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**CRIMORG 135
DROIPEN 55
ENFOPOL 151
DATAPROTECT 6
COMIX 761**

OUTCOME OF PROCEEDINGS

Of : Multidisciplinary Group on Organised Crime (Mixed Committee)
On : 9 November 2005

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COMIX 642 + ADD 1

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

The Commission presented its proposal and the background to it. Following these presentations delegations entered into a general discussion on the proposal. All delegations welcomed the proposal, but given the very early stage of the discussions most delegations placed a (scrutiny) reservation on the proposal. In addition, parliamentary reservations were entered by FR and IE. Linguistic reserves by ES, FI and IT.

Even though some delegations already raised a few detailed questions, the discussion mainly focused on the following three general topics: (1) procedure, (2) the content of the proposal and its potential added value, and (3) the scope of the draft Framework Decision.

1. Procedure

A significant number of delegations stated that they would prefer that this proposal, given its highly technical and specialised nature, could be studied by a group of experts. At the same time, it was emphasised by some that the Multidisciplinary group on organised crime would need to be kept involved. The Presidency indicated that, together with the incoming Presidency, it would look at the possibilities for involving experts in the discussion in a structural manner. It was also asked whether the Commission could provide, in one way or another, some form of explanatory memorandum to the provisions of the draft Framework Decision.

Whilst all delegations acknowledged the importance of the subject, a number of delegations also indicated that the negotiations on this draft Framework Decision should not stand in the way of progress on other legislative files.

2. Content and potential added value

Apart from a number of detailed comments, the following general remarks were made.

Concerns were voiced that the content of the proposal and the use of some concepts (e.g. that of adequacy) were inspired to a too large degree by data protection rules of the first pillar. Several delegations stressed the importance of an effective law enforcement, the interests of which should be balanced against the interests of the individual concerned. The outcome of that balancing exercise should not necessarily be similar to that in the first pillar, where the interests of the individual concerned are balanced against the commercial interests of economic actors (which hold data).

In the same vein, some delegations expressed qualms about the fact that prosecutorial authorities, whose functions required a very high degree of independence, would be subject to the control of data protection supervisory authorities.

Some delegations stated that, in order to have real added value, the draft Framework Decision would need to be more concrete and should not be confined to the enunciation of data protection principles. In this context, the need for very concrete and practicable rules, tailored to the needs of law enforcement, was also emphasised.

3. Scope of the draft Framework Decision

Various questions regarding the scope of the draft instrument were raised. In general, it was thought that the relationship to other EU and international instruments was not always very clear. For example, many delegations queried whether, and if so, why customs and, in particular the Customs Information System (CIS), had been excluded from the scope. Others asked whether it would not be possible/expedient to subject Eurojust and Europol to the data protection regime envisaged here. The Commission representative replied that the Eurojust and Europol regimes had been scrutinised and had been found to be adequate and that, therefore, there was no need to subject them to the general data protection regime of the draft Framework Decision.

Many delegations asked whether the envisaged data protection regime would apply only to data exchanged via police and/or judicial co-operation or also to data which were gathered and used in a purely domestic context. The Commission representative explained that, from a practical point of view, it was difficult to see how two different data protection regimes could apply, as data which were gathered in the context of an internal investigation could, at a later stage, possibly be exchanged with foreign authorities. In addition, in an internal investigation/prosecution data obtained from another Member State can be used and it would be very impractical to have to use two different data protection regimes to data used in the same investigation/prosecution.

Another question on scope which was raised by various delegations was whether the draft Framework Decision should apply only to information exchange within the European Union or also to information exchange with third States.