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*Plenary sitting*

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**A9-0361/2023**

15.11.2023

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## **REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Council Decision 2009/917/JHA, as regards its alignment with Union rules on the protection of personal data (COM(2023)0244 – C9-0170/2023 – 2023/0143(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Cornelia Ernst

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

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

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council amending Council Decision 2009/917/JHA, as regards its alignment with Union rules on the protection of personal data (COM(2023)0244 – C9-0170/2023 – 2023/0143(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0244),
  - having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0170/2023),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0361/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation Recital 2**

*Text proposed by the Commission*

(2) Council Decision 2009/917/JHA<sup>10</sup> on the use of information technology for customs purposes establishes the Customs Information System (CIS) to assist in preventing, investigating and prosecuting

*Amendment*

(2) Council Decision 2009/917/JHA<sup>10</sup> on the use of information technology for customs purposes establishes the Customs Information System (CIS) to assist in preventing, investigating and prosecuting

serious contraventions of national laws by making information available more rapidly and increase the effectiveness of the customs administrations. In order to ensure a consistent approach to the protection of personal data in the Union, that Decision should be amended to align it with Directive (EU) 2016/680. In particular, the personal data protection rules should respect the principle of purpose **specification**, be limited to specified categories of data subjects and categories of personal data, respect data security requirements, include additional protection for special categories of personal data and respect the conditions for subsequent processing. Moreover, provision should be made for the coordinated supervision model as introduced by Article 62 of Regulation (EU) 2018/1725<sup>11</sup> .

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<sup>10</sup> Council Decision 2009/917/JHA on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).

<sup>11</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

## Amendment 2

### Proposal for a regulation Recital 5

#### *Text proposed by the Commission*

(5) To ensure the optimal preservation of the data while reducing the administrative burden for the competent authorities, the procedure governing the

serious contraventions of national laws by making information available more rapidly and increase the effectiveness of the customs administrations. In order to ensure a consistent approach to the protection of personal data in the Union, that Decision should be amended to align it with Directive (EU) 2016/680. In particular, the personal data protection rules should respect the principle of purpose **limitation**, be limited to specified categories of data subjects and categories of personal data, respect data security requirements, include additional protection for special categories of personal data and respect the conditions for subsequent processing. Moreover, provision should be made for the coordinated supervision model as introduced by Article 62 of Regulation (EU) 2018/1725<sup>11</sup> .

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<sup>10</sup> Council Decision 2009/917/JHA on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).

<sup>11</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

#### *Amendment*

(5) To ensure the optimal preservation of the data while reducing the administrative burden for the competent authorities, the procedure governing the

retention of personal data in the CIS should be simplified by removing the obligation to review data annually and by setting a maximum retention period of **five** years which can be increased, subject to justification, by an additional period of two years. That retention period is necessary and proportionate in view of the typical length of criminal proceedings and the need for the data for the conduct of joint customs operations and of investigations.

retention of personal data in the CIS should be simplified by removing the obligation to review data annually and by setting **as a general rule** a maximum retention period of **three** years which can be increased, subject to justification, by an additional period of two years. That retention period is necessary and proportionate in view of the typical length of criminal proceedings and the need for the data for the conduct of joint customs operations and of investigations.

### Amendment 3

#### Proposal for a regulation

#### Article 1 – paragraph 1 – point 2

Decision 2009/917/JHA

Article 2 – paragraph 1 – point 2

*Text proposed by the Commission*

(2) **Point 2** of Article 2 is **hereby deleted**.

*Amendment*

(2) **In Article 2 point (2) is replaced by the following:**

**‘2. “personal data” means personal data as defined in Article 3, point (1), of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>1a</sup>;’**

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**<sup>1a</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).**

### Amendment 4

## **Proposal for a regulation**

### **Article 1 – paragraph 1 – point 3**

Decision 2009/917/JHA

Article 3 – paragraph 2

#### *Text proposed by the Commission*

In relation to the processing of personal data in the Customs Information System, the Commission shall be considered the processor, within the meaning of point (12) of Article 3 of Regulation (EU) 2018/1725, acting on behalf of the national authorities designated by each Member State, which shall be considered the controllers of the personal data.

#### *Amendment*

In relation to the processing of personal data in the Customs Information System, the Commission shall be considered the processor, within the meaning of point (12) of Article 3 of Regulation (EU) 2018/1725, acting, ***in accordance with Article 29 of that Regulation***, on behalf of the national authorities designated by each Member State, which shall be considered the controllers of the personal data.

## **Amendment 5**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 5**

Decision 2009/917/JHA

Article 5 – paragraph 2

#### *Text proposed by the Commission*

2. For the purpose of the actions referred to in paragraph 1, personal data in any of the categories referred to in Article 3(1) may be entered into the Customs Information System only if there are reasonable grounds, in particular on the basis of prior illegal activities, to suggest that the person concerned has committed, is in the act of committing or will commit criminal offences under national laws.

#### *Amendment*

2. For the purpose of the actions referred to in paragraph 1, personal data in any of the categories referred to in Article 3(1) may be entered into the Customs Information System only if there are reasonable ***and objective*** grounds, in particular on the basis of prior illegal activities, to suggest that the person concerned has committed, is in the act of committing or will commit criminal offences under national laws.

## **Amendment 6**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 6**

Decision 2009/917/JHA

Article 7 – paragraph 3



*Text proposed by the Commission*

*Amendment*

(6) **Paragraph 3 of Article 7 is replaced by the following:**

(6) **In Article 7 paragraph 3 is deleted;**

**‘3. Notwithstanding paragraphs 1 and 2, the Council may exceptionally, by a unanimous decision and after consultation of the European Data Protection Board, permit access to the Customs Information System by international or regional organisations, provided that both of the following conditions are met:**

**(a) the access complies with the general principles for transfers of personal data set out in Article 35 or, where applicable, Article 39 of Directive (EU) 2016/680;**

**(b) the access is based either on an adequacy decision adopted under Article 36 of that Directive or is subject to appropriate safeguards under Article 37 thereof.’**

## **Amendment 7**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 7**

Decision 2009/917/JHA

Article 8 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

Member States, Europol and Eurojust may process personal data obtained from the Customs Information System only in order to achieve the aim stated in Article 1(2), in accordance with the applicable rules of Union law on the **processing** of personal data.

Member States, Europol and Eurojust may process personal data obtained from the Customs Information System only in order to achieve the aim stated in Article 1(2), in accordance with the applicable rules of Union law on the **protection** of personal data.

## **Amendment 8**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 7 a (new)**

Decision 2009/917/JHA

Article 8 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**(7a) In Article 8 paragraph 2 is replaced by the following:**

**‘2. Without prejudice to paragraphs 1 and 4 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).’;**

**Amendment 9**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 8**

Decision 2009/917/JHA

Article 8 – paragraph 4 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) transmitted to, and further processed by, national authorities other than those designated under paragraph 2, in accordance with the applicable rules of Union law on the **processing** of personal data; or

(a) transmitted to, and further processed by, national authorities other than those designated under paragraph 2, in accordance with the applicable rules of Union law on the **protection** of personal data; or

**Amendment 10**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 8**

Decision 2009/917/JHA

Article 8 – paragraph 4 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) transferred to, and further processed by, the competent authorities of third countries and international or regional organisations, in accordance with Chapter V of Directive (EU) 2016/680 and, where relevant, with **Chapter V** of Regulation (EU) 2018/1725.

*Amendment*

(b) transferred to, and further processed by, the competent authorities of third countries and international or regional organisations, in accordance with Chapter V of Directive (EU) 2016/680 and, where relevant, with **Chapters V and IX** of Regulation (EU) 2018/1725.

**Amendment 11**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 9**

Decision 2009/917/JHA

Article 14

*Text proposed by the Commission*

Personal data entered into the Customs Information System shall be kept only for the time necessary to achieve the aim stated in Article 1(2) **and may not be retained for more than five** years. However, exceptionally, that data may be kept for an additional period of at most two years, where and insofar as **a strict need to do so** in order to achieve that aim **is established** in an individual case.

*Amendment*

Personal data entered into the Customs Information System shall be kept only for the time necessary to achieve the aim stated in Article 1(2). **The need for their retention shall, as a general rule, be reviewed at least once every three** years. However, exceptionally, that data may be kept for an additional period of at most two years, where and insofar as **strictly necessary** in order to achieve that aim in an individual case.

**Amendment 12**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11**

Decision 2009/917/JHA

Article 20

*Text proposed by the Commission*

Directive (EU) 2016/680 shall apply to the processing of personal data under this Decision.

*Amendment*

Directive (EU) 2016/680 **and Regulation (EU) 2018/1725** shall apply to the processing of personal data under this Decision.

## Amendment 13

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 13

Decision 2009/917/JHA

Article 26

*Text proposed by the Commission*

***Coordinated supervision among national supervisory authorities and the European Data Protection Supervisor shall be ensured*** in accordance with Article 62 of Regulation (EU) 2018/1725.

*Amendment*

- 1. The European Data Protection Supervisor shall be responsible for monitoring the processing of personal data under this Regulation by the Commission and for ensuring that it is carried out in accordance with this Regulation. The tasks and powers referred to in Articles 57 and 58 of Regulation (EU) 2018/1725 shall apply accordingly.***
- 2. The European Data Protection Supervisor shall carry out an audit of the processing of personal data by the Commission under this Regulation in accordance with international auditing standards at least every three years. A report on that audit shall be sent to the European Parliament, to the Council, to the Commission and to the national supervisory authorities.***
- 3. The European Data Protection Supervisor and the national supervisory authorities, each acting within the scope of their respective competences, shall cooperate actively within the framework of their responsibilities to ensure coordinated supervision*** in accordance with Article 62 of Regulation (EU) 2018/1725.

**ANNEX: LIST OF ENTITIES OR PERSONS  
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

<b>Entity and/or person</b>
The Rapporteur declares that she did not receive input from any entity or person.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Amending Council Decision 2009/917/JHA, as regards its alignment with Union rules on the protection of personal data
<b>References</b>	COM(2023)0244 – C9-0170/2023 – 2023/0143(COD)
<b>Date submitted to Parliament</b>	11.5.2023
<b>Committee responsible</b> Date announced in plenary	LIBE 11.5.2023
<b>Rapporteurs</b> Date appointed	Cornelia Ernst 6.7.2023
<b>Discussed in committee</b>	25.10.2023
<b>Date adopted</b>	13.11.2023
<b>Result of final vote</b>	+: 41 –: 0 0: 1
<b>Members present for the final vote</b>	Abir Al-Sahlani, Malik Azmani, Pietro Bartolo, Vasile Blaga, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Damien Carême, Lucia Ďuriš Nicholsonová, Cornelia Ernst, Maria Grapini, Sylvie Guillaume, Evin Incir, Sophia in 't Veld, Jeroen Lenaers, Juan Fernando López Aguilar, Erik Marquardt, Birgit Sippel, Sara Skytvedal, Annalisa Tardino, Milan Uhrík, Tom Vandendriessche, Elena Yoncheva
<b>Substitutes present for the final vote</b>	Cyrus Engerer, Nathalie Loiseau, Jan-Christoph Oetjen, Anne-Sophie Pelletier, Dragoş Tudorache, Maria Walsh
<b>Substitutes under Rule 209(7) present for the final vote</b>	Petras Auštrevičius, Katalin Cseh, Ciarán Cuffe, Marie Dauchy, Estrella Durá Ferrandis, Malte Gallée, Niclas Herbst, Martin Hojsík, France Jamet, Bernd Lange, Jutta Paulus, Laurence Sailliet, Ivan Štefanec
<b>Date tabled</b>	15.11.2023

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

<b>41</b>	<b>+</b>
ID	Marie Dauchy, France Jamet, Annalisa Tardino, Tom Vandendriessche
PPE	Vasile Blaga, Karolin Braunsberger-Reinhold, Niclas Herbst, Jeroen Lenaers, Laurence Sailliet, Sara Skyttedal, Ivan Štefanec, Maria Walsh
Renew	Abir Al-Sahlani, Petras Auštrevičius, Malik Azmani, Katalin Cseh, Lucia Ďuriš Nicholsonová, Martin Hojsík, Sophia in 't Veld, Nathalie Loiseau, Jan-Christoph Oetjen, Dragoș Tudorache
S&D	Pietro Bartolo, Estrella Durá Ferrandis, Cyrus Engerer, Maria Grapini, Sylvie Guillaume, Evin Incir, Bernd Lange, Juan Fernando López Aguilar, Birgit Sippel, Elena Yoncheva
The Left	Cornelia Ernst, Anne-Sophie Pelletier
Verts/ALE	Patrick Breyer, Saskia Bricmont, Damien Carême, Ciarán Cuffe, Malte Gallée, Erik Marquardt, Jutta Paulus

<b>0</b>	<b>-</b>

<b>1</b>	<b>0</b>
NI	Milan Uhrík

**Key to symbols:**

+ : in favour

- : against

0 : abstention