Alignment of the Customs Decision with LED - 2023/0143(COD)

COMP 1
General Data Protection provisions

Recital 2
Covers: AM 1 rapp, AM 14 S&D

(2) Council Decision 2009/917/JHA10 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 **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.

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10 Council Decision 2009/917/JHA on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).
11 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).

Article 1 – paragraph 1 – point 2
Council Decision 2009/917/JHA
Article 2 – paragraph 1 – point 2

Covers: AM 3 rapp, AM 18 S&D

(2) Point 2 of Article 2 is ***replaced by the following:***
2. "personal data" means personal data as defined in Article 3, point (1), of Directive (EU) 2016/680.

Article 1 – paragraph 1 – point 3
Council Decision 2009/917/JHA
Article 3 – paragraph 2

Covers: AM 4 rapp, AM 19 S&D

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.

Article 1 – paragraph 1 – point 5
Council Decision 2009/917/JHA
Article 5 – paragraph 2

Covers: AM 5 rapp, AM 20 S&D

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.

Article 1 – paragraph 1 – point 7
Council Decision 2009/917/JHA
Article 8 – paragraph 1 – subparagraph 1

Covers: AM 7 rapp, AM 24 S&D

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.

Article 1 – paragraph 1 – point 8
Council Decision 2009/917/JHA
Article 8 – paragraph 4 – subparagraph 1 – point a

Covers: AM 9 rapp, AM 25 S&D

(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

Article 1 – paragraph 1 – point 8
Council Decision 2009/917/JHA
Article 8 – paragraph 4 – subparagraph 1 – point b

Covers: AM 10 rapp, AM 26 S&D

(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.

Article 1 – paragraph 1 – point 11
Council Decision 2009/917/JHA
Article 20

Covers: AM 12 rapp, AM 30 S&D

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

COMP 2
Coordinated Supervision

Article 1 – paragraph 1 – point 13
Council Decision 2009/917/JHA
Article 26

Covers: AM 13 rapp

Article 26
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 national supervisory authorities of the Member States and the European Data Protection Supervisor, each acting within the scope of their respective competences, shall actively cooperate within the framework of their responsibilities and shall ensure coordinated supervision in accordance with Article 62 of Regulation (EU) 2018/1725.

COMP 3
Regional and international organisations

Article 1 – paragraph 1 – point 6 – introductory part
Council Decision 2009/917/JHA
Article 7 – paragraph 3

Covers: AM 6 rapp, AM 21 S&D, AM 22 S&D
Falls: AM 23 EPP

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

Article 1 – paragraph 1 – point 7 a (new)
Council Decision 2009/917/JHA
Article 8 – paragraph 2

Covers: AM 8 rapp

(7a) Paragraph 2 of Article 8 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).

(Removing a reference to Art 7(3) as a consequence of our deletion of that paragraph.)

COMP 4
Retention Periods

Recital 5

Covers: AM 2 rapp, AM 15 EPP, AM 16 S&D
Falls: AM 17 EPP

(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 ***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.

Article 1 – paragraph 1 – point 9
Council Decision 2009/917/JHA
Article 14

Covers: AM 11 rapp, AM 28 S&D, AM 27 EPP
Falls: AM 29 EPP

Article 14

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.