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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the initiative by the French Republic with a view to adopting a Council decision on the use of information technology for customs purposes (17483/2008 – 17483/2008 COR 1 – 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 by 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 by the French Republic (17483/2008 – 17483/2008 COR 1),

– having regard to Articles 30(1)(a) and 34(2)(c) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0037/2009),

– having regard to Rules 93, 51 and 41 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2009),

1. Rejects the initiative by the French Republic;

2. Calls on the French Republic to withdraw its initiative;

3. Instructs its President to forward its position to the Council and Commission, and the government of the French Republic.

EXPLANATORY STATEMENT

The Member States forwarded this 'initiative by the French Republic with a view to adopting a Council decision on the use of information technology for customs purposes' to Parliament for consultation. The European Parliament rapporteur recommends that the initiative be rejected for the following reasons.

The rapporteur does basically understand the Member States' desire to construct an effective system for combating all forms of illegal trade. At the same time, however, 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.

This applies all the more so to the present initiative in that the rapporteur has the impression that the title of the initiative conceals its true content. The content does rather justify the presumption that Member States are attempting to construct a system that is very similar to the Schengen Information System and the Visa Information System for customs purposes.

The rapporteur expects of the Council of the European Union that it take the opinions of the European Data Protection Supervisor and of the Article 29 Working Party into consideration. The rapporteur assumes that the Council is aware that the opinion of both these parties should be sought for initiatives of this type. In the present context it appears that neither party was involved in the deliberations, other than that they were both asked by the rapporteur for their positions on this initiative.

The rapporteur specifically considers that clarification is lacking regarding

- the inclusion of data,
- the validity of the data protection rules in the framework decision adopted,
- Member States' information obligations,
- the entitlement of EU citizens to receive information,
- re-use of the data collected in an international context,
- the involvement of the European Parliament and other actors,
- the inclusion of a rule on notification requirements in the event of the loss of personal data,
- 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,
- provisions for any revision of the decision that may be required.

The rapporteur thus considers that the Council of the European Union should clearly define who is covered by the scope of the framework decision, or to what extent the individual citizen is affected by this framework decision.
The provisions of the framework decision should also be absolutely clear about when access may be given to the data collected. In this respect, it must be explicitly stated that offences under national legislation cannot be enough in themselves, but there must be an actual infringement of the national provisions.

Given that the data concerned are personal, and thus sensitive, data on those concerned, steps must be taken to ensure that only highly trained and skilled staff are given access to the customs information system. In this respect, it should be pointed out that the reference to access by 'assistants' is not sufficiently transparent and does not sufficiently define the range of users and thus constitutes a further reason for rejecting the initiative.

The reference to the possible use of the data for 'other purposes' in no way corresponds to the principle of the purpose limitation of data collection and is contrary to the views consistently expressed over time by the European Parliament that the principles of data protection legislation are universally applicable and should be reflected across the board. 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.

For reasons associated with the principles of data thrift and data avoidance, the rapporteur is critical of the duplication of data and the inadequate rules on data deletion, as well as the retention period which seems very long. There is also an absence of rules to ensure the physical integrity of the data collected or incorporate arrangements for informing the party concerned in the event of data loss, data theft or a comparable threat to their personal data.

It is also essential that this decision and any ensuing measures taken by the Member States be subject to regular review which, the rapporteur considers, must involve the European Data Protection Supervisor in order to ensure, and report on, the independent monitoring of measures relating to data protection legislation. This is also not evident in the initiative as it stands.

The rapporteur can understand the objectives pursued by the Member States with this initiative. Assurance must also, however, be given that the interests of European citizens are not undermined, thus creating other kinds of threats to their integrity. As mentioned at the beginning, the rapporteur regrets that measures such as this are still being introduced shortly before the Lisbon Treaty is ratified. Particularly in the case of measures of this type that are of similar importance to the aforementioned Schengen Information System and the Visa Information System, it should have been necessary to involve the European Parliament more closely than through simple consultation as proof of loyal cooperation and respect for the importance of the European Parliament.
It is also questionable whether the legal basis chosen is the correct one, as the measures in question touch on key internal market issues as well as the field of judicial and police cooperation.

In the light of the above, the rapporteur therefore recommends that this initiative be rejected.