



**COUNCIL OF
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LIMITE

**CRIMORG 65
DROIPEN 26
ENFOPOL 59
DATAPROTECT 9
COMIX 346**

NOTE

From : Presidency
To : Article 36 Committee/Coreper/Council

No. prev. doc. : 13019/05 CRIMORG 104 DROIPEN 41 ENFOPOL 124 DATAPROTECT 4
COMIX 642
5485/06 CRIMORG 11 DROIPEN 5 ENFOPOL 9 DATAPROTECT 2 COMIX
62
6450/1/06 REV 1 CRIMORG 31 DROIPEN 13 ENFOPOL 29 DATAPROTECT
5 COMIX 174

No. Cion prop. : COM(2005) 475 final

Subject : Proposal for a Council Framework Decision on the protection of personal data
processed in the framework of police and judicial co-operation in criminal matters
- Scope: application to processing of data in a purely domestic context

Background

1. On 4 October 2005, the Commission forwarded to the Secretary-General of the Council a Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters. On 13 December 2005, the Council asked the Parliament for its opinion on the proposal.
The European Data Protection Supervisor has delivered his opinion on the proposal¹, which he presented to the MDG-(Mixed Committee) on 12 January 2006. On 24 January 2006, the Conference of European Data Protection Authorities also delivered an opinion on the

¹ doc. 16050/05 CRIMORG 160 DROIPEN 64 ENFOPOL 185 DATAPROTECT 8 COMIX 864.

proposal¹. On 11 January 2006, the Hungarian delegation submitted an extensive note on the Commission proposal².

At the meetings of the MDG - (Mixed Committee) of 8 February 2006, 9 and 31 March 2006, the first two chapters were discussed in-depth. DK, LV, NL and SI have a general scrutiny reservation on the proposal. FR, IE, NL and UK have a parliamentary reservation. AT, ES, FI, IT and SE have a linguistic scrutiny reservation.

Question on scope

2. On 12 January 2006, the MDG-(Mixed Committee) discussed a number of questions related to the scope of the draft Framework Decision³. One of these questions, on which no consensus was reached, was whether the scope of the Framework Decision should be confined to the cross-border transmission of information and the processing of data thus transmitted or whether it should – as foreseen in the Commission’s proposal – also encompass data gathered and used in a purely domestic context.

On 9 March 2006, the Council Legal Service delivered an Opinion on whether there was a legal basis for the inclusion of data gathered and used in a purely domestic context in the scope of the draft Framework Decision⁴.

Arguments against the inclusion of data processed in a purely domestic context

3. A number of delegations have expressed doubts against the inclusion of data processed in a purely domestic context⁵. One of the reasons put forward were doubts as to whether there was a TEU legal basis to regulate data protection in purely domestic cases. Another argument was that the inclusion of purely domestic data would be contrary to the proportionality and the subsidiarity principle. The UK delegation, while admitting that the UK has implemented the EU Data Protection Directive in the JHA area, has advanced figures which show that only a tiny proportion of all police cases in the UK have a cross-border dimension; it would hence be

¹ doc. 6329/06 CRIMORG 28 DROIPEN 12 ENFOPOL 26 DATAPROTECT 4 COMIX 156.

² doc. 5193/06 CRIMORG 3 DROIPEN 2 ENFOPOL 3 DATAPROTECT 1 COMIX 26.

³ doc. 5485/06 CRIMORG 11 DROIPEN 5 ENFOPOL 9 DATAPROTECT 2 COMIX 62.

⁴ doc. 7215/06 JUR 102 CRIMORG 46 DROIPEN 20 ENFOPOL 45 DATAPROTECT 7 COMIX 251.

⁵ CH, CZ, DK, IE and UK. SE thought the scope of the draft Framework decision should be transfer of data between Member States, but that it would also have an impact on the domestic handling of data on a general level. FI is not opposed to the inclusion of purely domestic data, but was not entirely convinced that there is a legal basis for this. Scrutiny reservations by CY, CZ, LV and MT.

disproportionate to subject all data handled by national police services to a future EU data protection regime.

The Commission's proposal and the position of the majority of Member States

4. As stated above, the Commission proposes that the Framework Decision applies to the processing of data in the field of Justice and Home Affairs also in a purely domestic context. Whilst the Commission proposal is aimed at ensuring data protection in the context of police and judicial co-operation between the Member States, in the Commission's view this inevitably has consequences for purely domestic processing of data as well. The concrete impact of the Commission proposal on purely domestic handling of data is primarily based on a number of general data protection principles derived from the Data Protection Directive, which are laid down in Chapter II of the draft Data Protection Framework Decision. The Commission has pointed out that all existing international instruments on data protection already contain these principles.

5. The Commission' approach was supported by a broad majority of delegations. One of the arguments put forward was that it is difficult to see how two different data protection regimes could apply, as data gathered in the context of an internal investigation could, at a later stage, possibly be exchanged with foreign authorities. It was also pointed out that data which have been gathered in a purely domestic context can hardly be factually distinguished from data that have been subject to cross-border transmission. In the view of the Commission and other delegations, good co-operation between Member States requires there to be full mutual trust regarding the data protection of information received from other Member States. Such a high degree of trust can only be achieved if the protection (and the ensuing reliability) of all data which – at a later stage – may be transferred to other Member States, is fully ensured.

Question to the Council

6. *The Presidency invites the Article 36 Committee/Coreper/Council to agree that the Framework Decision on the protection of personal data covers also the processing of data in a purely domestic context.*