are no longer required and used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Archiving in a separate data set is also permissible if the archived data are stored in a database with other data in such a way that they can no longer be used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. The appropriateness of the archiving period depends on the purposes of archiving and the legitimate interests of the data subjects.



## Amendment 7

### Proposal for a Council Framework Decision Recital 11 a

*Text proposed by the Council*

(11a) Where personal data may be further processed after the Member State from which the data were obtained has given its consent, each Member State may determine the modalities of such consent, ***including, for example, by way of general consent for categories of information or categories of further processing.***

*Amendment*

(11a) Where personal data may be further processed after the Member State from which the data were obtained has given its consent, each Member State may determine the modalities of such consent.

## Amendment 8

### Proposal for a Council Framework Decision Recital 13 a

*Text proposed by the Council*

(13a) Member *State* should ensure that the data subject is informed that the personal data could be or are being collected, processed or transmitted to *an other* Member State for the purpose of prevention, investigation, detection, and prosecution of criminal offences or the execution of criminal penalties. The modalities of the right of the data subject to be informed and the exceptions thereto shall be determined by national law. This may take a general form, for example, through the law or through the publication of a list of the processing operations.

*Amendment*

(13a) Member *States* should ensure that the data subject is informed that the personal data could be or are being collected, processed or transmitted to *another* Member State, ***to a third country, or to a private entity*** for the purpose of prevention, investigation, detection, and prosecution of criminal offences or the execution of criminal penalties. The modalities of the right of the data subject to be informed and the exceptions thereto shall be determined by national law. This may take a general form, for example, through the law or through the publication of a list of the processing operations.

## Amendment 9

### Proposal for a Council Framework Decision Article 1 - paragraph 2 - point c a (new)

*Text proposed by the Council*

*Amendment*

***(ca) are processed at national level.***

## *Justification*

*It is of crucial importance that this Framework Decision also applies to national data processing as to avoid different levels of data protection throughout the European Union.*

### **Amendment 10**

#### **Proposal for a Council Framework Decision Article 1 – paragraph 4**

*Text proposed by the Council*

*Amendment*

***4. This Framework Decision is without prejudice to essential national security interests and specific intelligence activities in the field of national security.***

***deleted***

### **Amendment 11**

#### **Proposal for a Council Framework Decision Article 2 – point 1**

*Text proposed by the Council*

*Amendment*

(1) "to make anonymous" shall mean to modify personal data in such a way that details of personal or material circumstances can no longer ***or only with disproportionate investment of time, cost and labour*** be attributed to an identified or identifiable individual.

(1) "to make anonymous" shall mean to modify personal data in such a way that details of personal or material circumstances can no longer be attributed to an identified or identifiable individual.

### **Amendment 12**

#### **Proposal for a Council Framework Decision Article 7**

*Text proposed by the Council*

*Amendment*

The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life shall be

**(1)** The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex

*permitted only when this is strictly necessary and when the domestic law provides adequate safeguards.*

life shall be *prohibited*.

*(2) By way of exception, such data may be processed if:*

*- provided for by law, following prior authorisation by a competent judicial authority, on a case-by-case basis and if absolutely necessary for the prevention, investigation, detection or prosecution of terrorist offences and of other serious criminal offences,*

*- Member States provide suitable specific safeguards, for example access to the data concerned only for personnel who are responsible for legitimate tasks which justify the processing.*

*These specific categories of data may not be processed automatically unless domestic law provides appropriate safeguards. The same proviso shall also apply to personal data relating to criminal convictions.*

### **Amendment 13**

#### **Proposal for a Council Framework Decision Article 11 - paragraph 1**

*Text proposed by the Council*

1. All transmissions of personal data are to be logged or documented for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security.

*Amendment*

1. All transmissions, ***accesses and subsequent processing*** of personal data are to be logged or documented for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security.

### **Amendment 14**

#### **Proposal for a Council Framework Decision Article 12 – paragraph 1**

*Text proposed by the Council*

1. Personal data received from or made available by the competent authority of

*Amendment*

1. Personal data received from or made available by the competent authority of

another Member State may, in accordance with the requirements of Article 3(2), be further processed only for the following purposes other than those for which they were transmitted or made available:

another Member State may, in accordance with the requirements of Article 3(2), be further processed only *if necessary* for the following purposes other than those for which they were transmitted or made available:

## Amendment 15

### Proposal for a Council Framework Decision Article 12 – paragraph 1, point d

#### *Text proposed by the Council*

(d) any other purpose only with the prior consent of the transmitting Member State or with the consent of the data subject, given in accordance with national law.

#### *Amendment*

(d) any other *specified* purpose *provided that it is laid down by law and is necessary in a democratic society for the protection of one of the interests set out in Article 9 of Convention 108, but* only with the prior consent of the transmitting Member State or with the consent of the data subject, given in accordance with national law.

*(Note to translation: exact same language as ECHR)*

## Amendment 16

### Proposal for a Council Framework Decision Article 14 – paragraph 1

#### *Text proposed by the Council*

1. Member States shall provide that personal data transmitted or made available by the competent authority of another Member State may be transferred to third States or international bodies or organisations established by international agreements or declared as an international body only if

#### *Amendment*

1. Member States shall provide that personal data transmitted or made available *on a case-by-case basis* by the competent authority of another Member State may be transferred to third States or international bodies or organisations established by international agreements or declared as an international body only if

## Amendment 17

### Proposal for a Council Framework Decision Article 14 – paragraph 1, point d

*Text proposed by the Council*

(d) the third State or international body concerned ensures an adequate level of protection for the intended data processing.

*Amendment*

(d) the third State or international body concerned ensures an adequate level of protection for the intended data processing ***equivalent to the one afforded by Article 2 of the Additional Protocol to the Convention 108 , and the corresponding case-law under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.***

## Amendment 18

### Proposal for a Council Framework Decision Article 14– paragraph 2

*Text proposed by the Council*

2. Transfer without prior consent in accordance with paragraph 1, point c, shall be permissible only if transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third State or to essential interests of a Member State and the prior consent cannot be obtained in good time. The authority responsible for giving consent shall be informed without delay.

*Amendment*

2. Transfer without prior consent in accordance with paragraph 1, point c, shall be permissible only if transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third State or to essential interests of a Member State and the prior consent cannot be obtained in good time. ***In such a case, the personal data may be processed by the recipient only if absolutely necessary for the specific purpose for which the data were supplied.*** The authority responsible for giving consent shall be informed without delay. ***Such data transfers shall be notified to the competent supervisory authority.***

## Amendment 19

### Proposal for a Council Framework Decision Article 14 – paragraph 3

#### *Text proposed by the Council*

3. By way of derogation from paragraph 1, point d, personal data may be transferred if

(a) the national law of the Member State transferring the data so provides for it because of

- i. legitimate specific interests of the data subject, or
- ii. legitimate prevailing interests, especially ***important public interests, or***

(b) the third State or receiving international body or organisation provides safeguards which are ***deemed*** adequate ***by*** the Member State concerned according to its national law.

#### *Amendment*

3. By way of derogation from paragraph 1, point d, personal data may ***exceptionally*** be transferred if

(a) the national law of the Member State transferring the data so provides for it because of:

- i. legitimate specific interests of the data subject, or
- ii. legitimate prevailing interests, especially ***the urgent and essential interests of a Member State or for the purpose of averting imminent serious threats to public safety, and***

(b) the third State or receiving international body or organisation provides safeguards which the Member State concerned ***shall ensure are adequate*** according to its national law.

***(ba) Member States shall ensure that records are kept of such transfers and shall make them available to national data protection authorities on request.***

## Amendment 20

### Proposal for a Council Framework Decision Article 14 – paragraph 4

#### *Text proposed by the Council*

4. The adequacy of the level of protection referred to in paragraph 1, point d, shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations. Particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the State of origin and the State or

#### *Amendment*

4. The adequacy of the level of protection referred to in paragraph 1, point d, shall be assessed ***by an independent authority***, in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations. Particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the State of origin and the State

international organisation of final destination of the data, the rules of law, both general and sectoral, in force in the third State or international organisation in question and the professional rules and security measures which are complied with there.

or international organisation of final destination of the data, the rules of law, both general and sectoral, in force in the third State or international organisation in question and the professional rules and security measures which are complied with there.

## Amendment 21

### Proposal for a Council Framework Decision Article 14 a – title

*Text proposed by the Council*

*Amendment*

*Article 14a*

*Article 14a*

*Transmission to private parties in Member States*

*Transmission to private parties **and access to data received by private parties** in Member States*

## Amendment 22

### Proposal for a Council Framework Decision Article 14 a – paragraph 1

*Text proposed by the Council*

*Amendment*

1. Member States shall provide that personal data received from or made available by the competent authority of another Member State may be transmitted to private parties only if:

1. Member States shall provide that personal data received from or made available **on a case-by-case basis** by the competent authority of another Member State may be transmitted to private parties only if:

## Amendment 23

### Proposal for a Council Framework Decision Article 14 a – paragraph 2 a (new)

*Text proposed by the Council*

*Amendment*

***2a. Member States shall provide that their respective competent authorities may have access to and process personal data controlled by private persons only on a case-by-case basis, in specific***

*circumstances, for specified purposes and subject to judicial scrutiny in the Member States.*

#### **Amendment 24**

##### **Proposal for a Council Framework Decision Article 14 a – paragraph 2 b (new)**

*Text proposed by the Council*

*Amendment*

***2b. The national legislation of the Member States shall provide that, where private persons receive and process data as part of a public service remit, they are subject to requirements which are at least equivalent to or otherwise exceed those imposed on the competent authorities.***

#### **Amendment 25**

##### **Proposal for a Council Framework Decision Article 17 – paragraph 1 – point a**

*Text proposed by the Council*

*Amendment*

(a) at least a confirmation from the controller or from the national supervisory authority as to whether or not data relating to him ***have been transmitted or made available*** and information on the recipients or categories of recipients to whom the data have been disclosed and communication of the data undergoing processing; ***or***

(a) at least confirmation from the controller or from the national supervisory authority as to whether or not data relating to him ***are being processed*** and information on the ***purpose of the processing, the recipients or categories of recipients to whom the data have been disclosed and communication of the data undergoing processing, and knowledge of the reasons for any automated decisions;***

#### **Amendment 26**

##### **Proposal for a Council Framework Decision Article 22 – paragraph 2 – point h**

*Text proposed by the Council*

*Amendment*

(h) prevent the unauthorised reading, copying, modification or deletion of

(h) prevent the unauthorised reading, copying, modification or deletion of



personal data during transfers of personal data or during transportation of data media (transport control);

personal data during transfers of personal data or during transportation of data media, ***including by means of appropriate encryption techniques*** (transport control);

#### **Amendment 27**

##### **Proposal for a Council Framework Decision Article 22 – paragraph 2 – point j a (new)**

*Text proposed by the Council*

*Amendment*

***(ja) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures relating to internal monitoring to ensure compliance with this Framework Decision (self-auditing).***

#### **Amendment 28**

##### **Proposal for a Council Framework Decision Article 24**

*Text proposed by the Council*

*Amendment*

Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Framework Decision and shall in particular lay down effective, proportionate and dissuasive sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Framework Decision.

Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Framework Decision and shall in particular lay down effective, proportionate and dissuasive sanctions, ***including administrative and/or criminal penalties in accordance with national law***, to be imposed in case of infringement of the provisions adopted pursuant to this Framework Decision.

#### **Amendment 29**

##### **Proposal for a Council Framework Decision Article 25 – paragraph 1 a (new)**

*Text proposed by the Council*

*Amendment*

***1a. Each Member State shall ensure that***

*the supervisory authorities are consulted when drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences or the enforcement of criminal penalties.*

## **Amendment 30**

### **Proposal for a Council Framework Decision Article 25 a (new)**

*Text proposed by the Council*

*Amendment*

#### **Article 25a**

***Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the Prevention, Investigation, Detection and Prosecution of Criminal Offences***

***1. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the Prevention, Investigation, Detection and Prosecution of Criminal Offences, (hereinafter referred to as 'the Working Party'), is established. It shall have advisory status and act independently.***

***2. The Working Party shall be composed of a representative of the supervisory authority or authorities designated by each Member State, a representative of the European Data Protection Supervisor, and a representative of the Commission. Each member of the Working Party shall be designated by the institution, authority or authorities which he represents. Where a Member State has designated more than one supervisory authority, they shall nominate a joint representative.***

***The chairpersons of the joint supervisory bodies set up under Title VI of the Treaty on European Union shall be entitled to participate in or to be represented at the***

*meetings of the Working Party. The supervisory authority or authorities designated by Iceland, Norway and Switzerland shall be entitled to be represented at meetings of the Working Party insofar as issues related to the Schengen acquis are concerned.*

*3. The Working Party shall take its decisions by a simple majority of the representatives of the supervisory authorities.*

*4. The Working Party shall elect its chairperson. The chairperson's term of office shall be two years. His appointment shall be renewable.*

*5. The Working Party's secretariat shall be provided by the Commission.*

*6. The Working Party shall adopt its own rules of procedure.*

*7. The Working Party shall consider items placed on its agenda by its chairperson, either on his own initiative or at the request of a representative of the supervisory authorities, the Commission, the European Data Protection Supervisor or the chairpersons of the joint supervisory bodies.*

## **Amendment 31**

### **Proposal for a Council Framework Decision Article 25 b (new)**

*Text proposed by the Council*

*Amendment*

*Article 25b*

*Tasks*

*1. The Working Party shall:*

*(a) give an opinion on national measures, where necessary to ensure that the standard of data protection achieved in national data processing is equivalent to that provided for in this Framework Decision.*

*(b) give an opinion on the level of*

*protection between the Member States and third countries and international bodies, in particular to ensure that personal data are transferred in accordance with Article 14 of this Framework Decision to third countries or international bodies which secure an adequate level of data protection,*

*(c) advise the Commission and the Member States on any proposed amendment to this Framework Decision, on any additional or specific measures to safeguard the rights and freedoms of natural persons with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences and on any other proposed measures affecting such rights and freedoms.*

*2. If the Working Party finds differences between the laws and practices of Member States which are likely to affect the equivalence of protection for persons with regard to the processing of personal data in the European Union, it shall inform the Council and the Commission.*

*3. The Working Party may, on its own initiative or that of the Commission or the Council, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the European Union for the purpose of the prevention, investigation, detection and prosecution of criminal offences.*

*4. The Working Party's opinions and recommendations shall be forwarded to the European Parliament, the Council and the Commission.*

*5. The Commission shall, on the basis of the information provided by the Member States, report to the Working Party on the*

*action taken in response to its opinions and recommendations. That report shall be made public and shall also be forwarded to the European Parliament and the Council. The Member States shall inform the Working Party of any action taken by them pursuant to paragraph 1.*

*6. The Working Party shall draw up an annual report regarding the protection of natural persons with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences in the European Union and in third countries. The report shall be made public and shall be transmitted to the European Parliament, the Council and the Commission.*

## Amendment 32

### Proposal for a Council Framework Decision Article 27 a – paragraph 1

#### *Text proposed by the Council*

1. Three years after expiry of the period laid down in Article 28(1), Member States shall report to the Commission on the national measures they have taken to ensure full compliance with this Framework Decision, and particularly also with regard to those provisions that already have to be complied with when data is collected. The Commission shall examine in particular the *implications of the provision on scope in* Article 1(2).

#### *Amendment*

1. Three years after expiry of the period laid down in Article 28(1), Member States shall report to the Commission on the national measures they have taken to ensure full compliance with this Framework Decision, and particularly also with regard to those provisions that already have to be complied with when data is collected. The Commission shall examine in particular the *application of* Article 1(2).

## **Amendment 33**

### **Proposal for a Council Framework Decision Article 27 a – paragraph 2 a (new)**

*Text proposed by the Council*

*Amendment*

***2a. To this end, the Commission shall take into account the observations forwarded by the parliaments and governments of the Member States, the European Parliament, the Article 29 working party established by Directive 95/46/EC, the European Data Protection Supervisor and the Working Party established in Article 25a of this Framework Decision.***

## EXPLANATORY STATEMENT

### Background

In December 2005, at the time of the adoption of the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services, the Council reaffirmed the commitment of several successive Presidencies to the swift adoption of a framework decision on the protection of personal data in the third pillar.

To that end, the Commission made in October 2005 a proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters.

The European Parliament adopted its first opinion on 14 June 2006, proposing a number of amendments to enhance the Commission proposal. In its legislative resolution adopted on 27 September 2006, Parliament called on the Council 'to consult Parliament again if it intends to amend the Commission proposal substantially'.

After deadlock had been reached within the Council on this framework decision, the European Parliament adopted, on 14 December 2006, a recommendation to the Council in which it stated that it was 'extremely concerned at the direction being taken by the debate in the Council, with Member States appearing to be moving towards a data protection agreement based on the lowest common denominator,' and feared, 'moreover, that the level of data protection will be lower than that provided by Directive 95/46/EC and Council of Europe Convention No 108 and that implementation of such an agreement might have a negative impact on the general principle of data protection in each Member State without establishing a satisfactory level of protection at European level'.

Following this recommendation, the Council took the decision to reconsult the European Parliament based on a Council text of March 2007. The European Parliament adopted its opinion on the 7th of June 2007, in which, in addition to several proposals for amendments, it *"Strongly regrets the lack of consensus in the Council on an extended scope for the Framework Decision, and calls on the Commission and the Council to propose the extension of its scope to data processed at national level after the assessment and revision of the Framework Decision and at the latest three years after its entry into force in order to ensure the coherence of data protection rules in the European Union"*.

The Council reached on 11th of December 2007 a political agreement on the proposed Framework Decision which is significantly different to both the original Commission proposal and the Council text on which the European Parliament was first reconsulted. The Council has thus decided to proceed with a second reconsultation of the European Parliament based on the text which gained the political agreement of the Member States.

## **Data Protection in the Treaty on the functioning of the European Union**

In our previous report, we proposed that a possible solution to Member State's opposition to having a large scope for the Framework Decision which would cover data processed at national level, would be to hold a revision of the Framework decision in order to assess the extension of the scope.

We welcome the insertion of an evaluation clause by the Council and whereas 6a which foresees a possible extension of the scope. However, article 16 of the Treaty on the functioning of the European Union will provide the European Union with a clear legal basis for specific rules on the protection of personal data in the fields of judicial and police cooperation. It is therefore necessary to hold a revision of the Framework Decision within six months following the date of entry into force of the Treaty of Lisbon and in particular with a view of extending its scope.

### **Position of the rapporteur**

I welcome the Council decision to proceed with a second reconsultation of the European Parliament considering the significant impact this Framework Decision will have on the fundamental rights of EU citizens, in particular the protection of private life. This gives credit to the Council, showing its continued willingness to engage with Members.

I am thus satisfied by the fact that the Council has partly adopted the compromise regarding the scope of the Framework Decision which we suggested in our last report.

However, the European Parliament has always insisted in favour of a strong and protective Framework Decision which would allow a level of data protection at least equivalent to that insured in the first pillar by the 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 the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108).

I therefore regret that the Council has emptied the original Commission proposal of its content and has reached political agreement on the lowest possible common denominator. This is the price of the rule of unanimity in the Council. The level of data protection of this text is minimal and also leaves very serious gaps. In some cases, one might even question whether it respects the standards set by the Convention 108 especially with regards to the principle of proportionality which is a fundamental principle of data protection.

I therefore propose a series of significant amendments which aim at addressing the issues which have always been at the heart of the concern voiced by the European Parliament:

#### **Insuring the principles of proportionality and purpose limitation:**

Article 3 sets the conditions for purpose limitation and proportionality. The collection of personal data must be fair and lawful as set out by article 9 of the Convention 108. Further processing should be possible on a case by case basis in order to take into account the specific nature of police and judicial cooperation but only if it is compatible with the purposes for



which the data was collected.

Article 12 (d) however allows for the data to be used for "any other purpose" which is too wide and does not allow for the full respect of purpose limitation. The rapporteur therefore suggests setting clear and substantive limitations to any further processing. The consent of the transmitting Member State in itself cannot be considered as sufficient. In addition, I repeat that I don't believe that real free and informed consent of the data subject is possible in the field of police and judicial cooperation, it should therefore not be the only criterion to measure the possibility of further processing.

### **Sensitive Data**

The processing of special categories of data should be the exception rather than the rule and should only be permissible in very strict and well defined cases provided by law.

### **Transfer of Data to Third Countries**

I am happy to see the reinsertion of Article 14(4) which provides for the assessment of the adequacy of the level of protection insured by the Third Country. This was a priority for the European Parliament. However, this clause can only be effective if the adequacy finding is made by an independent authority and not the Member State transferring the data.

### **Transfer to private parties**

During negotiations on the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services, the European Parliament insisted that the issue of national authorities should have a possibility to access data stored by private parties. I therefore propose to reinsert this concept in conformity with our previous reports.

### **Right of access**

The data subject cannot fully exercise his rights to rectification or judicial remedies if he is not informed of the purposes for which the data concerning him are being processed.

### **Working Party and national data protection authorities**

I am surprised that this important provision has been deleted by the Council at a very late stage in the discussions. A forum of national and European supervisory authorities is needed to insure harmonised application of the Framework Decision. Such a group exists in the first pillar with the Article 29 Working Party and should also exist in the third pillar. I therefore suggest to reinsert the article providing the creation of a Working Party and to define its tasks clearly.

Furthermore, the role of national data protection authorities should be extended to being consulted with regard measures relating to the protection of personal data in police and judicial cooperation in the same way that Article 28(2) of Directive 95/46/EC provides for the first pillar.

## PROCEDURE

<b>Title</b>	Protection of personal data		
<b>References</b>	07315/2007 – C6-0115/2007 – 16069/2007 – C6-0010/2008 – COM(2005)0475 – C6-0436/2005 – 2005/0202(CNS)		
<b>Date of consulting Parliament</b>	13.12.2005		
<b>Committee responsible</b> Date announced in plenary	LIBE 15.1.2008		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 15.1.2008		
<b>Not delivering opinions</b> Date of decision	JURI 18.4.2008		
<b>Rapporteur(s)</b> Date appointed	Martine Roure 11.2.2008		
<b>Discussed in committee</b>	11.2.2008	27.2.2008	15.7.2008
<b>Date adopted</b>	15.7.2008		
<b>Result of final vote</b>	+: 38	–: 0	0: 1
<b>Members present for the final vote</b>	Alexander Alvaro, Catherine Boursier, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Giuseppe Castiglione, Giusto Catania, Carlos Coelho, Esther De Lange, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Jeanine Hennis-Plasschaert, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Baroness Sarah Ludford, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Martine Roure, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka		
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Simon Busuttil, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Antonio Masip Hidalgo, Bill Newton Dunn, Maria Grazia Pagano, Eva-Britt Svensson		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Ioannis Kasoulides		