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REPORT

on the initiative of the French Republic with a view to adopting a Council decision on the use of information technology for customs purposes
(17483/2008 – 17483/2008COR1 – C6-0037/2009 – 2009/0803(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Alexander Alvaro

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 initiative of the French Republic with a view to adopting a Council decision on the use of information technology for customs purposes
(17483/2008– C6-0037/2009 – 2009/0803(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (17483/2008),
 - having regard to Article 30(1)(a) of the EU Treaty,
 - having regard to Article 39(1) and Article 34(2)(c) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0037/2009) ,
 - having regard to Rules 100 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0052/2009),
1. Approves the initiative of the French Republic 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 initiative of the French Republic substantially;
 5. Instructs its President to forward its position to the Council and the Commission, and to the government of the French Republic.

Amendment 1

Initiative of the French Republic Recital 3

Text proposed by the French Republic

(3) It is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities,

Amendment

(3)It is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities,

using new technology for the management and transmission of such information, **subject to** the provisions of *the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981*, and the principles contained in Recommendation R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987, regulating the use of personal data in the police sector.

using new technology for the management and transmission of such information, **taking into account** the provisions of *Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters*¹ and the principles contained in Recommendation R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987, regulating the use of personal data in the police sector.

¹ OJ L 350, 30.12.2008, p. 60.

Justification

It is necessary to update the references concerning the data protection instruments that must be taken into account in this field.

Amendment 2

Initiative of the French Republic Recital 4

Text proposed by the French Republic

(4) It is also necessary to enhance complementarity with actions in the context of cooperation with the European Police Office (Europol) and Eurojust, by **granting those agencies access to** the Customs Information System.

Amendment

(4) It is also necessary to enhance complementarity with actions in the context of cooperation with the European Police Office (Europol) and Eurojust, by **allowing data from** the Customs Information System **to be communicated to those agencies subject to certain conditions**.

Justification

Europol et Eurojust ne peuvent avoir un accès direct aux données du système d'information des douanes, ces offices ne peuvent que demander que leur soient communiquées des données, cette demande doit être justifiée. Un tel accès direct et un droit de gestion des données ne sont ni proportionnés ni nécessaires aux enquêtes concernées, aucune mission concrète et exacte n'étant définie et aucune justification à un tel élargissement du SID à Europol et à Eurojust n'étant fournie. Un tel élargissement d'accès à Europol et à Eurojust constitue un détournement de la finalité du SID et présente un risque inacceptable d'interconnexion des systèmes d'information.

Amendment 3

Initiative of the French Republic Recital 4 a (new)

Text proposed by the French Republic

Amendment

(4a) Reading access to the Customs Information System would allow Eurojust to obtain information required for an accurate preliminary overview immediately in order to identify and overcome legal obstacles and achieve better prosecution results. Reading access to the customs files identification database would allow Eurojust to receive information about ongoing and closed investigations in different Member States and thus to enhance support for judicial authorities in those Member States.

Justification

It is necessary to enhance the justification for access of Eurojust to the CIS.

Amendment 4

Initiative of the French Republic Recital 5 a (new)

Text proposed by the French Republic

Amendment

(5a) Member States recognise the benefits of full access to the customs files identification database in terms of coordinating and strengthening the fight against cross-border crime. Member States should therefore commit to entering data in that database to the greatest extent possible.

Amendment 5

Initiative of the French Republic Recital 5 b (new)

Text proposed by the French Republic

Amendment

(5b) Data obtained from the Customs Information System should not be transferred under any circumstances for use by the national authorities of third countries.

Amendment 6

Initiative of the French Republic Recital 8

Text proposed by the French Republic

Amendment

(8) An operational analysis of the activities, ***resources and intentions*** of certain persons or businesses that do not comply ***or appear not to comply*** with national laws should help the customs authorities to take the appropriate measures in specific cases to achieve the objectives laid down as regards the fight against fraud.

(8) An operational analysis of the activities of certain persons or businesses that do not comply with national laws ***and of the resources which they use, or have used, to commit, in a short space of time, infringements as defined in this Decision, or which have enabled such infringements to be committed,*** should help the customs authorities to take the appropriate measures in specific cases to achieve the objectives laid down as regards the fight against fraud.

Justification

'Intentions' do not provide sufficient grounds for the entry of personal data in the system, notwithstanding the proposal's restriction of such an option to certain cases. It is essential that the information gathered should indicate that an infringement of the law – within the meaning of Article 15 of this proposal – is either about to be committed or has been committed.

Amendment 7

Initiative of the French Republic Recital 9 a (new)

Text proposed by the French Republic

Amendment

(9a) This Decision should not prevent Member States from applying their constitutional rules relating to public access to official documents.

Amendment 8

Initiative of the French Republic Article 2 – point 1 – point a

Text proposed by the French Republic

Amendment

(a) the movement of goods subject to measures of prohibition, restriction or control, in particular those measures covered by **Articles 36 and 223** of the Treaty establishing the European Community;

(a) the movement of goods subject to measures of prohibition, restriction or control, in particular those measures covered by **Articles 30 and 296** of the Treaty establishing the European Community;

Amendment 9

Initiative of the French Republic Article 2 – point 1 – point a a (new)

Text proposed by the French Republic

Amendment

(aa) measures to control cash movements within the Community, where such measures are taken in accordance with Article 58 of the Treaty establishing the European Community;

Justification

It is necessary to update the Decision having in view the provisions included in Regulation (EC) 1889/2005 of the European Parliament and of the Council on controls of cash entering or leaving the Community.

Amendment 10

Initiative of the French Republic

Article 2 – point 1 – point b – point i

Text proposed by the French Republic

(i) the laws, regulations or administrative provisions of a Member State in the application of which the customs administration of that Member State has partial or total competence, concerning the cross-border movement of goods subject to measures of prohibition, restriction or control, in particular those measures referred to in **Articles 36 and 223** of the Treaty establishing the European Community, and non-harmonised excise duties;

Amendment

(i) the laws, regulations or administrative provisions of a Member State in the application of which the customs administration of that Member State has partial or total competence, concerning the cross-border movement of goods subject to measures of prohibition, restriction or control, in particular those measures referred to in **Articles 30 and 296** of the Treaty establishing the European Community, and non-harmonised excise duties;

Amendment 11

Initiative of the French Republic

Article 2 – point 2

Text proposed by the French Republic

2) the term "personal data" means any information relating to an identified or identifiable **individual**;

Amendment

2) the term "personal data" means any information relating to an identified or identifiable **natural person (data subject), an identifiable natural person being one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity**;

Justification

It is necessary to amend the definition of the term 'personal data' in accordance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

Amendment 12

Initiative of the French Republic Article 2 – point 3

Text proposed by the French Republic

3) the term "supplying Member State" means a State which **includes** an item of data in the Customs Information System;

Amendment

3) the term "supplying Member State" means a *Member* State which **enters** an item of data **in** the Customs Information System;

(This amendment - replacement of the term 'include' with the term 'enter' and the corresponding noun, adjective forms - applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 13

Initiative of the French Republic Article 3 – paragraph 1 – point g a (new)

Text proposed by the French Republic

Amendment

(ga) cash detained, seized or confiscated.

Justification

It is necessary to update the Decision having in view the provisions included under Article 1(9) of Regulation (EC) 766/2008 of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

Amendment 14

Initiative of the French Republic Article 4 – paragraph 2 – point a

Text proposed by the French Republic

(a) *name*, maiden name, forenames, **former surnames** and aliases;

Amendment

(a) *names*, maiden name, forenames and aliases;

Justification

The data in the categories set out in Article 3 of the proposal may include only such personal information as is necessary and individual privacy may not be infringed thereby. Information about the personality and personal history of individuals may not be included: otherwise there is a risk of gradually creating a 'Big Brother' Europe without actually making European citizens any safer.

Amendment 15

Initiative of the French Republic

Article 4 – paragraph 4 – introductory part

Text proposed by the French Republic

Amendment

4. With regard to category set out in **point (g) of Article 3**, the items of information **included** in respect of persons shall comprise no more than:

4. With regard to **the** category set out in **Article 3(1)(g) and (ga)**, the items of information **entered** in respect of persons shall comprise no more than:

Justification

This represents a necessary amendment following the changes included under Article 3 (1), point (ga) new.

Amendment 16

Initiative of the French Republic

Article 4 – paragraph 5

Text proposed by the French Republic

Amendment

5. In any case personal data listed in Article 6, **first sentence, of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, hereinafter referred to as the "1981 Strasbourg Convention"**, shall not be **included**.

5. In any case personal data listed in Article 6 **of Framework Decision 2008/977/JHA** shall not be **entered**.

Justification

It is necessary to update the references concerning the data protection instruments that must be taken into account in this field.

Amendment 17

Initiative of the French Republic Article 5 – paragraph 1

Text proposed by the French Republic

1. Data in the categories referred to in Article 3 shall be ***included in*** the Customs Information System only for the purpose of sighting and reporting, discreet surveillance, specific checks, or operational analysis.

Amendment

1. Data in the categories referred to in ***Article 3(1)(a) to (g)*** shall be ***entered in*** the Customs Information System only for the purpose of sighting and reporting, discreet surveillance, specific checks ***and strategic*** or operational analysis.

Amendment 18

Initiative of the French Republic Article 5 – paragraph 1 a (new)

Text proposed by the French Republic

Amendment

1a. Data in the category referred to in Article 3(1)(ga) shall be entered in the Customs Information System only for the purpose of strategic or operational analysis.

Amendment 19

Initiative of the French Republic Article 5 – paragraph 2

Text proposed by the French Republic

2. For the purpose of the suggested actions referred to in paragraph 1, namely sighting and reporting, discreet surveillance, specific checks, or operational analysis, personal data within ***any of*** the categories referred to in *Article 3* may be ***included*** in the Customs Information System only if, especially on the basis of prior illegal activities, there are ***real*** indications to suggest that the person concerned has

Amendment

2. For the purpose of the suggested actions referred to in paragraph 1, namely sighting and reporting, discreet surveillance, specific checks ***and strategic*** or operational analysis, personal data within the categories referred to in *Article 3(1)*, ***with the exception of point (e)***, may be ***entered*** in the Customs Information System only if, especially on the basis of prior illegal activities, there are ***factual*** indications ***or***

committed, is in the act of committing, or will commit serious contraventions of national laws.

reasonable grounds to suggest that the person concerned has committed, is in the act of committing, or will commit serious contraventions of national laws.

Justification

The term ‘real’ could create confusions. By means of example, Eurojust Decision in Article 14(4) point b) and Europol Decision in Article 12(1) point b) refer to "factual indications" or to "factual indications or reasonable grounds" not to "real indications".

Amendment 20

Initiative of the French Republic Article 6 – paragraph 1 – point iv

Text proposed by the French Republic

Amendment

(iv) persons accompanying the person concerned or occupants of the means of transport; **deleted**

Justification

The data in the categories set out in Article 3 of the proposal may include only such personal information as is necessary and individual privacy may not be infringed thereby. Any item of information about an individual that is included must relate solely to the facts of an established breach of the law, but such information may not include the fact of a person being in the same vehicle as another person accused of breaking the law.

Amendment 21

Initiative of the French Republic Article 7 – paragraph 2

Text proposed by the French Republic

Amendment

2. Each Member State shall send the other Member States and the committee referred to in Article 23 a list of its competent authorities which have been designated in accordance with paragraph 1 of this Article to have direct access to the Customs Information System **stating**, for each authority, which data it may have access to and for what purposes.

2. Each Member State shall send the other Member States and the committee referred to in Article 23 a list of its competent authorities which have been designated in accordance with paragraph 1 of this Article to have direct access to the Customs Information System. **Any amendment made to that list shall also be communicated to the other Member States**

and to the committee referred to in Article 23. The list shall state, for each authority, which data it may have access to and for what purposes. **Each Member State shall ensure the publication of the list and any amendment thereto.**

Justification

The publication of the mentioned list of authorities would help to achieve better transparency and create a practical tool for an effective supervision.

Amendment 22

**Initiative of the French Republic
Article 7 – paragraph 3**

Text proposed by the French Republic

Amendment

3. Notwithstanding the provisions of paragraphs 1 and 2, Member State may, by unanimous agreement, permit access to the Customs Information System by international or regional organisations. Such agreement shall take the form of a Council decision. In reaching this decision the Member States shall take account of any reciprocal arrangements and any opinion of the Joint Supervisory Authority referred to in Article 25 on the adequacy of data protection measures. **deleted**

Justification

L'accès général au système d'information des douanes ne peut pas être autorisé à des organisations internationales ou régionales qui ne sont nullement précisées, encore moins à des Etats tiers. La suppression s'impose également en raison de l'absence de toute garantie en matière de protection des données personnelles dans le présent paragraphe. Il existe des précédents en la matière qui exige la plus grande prudence en matière d'accès de tiers, Etats ou organisations internationales, à des systèmes de données de l'Union européenne. Les négociations en cours concernant l'accord SWIFT doivent nous inciter à la plus grande vigilance.

Amendment 23

Initiative of the French Republic Article 8 – paragraph 1

Text proposed by the French Republic

1. Member States may use data obtained from the Customs Information System only in order to achieve the aim stated in Article 1(2). ***However, they may use it for administrative or other purposes with the prior authorisation of, and subject to any conditions imposed by, the Member State which included it in the system. Such other use shall be in accordance with the laws, regulations and procedures of the Member State which seeks to use it and should take into account Principle 5.5 of Recommendation R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987, regulating the use of personal data in the police sector, hereinafter referred to as "Recommendation R (87) 15".***

Amendment

1. Member States, ***Europol and Eurojust*** may use data obtained from the Customs Information System only in order to achieve the aim stated in Article 1(2).

Justification

Data should only be used for well defined and clearly limited purposes governed by the legal framework.

Amendment 24

Initiative of the French Republic Article 8 – paragraph 2

Text proposed by the French Republic

2. Without prejudice to *paragraphs 1 and 4* of this Article, ***Article 7(3)*** and Articles 11 and 12, data obtained from the Customs Information System shall only be used by national authorities in each Member State designated by the Member State in question, which are competent, in accordance with the laws, regulations and procedures of that Member State, to act in

Amendment

2. Without prejudice to *paragraph 1* of this Article and Articles 11 and 12, data obtained from the Customs Information System shall only be used by national authorities in each Member State designated by the Member State in question, which are competent, in accordance with the laws, regulations and procedures of that Member State, to act in

order to achieve the aim stated in Article 1(2).

order to achieve the aim stated in Article 1(2).

Justification

In keeping with the amendment to Article 7(3).

Amendment 25

**Initiative of the French Republic
Article 8 – paragraph 3**

Text proposed by the French Republic

3. Each Member State shall send the other Member States and the *Committee* referred to in Article 23 a list of the competent authorities it has designated in accordance with paragraph 2 of this Article.

Amendment

3. Each Member State shall send the other Member States and the *committee* referred to in Article 23 a list of the competent authorities it has designated in accordance with paragraph 2 of this Article.

Any amendment made to that list shall also be communicated to the other Member States and to the committee referred to in Article 23. Each Member State shall ensure the publication of the list and any amendment thereto.

Justification

The publication of the mentioned list of authorities would help to achieve better transparency and create a practical tool for an effective supervision.

Amendment 26

**Initiative of the French Republic
Article 8 – paragraph 4**

Text proposed by the French Republic

4. Data obtained from the Customs Information System may, with the prior authorisation of, and subject to any conditions imposed by, the Member State which included it in the system, be communicated for use by national authorities other than those designated under paragraph 2, non-Member States,

Amendment

deleted

and international or regional organisations wishing to make use of them. Each Member State shall take special measures to ensure the security of such data when they are being transmitted or supplied to services located outside its territory. Details of such measures must be communicated to the Joint Supervisory Authority referred to in Article 25.

Justification

The safeguards envisaged in this provision are far from sufficient from the perspective of the protection of personal data.

Amendment 27

Initiative of the French Republic Article 11

Text proposed by the French Republic

*1. Subject to Chapter IX of this Decision, the European Police Office (Europol) shall, within its mandate, have the right **to have access to the** data entered *into* the Customs Information System in accordance with Articles 2, 3, 4, 5 and 6, **to search those data directly, and to enter data into the system.***

*2. **Where a search by Europol reveals the existence of an alert in the Customs Information System, Europol shall, via the channels defined in Council Decision [...] establishing a European Police Office (Europol Decision), inform the Member State which issued the alert.***

*3. **Use of information obtained from a search in the Customs Information System is subject to the consent of the Member State which entered the data into***

Amendment

Subject to Chapter IX of this Decision, the European Police Office (Europol) shall, within its mandate, have the right **to make a duly substantiated request for** data entered *in* the Customs Information System in accordance with Articles 2, 3, 4, 5 and 6 **to be communicated to a clearly identified member of its staff.**

Data communicated in accordance with the preceding paragraph shall be destroyed either immediately, should they prove not to be of relevance to an ongoing Europol enquiry or investigation, or in accordance with the provisions of Article 14. Europol shall notify the competent authority which supplied the data of the fact that they have been destroyed and the reasons for their destruction. The competent authority shall record the notification.

the system. If this Member State allows the use of such information, the handling thereof shall be governed by the Europol Decision. Europol may communicate such information to third countries and third bodies only with the consent of the Member State which entered the data into the system.

4. Europol may request further information from the Member States concerned, in accordance with the provisions of the Europol Decision.

5. Without prejudice to paragraphs 3 and 4, Europol shall not connect the parts of the Customs Information System to which it has access to any computer system for data collection and processing operated by or at Europol, nor transfer the data contained therein to any such system, nor download or otherwise copy any part of the Customs Information System.

Europol shall limit access to data entered into the Schengen Information System to duly authorised staff of Europol.

Europol shall allow the Joint Supervisory Body, set up under Article 34 of the Europol Decision, to review the activities of Europol in the exercise of its right to accede to and to search data entered into the Customs Information System.

Justification

Europol ne peut avoir un accès direct aux données du système d'information des douanes, Europol ne peut que demander que lui soient communiquées des données, cette demande doit être justifiée. Un tel accès direct et un droit de gestion des données ne sont ni proportionnés ni nécessaires aux enquêtes concernées, aucune mission concrète et exacte n'étant définie et aucune justification à un tel élargissement du SID à Europol n'étant fournie. Un tel élargissement d'accès à Europol constitue un détournement de la finalité du SID et présente un risque inacceptable d'interconnexion des systèmes d'information. Par ailleurs, il est inacceptable de profiter de cette proposition pour élargir les compétences d'Europol à accéder à d'autres informations que celles contenues dans le SID.

Amendment 28

Initiative of the French Republic Article 11 – paragraph 5 a (new)

Text proposed by the French Republic

Amendment

5a. Nothing in this Article shall be interpreted as affecting the provisions of the Europol Decision concerning data protection and the liability for any unauthorised or incorrect processing of such data by Europol staff or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

Amendment 29

Initiative of the French Republic Article 12 – paragraph 1

Text proposed by the French Republic

Amendment

1. ***Subject to Chapter IX***, the national members of Eurojust ***and*** their assistants shall, within their mandate, have the right to have access to the data entered *into* the Customs Information System in accordance with ***Articles 2, 3, 4, 5 and 6***, and to search those data.

1. The national members of Eurojust, their ***deputies, assistants and specifically authorised staff*** shall, within their mandate ***and for the purpose of fulfilling their tasks***, have the right to have access to the data entered *in* the Customs Information System in accordance with ***Articles 1, 3, 4, 5, 6, 15, 16, 17, 18 and 19*** and to search those data.

Amendment 30

Initiative of the French Republic Article 12 – paragraph 2

Text proposed by the French Republic

Amendment

2. Where a search by a national member of Eurojust reveals ***the existence of an alert*** in the Customs Information System, he or she shall inform the Member State ***having issued the alert thereof. Any communication of information obtained***

2. Where a search by a national member of Eurojust, ***their deputies, assistants or specifically authorised staff*** reveals a ***match between information processed by Eurojust and an entry*** in the Customs Information System, he or she shall inform

from such a search may be communicated to third countries and third bodies only with the consent of the Member State which issued the alert.

the Member State *which made the entry.*

Justification

The safeguards envisaged in this provision are far from sufficient from the perspective of the protection of personal data.

Amendment 31

Initiative of the French Republic Article 12 – paragraph 3

Text proposed by the French Republic

3. Nothing in this Article shall be interpreted as affecting the provisions of ***Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime*** which concern data protection and the liability for any unauthorised or incorrect processing of such data by national members of Eurojust ***or*** their assistants, or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

Amendment

3. Nothing in this Article shall be interpreted as affecting the provisions of ***Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust***¹ which concern data protection and the liability for any unauthorised or incorrect processing of such data by national members of Eurojust, their ***deputies***, assistants ***and specifically authorised staff***, or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

¹ *OJ L 138, 4.6.2009, p. 14.*

Amendment 32

Initiative of the French Republic Article 12 – paragraph 4

Text proposed by the French Republic

4. No parts of the Customs Information System to which the national members ***or*** their assistants have access shall be connected to any computer system for data collection and processing in operation by or at Eurojust, nor shall any data contained in the former be transferred to the latter, nor shall any part of the Customs

Amendment

4. No parts of the Customs Information System to which the national members ***of Eurojust***, their ***deputies***, assistants ***or specifically authorised staff*** have access shall be connected to any computer system for data collection and processing in operation by or at Eurojust, nor shall any data contained in the former be transferred

Information System be downloaded.

to the latter, nor shall any part of the Customs Information System be downloaded.

Amendment 33

Initiative of the French Republic Article 12 – paragraph 5

Text proposed by the French Republic

5. Access to data entered in the Customs Information System shall be limited to the national members **and** their assistants and not be extended to Eurojust staff.

Amendment

5. Access to data entered in the Customs Information System shall be limited to the national members **of Eurojust**, their **deputies**, assistants and **specifically authorised staff and shall** not be extended to **other** Eurojust staff.

Amendment 34

Initiative of the French Republic Article 13 – paragraph 1

Text proposed by the French Republic

1. Only the supplying Member State **or Europol** shall have the right to amend, supplement, **correct** or **delete** data which it has entered in the Customs Information System.

Amendment

1. Only the supplying Member State shall have the right to amend, supplement, **rectify** or **erase** data which it has entered in the Customs Information System.

Amendment 35

Initiative of the French Republic Article 13 – paragraph 2

Text proposed by the French Republic

2. Should a supplying Member State **or Europol** note, or have drawn to its attention, that the data it **included** are factually inaccurate or were **included**, or are stored contrary to this Decision, it shall amend, supplement, **correct** or **delete** the data, as appropriate, and shall advise the

Amendment

2. Should a supplying Member State note, or have drawn to its attention, that the data it **entered** are factually inaccurate or were **entered**, or are stored contrary to this Decision, it shall amend, supplement, **rectify** or **erase** the data, as appropriate, and shall advise the other Member States

other Member States *and Europol* accordingly.

and Eurojust accordingly.

Amendment 36

Initiative of the French Republic Article 13 – paragraph 3

Text proposed by the French Republic

3. If one of the Member States *or* Europol has evidence to suggest that an item of data is factually inaccurate, or was *included* or is stored in the Customs Information System, contrary to this Decision, it shall advise the supplying Member State *or Europol* as soon as possible. The *latter* shall check the data concerned and, if necessary, *correct* or *delete* the item without delay. The supplying Member State *or Europol* shall advise the other Member States and *Europol of any correction or deletion effected*.

Amendment

3. If one of the Member States, Europol *or Eurojust* has evidence to suggest that an item of data is factually inaccurate, or was *entered* or is stored in the Customs Information System, contrary to this Decision, it shall advise the supplying Member State as soon as possible. The *supplying Member State* shall check the data concerned and, if necessary, *rectify* or *erase* the item without delay. The supplying Member State shall advise the other Member States and *Eurojust where an item of data has been rectified or erased*.

Amendment 37

Initiative of the French Republic Article 13 – paragraph 4

Text proposed by the French Republic

4. If, when entering data in the Customs Information System, a Member State *or Europol* notes that its report conflicts with a previous report as to content or suggested action, it shall immediately advise the Member State *or Europol* which made the previous report. The two Member States *or the Member State and Europol* shall then attempt to resolve the matter. In the event of disagreement, the first report shall stand, but those parts of the new report which do not conflict shall be *included* in the System.

Amendment

4. If, when entering data in the Customs Information System, a Member State notes that its report conflicts with a previous report as to content or suggested action, it shall immediately advise the Member State which made the previous report. The two Member States shall then attempt to resolve the matter. In the event of disagreement, the first report shall stand, but those parts of the new report which do not conflict shall be *entered* in the System.

Amendment 38

Initiative of the French Republic Article 13 – paragraph 5

Text proposed by the French Republic

5. Subject to the provisions of this Decision, where in any Member State a court, or other competent authority within that Member State, makes a final decision as to amendment, supplementation, **correction** or **deletion** of data in the Customs Information System, the Member States **and Europol** undertake mutually to enforce such a decision. In the event of conflict between such decisions of courts or other competent authorities in different Member States, including those referred to in Article 22(4) concerning **correction or deletion**, the Member State which included the data in question **or Europol** shall **delete** them from the System.

Amendment

5. Subject to the provisions of this Decision, where in any Member State a court, or other competent authority within that Member State, makes a final decision as to amendment, supplementation, **rectification** or **erasure** of data in the Customs Information System, the Member States undertake mutually to enforce such a decision. In the event of conflict between such decisions of courts or other competent authorities in different Member States, including those referred to in Article 22(4) concerning **rectification** or **erasure**, the Member State which entered the data in question shall **erase** them from the System.

Amendment 39

Initiative of the French Republic Article 14 – paragraph 1

Text proposed by the French Republic

1. Data **included** in the Customs Information System shall be kept only for the time necessary to achieve the purpose for which **it was included**. The need for their retention shall be reviewed at least annually by the supplying Member State, **or by Europol if the latter entered the data**.

Amendment

1. Data **entered** in the Customs Information System shall be kept only for the time necessary to achieve the purpose for which **they were entered**. The need for their retention shall be reviewed at least annually by the supplying Member State.

Amendment 40

Initiative of the French Republic Article 14 – paragraph 2

Text proposed by the French Republic

2. The supplying Member State, **or Europol if the latter entered the data**, may, within the review period, decide to retain data until the next review if their retention is necessary for the purposes for which they were **included**. Without prejudice to Article 22, if there is no decision to retain data, they shall automatically be transferred to that part of the Customs Information System to which access shall be limited in accordance with paragraph 4 of this Article.

Amendment

2. The supplying Member State may, within the review period, decide to retain data until the next review if their retention is necessary for the purposes for which they were **entered**. Without prejudice to Article 22, if there is no decision to retain data, they shall automatically be transferred to that part of the Customs Information System to which access shall be limited in accordance with paragraph 4 of this Article.

Amendment 41

Initiative of the French Republic Article 14 – paragraph 3

Text proposed by the French Republic

3. The Customs Information System shall automatically inform the supplying Member State, **or Europol if the latter entered the data**, of a scheduled transfer of data from the Customs Information System under paragraph 2, giving one month's notice.

Amendment

3. The Customs Information System shall automatically inform the supplying Member State of a scheduled transfer of data from the Customs Information System under paragraph 2, giving one month's notice.

Amendment 42

Initiative of the French Republic Article 14 – paragraph 4

Text proposed by the French Republic

4. Data transferred under paragraph 2 shall continue to be retained for one year within the Customs Information System, but, without prejudice to Article 22, shall be

Amendment

4. Data transferred under paragraph 2 shall continue to be retained for one year within the Customs Information System, but, without prejudice to Article 22, shall be

accessible only to a representative of the Committee referred to in Article 23 or to the supervisory authorities referred to in **Articles 24(1) and 25(1)**. During that period they may consult the data only for the purposes of checking their accuracy and lawfulness, after which they *must* be **deleted**.

Amendment 43

Initiative of the French Republic Article 15 – paragraph 1

Text proposed by the French Republic

1. The Customs Information System shall contain data in accordance with this Chapter, in addition to data in accordance with Article 3, in a special database, hereinafter referred to as "the customs files identification database". Without prejudice to the provisions of this Chapter and of Chapters VII and VIII, all the provisions of this Decision shall also apply to the customs files identification database.

Amendment 44

Initiative of the French Republic Article 15 – paragraph 2

Text proposed by the French Republic

2. The aim of the customs files identification database shall be to enable the national authorities responsible for carrying out customs investigations designated pursuant to Article 7, when opening a file on or investigating one or more persons or businesses, to identify competent authorities of other Member States which are investigating or have investigated those persons or businesses, in order, through information on the existence

accessible only to a representative of the Committee referred to in Article 23 or to the supervisory authorities referred to in **Articles 22a and 25a**. During that period they may consult the data only for the purposes of checking their accuracy and lawfulness, after which they *shall* be **erased**.

Amendment

1. The Customs Information System shall contain data in accordance with this Chapter, in addition to data in accordance with Article 3, in a special database, hereinafter referred to as "the customs files identification database". Without prejudice to the provisions of this Chapter and of Chapters VII and VIII, all the provisions of this Decision shall also apply to the customs files identification database. ***The exception in Article 21(3) shall not apply.***

Amendment

2. The aim of the customs files identification database shall be to enable the national authorities responsible for carrying out customs investigations designated pursuant to Article 7, when opening a file on or *when* investigating one or more persons or businesses, ***and Europol and Eurojust***, to identify competent authorities of other Member States which are investigating or have investigated those persons or businesses, in

of investigation files, to achieve the aim referred to in Article 1(2).

order, through information on the existence of investigation files, to achieve the aim referred to in Article 1(2).

Amendment 45

Initiative of the French Republic Article 15 – paragraph 3 – introductory part

Text proposed by the French Republic

3. For the purposes of the customs files identification database, each Member State shall send the other Member States and the committee mentioned in Article 23 a list of serious ***infringements*** of its national laws.

This list shall comprise only ***infringements*** that are punishable:

Amendment

3. For the purposes of the customs files identification database, each Member State shall send the other Member States, ***Europol, Eurojust*** and the committee referred to in Article 23 a list of serious ***contraventions*** of its national laws.

This list shall comprise only ***contraventions*** that are punishable:

Amendment 46

Initiative of the French Republic Article 15 – paragraph 3 – point b

Text proposed by the French Republic

(b) by a fine of at least ***EUR 15 000***.

Amendment

(b) by a fine of at least ***EUR 25 000***.

Justification

The types of infringement indicated in this subparagraph include a large number of minor violations of the law, thus permitting the entry of a great deal of data of a personal nature, which are neither proportionate nor necessary to the inquiries concerned.

Amendment 47

Initiative of the French Republic Article 16 – paragraph 1 – introductory part

Text proposed by the French Republic

1. ***The competent authorities shall enter data*** from investigation files in the customs

Amendment

1. ***Data*** from investigation files ***shall be entered*** in the customs files identification

files identification database for the purposes set out in Article 15(2). The data shall cover only the following categories:

database **only** for the purposes set out in Article 15(2). The data shall only cover the following categories:

Amendment 48

Initiative of the French Republic

Article 16 – paragraph 1 – point a – point iii

Text proposed by the French Republic

(iii) has been the subject of an administrative or **legal** sanction for such an infringement;

Amendment

(iii) has been the subject of an administrative or **judicial** sanction for such an infringement;

Amendment 49

Initiative of the French Republic

Article 17

Text proposed by the French Republic

A Member State shall not be obliged to make entries pursuant to Article 16 in any particular case if and for such time as this would harm public policy or other essential interests, in particular **with regard to data protection, of the Member State concerned**.

Amendment

A Member State shall not be obliged to make entries pursuant to Article 16 in any particular case if, and for such time as this would harm public policy or other essential interests, in particular **where this would present an immediate and serious threat to public security in that Member State, in another Member State or in a third country; where other essential interests of equal importance are at stake; where such entries could present serious harm to the rights of individuals or would prejudice an ongoing investigation**.

Amendment 50

Initiative of the French Republic

Article 18 – paragraph 2 – point b

Text proposed by the French Republic

(b) for businesses: business name and/or

Amendment

(b) for businesses: business name, and/or

name under which trade is conducted
and/or VAT identifier and/or excise duties
identification number *and/or address*.

name under which trade is conducted
and/or address and/or VAT identifier,
and/or excise duties identification number.

Amendment 51

Initiative of the French Republic Article 19 – paragraph 1 – point b

Text proposed by the French Republic

(b) data relating to investigation files
which have established that an
infringement has taken place but which
have not yet led to a conviction or to
imposition of a fine shall not be retained
beyond a period of **six years**;

Amendment

(b) data relating to investigation files
which have established that an
infringement has taken place but which
have not yet led to a conviction or to
imposition of a fine shall not be retained
beyond a period of **three years**;

Justification

The proposed data-retention periods are extremely long and not commensurate with pertinent measures to guarantee personal security and data protection.

Amendment 52

Initiative of the French Republic Article 20

Text proposed by the French Republic

1. Each Member State intending to receive personal data from, or include them in, the Customs Information System shall, no later than ..., adopt national measures sufficient to achieve a level of protection of personal data at least equal to that resulting from the principles of the 1981 Strasbourg Convention.

2. A Member State shall receive personal data from, or include them in, the Customs Information System only where the arrangements for the protection of such data provided for in paragraph 1 have entered into force in the territory of that Member State. The Member State shall also have previously designated a

Amendment

Framework Decision 2008/977/JHA shall apply to the protection of the data exchanged in accordance with this Decision unless otherwise provided in this Decision.

national supervisory authority or authorities in accordance with Article 24.

3. In order to ensure the proper application of the data protection provisions in this Decision, the Customs Information System shall be regarded in every Member State as a national data file subject to the national provisions referred to in paragraph 1 and any more stringent provisions contained in this Decision.

Amendment 53

Initiative of the French Republic Article 21 – paragraph 1

Text proposed by the French Republic

Amendment

1. Subject to Article 8(1), each Member State shall ensure that it shall be unlawful under its laws, regulations and procedures for personal data from the Customs Information System to be used other than for the purposes set out in Article 1(2).

deleted

Amendment 54

Initiative of the French Republic Article 21 – paragraph 3

Text proposed by the French Republic

Amendment

3. Subject to Article 8(1), personal data *included* by other Member States *may* not be copied from the Customs Information System into other national data files, except those copies held in systems of risk management used to direct national customs controls or copies held in an operational analysis system used to coordinate actions.

3. Subject to Article 8(1), personal data *entered* by other Member States *shall* not be copied from the Customs Information System into other national data files, except those copies held in systems of risk management used to direct national customs controls or copies held in an operational analysis system used to coordinate actions. *Such copies may be made to the extent necessary for specific cases or investigations.*

Amendment 55

Initiative of the French Republic Article 21 – paragraph 4

Text proposed by the French Republic

4. In the two exceptional cases provided for in paragraph 3, only the analysts **designated** by the national authorities of each Member State shall be empowered to process personal data obtained from the Customs Information System within the framework of a risk management system used to direct customs controls by national authorities or of an operational analysis system used to coordinate actions.

Amendment

4. In the two exceptional cases provided for in paragraph 3, only the analysts **authorised** by the national authorities of each Member State shall be empowered to process personal data obtained from the Customs Information System within the framework of a risk management system used to direct customs controls by national authorities or of an operational analysis system used to coordinate actions.

Amendment 56

Initiative of the French Republic Article 21 – paragraph 7

Text proposed by the French Republic

7. Personal data copied from the Customs Information System shall be kept only for the time necessary to achieve the purpose for which they were copied. The need for their retention shall be reviewed at least annually by the **partner** in the Customs Information System which carried out the copying. The storage period shall not exceed ten years. Personal data which are not necessary for the continuation of the analysis shall be **deleted** immediately or have any identifying factors removed.

Amendment

7. Personal data copied from the Customs Information System shall be kept only for the time necessary to achieve the purpose for which they were copied. The need for their retention shall be reviewed at least annually by the **Member State** in the Customs Information System which carried out the copying. The storage period shall not exceed ten years. Personal data which are not necessary for the continuation of the **operational** analysis shall be **erased** immediately or have any identifying factors removed.

Amendment 57

Initiative of the French Republic Article 22 – paragraph 1

Text proposed by the French Republic

1. The rights of persons with regard to personal data in the Customs Information System, in particular their right of access, shall be ***put into effect*** in accordance with the laws, regulations and procedures of the Member State in which such rights are invoked.

If laid down in the laws, regulations and procedures of the Member State concerned, the national supervisory authority provided for in Article 23 shall decide whether information is to be communicated and the procedures for so doing.

A Member State which has not supplied the data concerned may communicate data only if it has first given the supplying Member State an opportunity to adopt its position.

Amendment

The rights of persons with regard to personal data in the Customs Information System, in particular their right of access, ***rectification, erasure or blocking*** shall be ***exercised*** in accordance with the laws, regulations and procedures of the Member State ***implementing Framework Decision 2008/977/JHA*** in which such rights are invoked. ***Access shall be refused to the extent that such refusal is necessary and proportionate in order to avoid jeopardising any ongoing national investigations, or during a period of discreet surveillance or sighting and reporting. When the applicability of an exemption is assessed, the legitimate interests of the person concerned shall be taken into account.***

Amendment 58

Initiative of the French Republic Article 22 – paragraph 2

Text proposed by the French Republic

Amendment

2. A Member State, to which an application for access to personal data is made, shall refuse access if access may undermine the performance of the legal task specified in the report pursuant to Article 5(1), or in order to protect the rights and freedoms of others. Access shall be refused in any event during the period of discreet surveillance or sighting and reporting, and during the period in which the operational analysis of the data or administrative enquiry or criminal investigation is ongoing. *deleted*

Amendment 59

Initiative of the French Republic Article 22 – paragraph 3

Text proposed by the French Republic

Amendment

3. In each Member State, a person may, according to the laws, regulations and procedures of the Member State concerned, have personal data relating to himself corrected or deleted if those data are factually inaccurate, or were included or are stored in the Customs Information System contrary to the aim stated in Article 1(2) of this Decision or to the provisions of Article 5 of the 1981 Strasbourg Convention. *deleted*

Amendment 60

Initiative of the French Republic

Article 22 – paragraph 4 – first subparagraph – point c a (new)

Text proposed by the French Republic

Amendment

(ca) block personal data;

Amendment 61

Initiative of the French Republic

Article 22 – paragraph 4 – second subparagraph

Text proposed by the French Republic

Amendment

The Member States concerned undertake mutually to enforce the final decisions taken by a court, or other competent authority, pursuant to points (a) to (c).

The Member States concerned undertake mutually to enforce the final decisions taken by a court, or other competent authority, pursuant to points (a) to (c) ***without prejudice to Article 29.***

Amendment 62

Initiative of the French Republic

Article 22 – paragraph 5

Text proposed by the French Republic

Amendment

5. The references in this Article and in Article 13(5) to a "final decision" do not indicate any obligation on the part of any Member State to appeal against a decision taken by a court or other competent authority.

deleted

Amendment 63

Initiative of the French Republic Article 22 a (new)

Text proposed by the French Republic

Amendment

Article 22a

Each Member State shall designate a national supervisory authority or national supervisory authorities responsible for personal data protection to carry out independent supervision of such data entered in the Customs Information System in accordance with Framework Decision 2008/977/JHA.

Amendment 64

Initiative of the French Republic Article 23 – paragraph 3

Text proposed by the French Republic

Amendment

3. The Committee shall report annually to the Council, in accordance with Title VI of the Treaty on European Union, regarding the efficiency and effectiveness of the Customs Information System, making recommendations as necessary.

3. The Committee shall report annually to the Council, in accordance with Title VI of the Treaty on European Union, regarding the efficiency and effectiveness of the Customs Information System, making recommendations as necessary. ***That report shall be sent to the European Parliament for information.***

Amendment 65

Initiative of the French Republic Article 24

Text proposed by the French Republic

Amendment

1. Each Member State shall designate a national supervisory authority or authorities responsible for personal data

deleted

protection to carry out independent supervision of such data included in the Customs Information System.

The supervisory authorities, in accordance with their respective national laws, shall carry out independent supervision and checks, to ensure that the processing and use of data held in the Customs Information System do not violate the rights of the person concerned. For this purpose the supervisory authorities shall have access to the Customs Information System

2. Any person may ask any national supervisory authority to check personal data relating to himself on the Customs Information System and the use which has been or is being made of those data. That right shall be governed by the laws, regulations and procedures of the Member State in which the request is made. If the data have been included by another Member State, the check shall be carried out in close coordination with that Member State's national supervisory authority.

Amendment 66

Initiative of the French Republic Article 25

Text proposed by the French Republic

Amendment

1. A Joint Supervisory Authority shall be set up, consisting of two representatives from each Member State drawn from the respective independent national supervisory authority or authorities.

deleted

2. The Joint Supervisory Authority shall perform its task in accordance with the provisions of this Decision and of the 1981 Strasbourg Convention taking into account Recommendation R (87) 15.

3. The Joint Supervisory Authority shall

be competent to supervise operation of the Customs Information System, to examine any difficulties of application or interpretation which may arise during its operation, to study problems which may arise with regard to the exercise of independent supervision by the national supervisory authorities of the Member States, or in the exercise of rights of access by individuals to the System, and to draw up proposals for the purpose of finding joint solutions to problems.

4. For the purpose of fulfilling its responsibilities, the Joint Supervisory Authority shall have access to the Customs Information System.

5. Reports drawn up by the Joint Supervisory Authority shall be forwarded to the authorities to which the national supervisory authorities submit their reports.

Amendment 67

Initiative of the French Republic Article 25 a (new)

Text proposed by the French Republic

Amendment

Article 25a

1. The European Data Protection Supervisor shall supervise the activities of the Commission in relation to the Customs Information System. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹ shall apply accordingly.

2. The national supervisory authorities and the European Data Protection

Supervisor, each acting within the scope of their respective competences, shall cooperate actively within the framework of their responsibilities and shall ensure coordinated supervision of the Customs Information System.

3. The national supervisory authorities and the European Data Protection Supervisor shall meet for that purpose at least once a year. The costs and servicing of those meetings shall be for the account of the European Data Protection Supervisor. A report of activities shall be submitted to the European Parliament, the Council and the Commission every two years.

¹ OJ L 8, 12.1.2001, p. 1.

Amendment 68

Initiative of the French Republic Article 26 – paragraph 1 – point a

Text proposed by the French Republic

(a) by the competent authorities of the Member States in respect of the terminals of the Customs Information System in their respective States;

Amendment

(a) by the competent authorities of the Member States in respect of the terminals of the Customs Information System in their respective *Member States and by Europol and Eurojust*;

Amendment 69

Initiative of the French Republic Article 26 – paragraph 2 – introductory part

Text proposed by the French Republic

2. In particular the competent authorities and the committee referred to in Article 23 shall take measures:

Amendment

2. In particular the competent authorities, ***Europol, Eurojust*** and the committee referred to in Article 23 shall take measures:

Amendment 70

Initiative of the French Republic

Article 26 – paragraph 2 – point d a (new)

Text proposed by the French Republic

Amendment

(da) to ensure that persons authorised to access the Customs Information System have access only to the data covered by their access authorisation and only by means of individual and unique user identities and confidential access modes (data access control);

Justification

Given that the data concerned are personal, and thus sensitive, steps must be taken to ensure that access to the customs information system is transparent and in compliance with similar information system regulations.

Amendment 71

Initiative of the French Republic

Article 26 – paragraph 2 – point e

Text proposed by the French Republic

Amendment

(e) to guarantee that, with respect to the use of the Customs Information System, authorised persons have right of access only to data for which they have competence; ***deleted***

Justification

Given that the data concerned are personal, and thus sensitive, steps must be taken to ensure that access to the customs information system is transparent and in compliance with similar information system regulations.

Amendment 72

Initiative of the French Republic

Article 26 – paragraph 2 – point e a (new)

Text proposed by the French Republic

Amendment

(ea) to ensure that all authorities with a right of access to the Customs Information System create profiles describing the functions and responsibilities of persons who are authorised to access, enter, rectify, erase and search the data and make those profiles available to the national supervisory authorities referred to in Article 22a without delay at their request (personnel profiles);

Justification

Given that the data concerned are personal, and thus sensitive, steps must be taken to ensure that access to the customs information system is transparent and in compliance with similar information system regulations.

Amendment 73

Initiative of the French Republic

Article 26 – paragraph 2 – point h a (new)

Text proposed by the French Republic

Amendment

(ha) to 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 Decision (self-auditing).

Justification

Given that the data concerned are personal, and thus sensitive, steps must be taken to ensure that access to the customs information system is transparent and in compliance with similar information system regulations.

Amendment 74

Initiative of the French Republic Article 28 – paragraph 1

Text proposed by the French Republic

1. Each Member State shall ***be responsible for the accuracy, currency and lawfulness of data it has included*** in the Customs Information System. ***Each Member State shall also be responsible for complying with the provisions of Article 5 of the 1981 Strasbourg Convention.***

Amendment

1. Each Member State shall ***ensure that the data which it has entered*** in the Customs Information System ***in accordance with Article 3, Article 4(1) and Article 8 of Framework Decision 2008/977/JHA are accurate, up-to-date, complete and reliable and that they are entered lawfully.***

Amendment 75

Initiative of the French Republic Article 28 – paragraph 2

Text proposed by the French Republic

2. Each Member State shall be liable, in accordance with its ***laws, regulations and procedures, for injury*** caused to a person through the use of the Customs Information System ***in the Member State concerned***. This shall also ***be the case where the injury was caused by the supplying*** Member State entering inaccurate data or entering data ***contrary to this Decision***.

Amendment

2. Each Member State shall be liable in accordance with its ***national law for any damage*** caused to a person through the use of the Customs Information System. This shall also ***apply to damage caused by a*** Member State entering inaccurate data or entering ***or storing*** data ***unlawfully***.

Amendment 76

Initiative of the French Republic Article 28 – paragraph 3

Text proposed by the French Republic

3. If ***the*** Member State ***against which an action in respect of inaccurate data is brought is not the Member State which supplied it***, the Member States ***concerned shall seek agreement as to what proportion, if any, of the sums paid out in***

Amendment

3. If ***a recipient*** Member State ***pays compensation for damage caused by the use of inaccurate data entered in the Customs Information System by another Member State***, the Member State ***that entered the inaccurate data shall refund***

compensation shall be reimbursed by the supplying Member State to the other Member State. Any such sums agreed shall be reimbursed on request.

the recipient Member State the amount paid in compensation, taking into account any fault that may lie with the recipient Member State.

Amendment 77

Initiative of the French Republic Article 28 – paragraph 3 a (new)

Text proposed by the French Republic

Amendment

3a. Europol and Eurojust shall be liable in accordance with their constituent rules.

Amendment 78

Initiative of the French Republic Article 29 – paragraph 2

Text proposed by the French Republic

Amendment

2. Other expenditure incurred in the implementation of this Decision shall be borne by the Member States. ***Each Member State's share shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the costs are incurred.***

For the purpose of applying this paragraph, the expression "gross national product" means the gross national product determined in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices or any Community instrument amending or replacing it.

2. Costs relating to the maintenance of the national work stations or terminals incurred in the implementation of this Decision shall be borne by the Member States.

Amendment 79

Initiative of the French Republic Article 31

Text proposed by the French Republic

The Member States shall ensure that their national law conforms to this Decision by

Amendment

The Member States shall ensure that their national law conforms to this Decision by **1 July 2011**.

Amendment 80

Initiative of the French Republic Article 32

Text proposed by the French Republic

This Decision replaces the Convention on the use of information technology for customs purposes, as well as the Protocol of 12 March 1999 on the scope of the laundering of proceeds in the Convention on the use of information technology for customs purposes and the inclusion of the registration number of the means of transport in the Convention (hereinafter referred to as the "protocol on the scope of the laundering of proceeds") and the Protocol of 8 May 2003 established in accordance with Article 34 of the Treaty on European Union, amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes (hereinafter referred to as the "Protocol on the creation of a customs files identification database), with effect from

Amendment

This Decision replaces the Convention on the use of information technology for customs purposes, as well as the Protocol of 12 March 1999 on the scope of the laundering of proceeds in the Convention on the use of information technology for customs purposes and the inclusion of the registration number of the means of transport in the Convention(hereinafter referred to as the "protocol on the scope of the laundering of proceeds") and the Protocol of 8 May 2003 established in accordance with Article 34 of the Treaty on European Union, amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes (hereinafter referred to as the "Protocol on the creation of a customs files identification database), with effect from **1 July 2011**.

Amendment 81

Initiative of the French Republic Article 32 – paragraph 1 a (new)

Text proposed by the French Republic

Amendment

The Convention and protocols referred to in the first paragraph shall therefore cease to be in force from the date of application of this Decision.

Amendment 82

Initiative of the French Republic Article 33

Text proposed by the French Republic

Amendment

Unless otherwise provided in this Decision, measures implementing the Convention on the use of information technology for customs purposes and the respective protocols on the scope of the laundering of proceeds and on the creation of a customs files identification database shall be repealed with effect from

Unless otherwise provided in this Decision, measures implementing the Convention on the use of information technology for customs purposes and the respective protocols on the scope of the laundering of proceeds and on the creation of a customs files identification database shall be repealed with effect from **1 July 2011**.

Amendment 83

Initiative of the French Republic Article 34

Text proposed by the French Republic

Amendment

Any dispute between Member States on the interpretation or application of this Decision shall, in an initial stage, be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

deleted

If no solution is found within six months, the matter will be referred to the Court of Justice of the European Communities by

a party to the dispute.

Amendment 84

**Initiative of the French Republic
Article 35 – paragraph 2**

Text proposed by the French Republic

2. It shall apply from

Amendment

2. It shall apply from **1 July 2011**.

EXPLANATORY STATEMENT

The French Republic presented an initiative with a view to the adoption of a Council Decision on the use of information technology for customs purposes. It is argued that the aim of the initiative is to replace the Convention on the use of information technology for customs purposes of 26 July 1995 (CIS Convention) by a Council Decision and bring it in line with the Regulation 766/2008 of 9 July 2008 amending Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

While the rapporteur understands the Member States' desire to construct an effective system for combating all forms of illegal trade he finds it regrettable that such measures should be decided in a hurry by the Member States prior to ratification of the Lisbon Treaty. This gives the impression that the Council of the European Union is consciously seeking to take key decisions before the European Parliament is in a position to be involved by codecision.

The rapporteur acknowledges that the text has undergone important changes since the initial version and he especially welcomes the efforts of the Council to update the data protection measures. Nevertheless, he believes that in its latest version of the text the Council has not yet sufficiently implemented the recommendations of the European Data Protection Supervisor and the Customs Joint Supervisory Authority.

The rapporteur specifically considers that clarification is lacking regarding

- a fully convincing and exhaustive justification for the necessity of updating the existing customs system,
- an explanation for giving access to Europol and Eurojust,
- Member States' information and supervisory obligations,
- clear purpose limitation regarding the collection and use of the data, with respect inter alia to the intention of giving Europol and Eurojust the right to access these data,
- compliance with existing Schengen Information System and Visa Information System regulations,
- re-use of the data collected in an international context,
- the involvement of the European Parliament and other actors,
- provisions for any revision of the decision that may be required.

Given that the data concerned are personal, and thus sensitive, steps must be taken to ensure that access to the customs information system is transparent, in compliance with similar information system regulations and consistent within the three-pillar as well as a possible non-pillar system.

The reference in Article 8 to the possible use of the data for 'administrative or other purposes' does not comply with the principle of the purpose limitation of data collection and is contrary to the views consistently expressed by the European Parliament that data should only be used for well defined and clearly limited purposes governed by the legal framework.

For similar reasons, and particularly the lack of effective representation of the interests of European citizens (in this case as regards their entitlement to receive information and have data deleted), the rapporteur advises strongly against making the data collected in the context of this initiative for a decision available to non-Member States or international organizations.

Finally, it is also essential that this decision and any ensuing measures taken by the Member States be subject to regular review.

PROCEDURE

Title	Use of information technology for customs purposes		
References	17483/2008 – C6-0037/2009 – 2009/0803(CNS)		
Date of consulting Parliament	26.1.2009		
Committee responsible Date announced in plenary	LIBE 5.2.2009		
Committee(s) asked for opinion(s) Date announced in plenary	CONT 5.2.2009	IMCO 5.2.2009	
Not delivering opinions Date of decision	CONT 1.10.2009	IMCO 28.9.2009	
Rapporteur(s) Date appointed	Alexander Alvaro 22.7.2009		
Discussed in committee	29.9.2009	6.10.2009	5.11.2009
Date adopted	5.11.2009		
Result of final vote	+: 35 –: 2 0: 7		
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Vilija Blinkevičiūtė, Louis Bontes, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Monika Flašíková Beňová, Nathalie Griesbeck, Sylvie Guillaume, Jeanine Hennis-Plasschaert, Salvatore Iacolino, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Renate Weber, Tatjana Ždanoka		
Substitute(s) present for the final vote	Alexander Alvaro, Edit Bauer, Anna Maria Corazza Bildt, Ana Gomes, Nadja Hirsch, Ramón Jáuregui Atondo, Wolfgang Kreissl-Dörfler, Petru Constantin Luhan, Antonio Masip Hidalgo, Mariya Nedelcheva, Raül Romeva i Rueda, Bogusław Sonik, Michèle Striffler, Kyriacos Triantaphyllides, Cecilia Wikström		