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## **REPORT**

on the initiative of the Portuguese Republic with a view to the adoption of a Council Decision establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)  
(7381/2000 – C5-0230/2000 – 2000/0804(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Jorge Salvador Hernandez Mollar

### ***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)

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## PROCEDURAL PAGE

By letter of 6 May 2000 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Portuguese Republic with a view to the adoption of a Council Decision establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) (7381/2000 – 2000/0804(CNS)).

At the sitting of 19 May 2000 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0230/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Jorge Salvador Hernandez Mollar rapporteur at its meeting of 6 June 2000.

It considered the initiative of the Portuguese Republic and the draft report at its meetings of 22 June, 12 July and 4 September 2000.

At the last meeting it adopted the draft legislative resolution unanimously with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, Bernd Posselt, vice-chairman; Jorge Salvador Hernández Mollar, rapporteur, Jan Andersson (for Sérgio Sousa Pinto), Niall Andrews, Alima Boumediene-Thiery, Rocco Buttiglione, Marco Cappato, Michael Cashman, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Evelyne Gebhardt (for Martin Schulz), Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Hartmut Nassauer, William Francis Newton Dunn (for Charlotte Cederschiöld), Arie M. Oostlander (for Daniel J. Hannan), Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Joke Swiebel), Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke) and Christian von Boetticher.

The report was tabled on 6 September 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Initiative of the Portuguese Republic with a view to the adoption of a Council Decision establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) (7381/2000 – C5-0230/2000 – 2000/0804(CNS))**

The initiative is amended as follows:

Text proposed by the Portuguese Republic<sup>1</sup>

Amendments by Parliament

(Amendment 1)  
Recital -1 (new)

***(-1) Protection of natural persons as regards processing of personal data is a matter of vital concern to the Union institutions, and, to enable the appropriate provision to be made in the medium term, rules should be adopted to lay down common protection standards and, as provided for in this initiative, a single body established to safeguard the above protection.***

*Justification:*

*The quantities of personal information being processed automatically are expanding unremittingly and, if used improperly, could undermine the position of the persons to whom the recorded data relate. In order to cope in these circumstances, public bodies need to be set up to protect citizens and guarantee respect for their fundamental right to privacy.*

*The Union institutions are aware that they have a responsibility in this area and should consequently embark without further delay on an ambitious legislative programme with a view, in the medium term, to enforcing common protection standards by means of a single supervisory body, established under the third pillar, and, in the long term, to laying down standards and setting up a single supervisory body established on a Union-wide basis.*

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<sup>1</sup> OJ C 141, 19.5.2000, p. 20.

(Amendment 2)

Recital 3

(3) For practical reasons and **without prejudice to any future decision providing for the transformation of the existing** Joint Supervisory Bodies into one single body, vested with legal personality, and an own budget, the administration of the Data Protection Secretariat should be closely linked to the General Secretariat of the Council, while safeguarding its independence in the exercise of its tasks.

(3) For practical reasons and **bearing in mind that Title VI of the EU Treaty must be communitised and that** the Joint Supervisory Bodies **must develop with a view to their ultimate conversion** into one single body, vested with legal personality, and an own budget, the administration of the Data Protection Secretariat should **provisionally** be closely linked to the General Secretariat of the Council, while safeguarding its independence in the exercise of its tasks.

*Justification:*

*Neither from the point of view of defending citizens' interests nor from the point of view of administrative rationality are there any sensible reasons why there should be three distinct Joint Supervisory Bodies. The legal principle of fair and equal treatment for all citizens requires that there should be just one body to enforce and interpret the rules in accordance with the same criteria. That is why the three Joint Supervisory Data Protection Bodies must be merged as soon as possible to form a single body that must have legal personality and its own budget, thus guaranteeing that it will be able to act independently to uphold the interests of individuals.*

*As matters currently stand, to set up a single Secretariat for the three Joint Supervisory Data Protection Bodies is a timid step forward that will do nothing whatsoever to resolve the basic problem.*

*In addition, Article 42 of the EU Treaty makes provision for the incorporation of areas under Title VI of the EU Treaty into Title IV of the EC Treaty. Such a decision must result in the secretariat being attached to the Commission, in view of its responsibilities as laid down in the EC Treaty.*

(Amendment 3)

Recital 4

(4) In order to ensure this independence, decisions on the appointment and removal from office of the head of the Data Protection Secretariat **should** be taken by the Deputy Secretary-General of the Council, acting on a proposal of the Joint Supervisory Bodies, and the other officials assigned to the Data Protection Secretariat **should** be placed exclusively under the instructions of the **Secretariat's head**.

(4) In order to ensure this independence, decisions on the appointment and removal from office of the head of the Data Protection Secretariat **shall** be taken by the Deputy Secretary-General of the Council, acting on a proposal of the Joint Supervisory Bodies, and the other officials assigned to the Data Protection Secretariat **shall** be placed exclusively under the instructions of the head **of the Data**

## ***Protection Secretariat.***

### *Justification:*

*(In the Spanish text, the word 'Director' has been corrected and replaced by a more accurate term, 'Secretario'). The head of the Data Protection Secretariat will be called upon to make the necessary arrangements to fill the posts assigned to that Secretariat.*

(Amendment 4)  
Recital 4a (new)

***As regards the protection of personal data, and as an adjunct to the initiative of the Portuguese Republic, there is a need to adopt a legally binding instrument designed to provide, under the third pillar, a level of protection equivalent to that afforded under the first pillar by Directive 95/46/EC.***

### *Justification:*

*The processing of personal data is taking on new proportions at European Union level under the third pillar. There is a need, therefore, to guarantee in this sector a level of protection of personal data equivalent to that provided under the first pillar.*

(Amendment 5)  
Recital 5

(5) The administrative expenses of the Data Protection Secretariat ***should*** be charged to the general budget of the European Union. Europol ***should*** contribute to the financing of certain expenses in respect of meetings relating to matters of implementation of the Europol Convention.

(5) The administrative expenses of the Data Protection Secretariat ***shall*** be charged to the general budget of the European Union. Europol ***shall*** contribute to the financing of certain expenses in respect of meetings relating to matters of implementation of the Europol Convention.

### *Justification:*

*Expenditure incurred in the operation of the Data Protection Secretariat has to be regarded as administrative expenditure, as provided for in Article 268 of the EC Treaty, and hence charged to the general budget of the Communities.*

*Given that Europol has legal personality and its own budget, the rapporteur likewise takes the view that expenditure incurred in meetings held within the legal framework of Europol*

*should be financed by the Europol budget until such time as a single joint supervisory data protection body can be set up, along with its own single secretariat, and the related expenditure entered in a separate section.*

(Amendment 6)

Article 2(1)

1. The Data Protection Secretariat shall be headed by a Data Protection Secretary who shall have the independence in the performance of his tasks safeguarded, subject to instructions from the Supervisory Bodies and their chairmen only. The Deputy Secretary-General of the Council, acting on a proposal by the Joint Supervisory Bodies, shall appoint the Data Protection Secretary for a period of *two* years, ***who shall be eligible for reappointment.***

1. The Data Protection Secretariat shall be headed by a Data Protection Secretary who shall have the independence in the performance of his tasks safeguarded, subject to instructions from the Supervisory Bodies and their chairmen only. The Deputy Secretary-General of the Council, acting on a proposal by the Joint Supervisory Bodies, shall appoint the Data Protection Secretary for a period of *four* years. ***The Data Protection Secretary may be reappointed.***

*Justification:*

*A two-year appointment only appears to be too brief to enable the Secretariat to operate with the necessary coherence and continuity. The term of the appointment should therefore be lengthened to four years.*

*A new sentence has also been added in order to specify that persons holding the administrative position of data protection secretary may, as a general rule, be reappointed to serve for further terms.*

(Amendment 7)

Article 2(2)

2. The Data Protection Secretary shall be chosen from among the persons who are European Union citizens, have full civil and political rights and offer every guarantee of independence. He shall refrain from any action incompatible with his duties and, during his term of office, not engage in any other occupation, whether gainful or not. He shall after his term of office behave with integrity and discretion as regards the acceptance of appointments and benefits.

2. The Data Protection Secretary shall be chosen from among the persons who are European Union citizens, have full civil and political rights, ***can bring to bear outstanding experience and expertise in the performance of the duties concerned,*** and offer every guarantee of independence. He shall refrain from any action incompatible with his duties and, during his term of office, not engage in any other occupation, whether gainful or not, ***or in any other political or administrative***



*office*. He shall after his term of office behave with integrity and discretion as regards the acceptance of appointments, *office*, and benefits.

*Justification:*

*Among other qualities, the Data Protection Secretary must be able to draw on manifest expertise in and wide experience of protection of personal data so as to ensure that he can run the Secretariat in the proper fashion.*

*Similarly, the person holding the post of data protection secretary must be forbidden at the same time to engage in any other office or occupation, since this will enable the dedication and independence required for the secretaryship to be preserved intact.*

(Amendment 8)  
Article 2(3)

3. The Data Protection Secretary *may* be removed from office by the Deputy Secretary-General of the Council, acting on a proposal from the Joint Supervisory Bodies, if he no longer fulfils the conditions required for the performance of his duties or in cases of *serious* breach of his obligations.

3. The Data Protection Secretary *shall* be removed from office by the Deputy Secretary-General of the Council, acting on a proposal from the Joint Supervisory Bodies, if he no longer fulfils the conditions required for the performance of his duties or in cases of breach of his obligations *or if he has been guilty of serious misconduct*.

*Justification:*

*Serious misconduct, of whatever nature, should be deemed to constitute sufficient grounds for dismissal of the Data Protection Secretary.*

(Amendment 9)  
Article 2(4)

4. Apart from removal from office in accordance with paragraph 3, the office of the Data Protection Secretary shall end *when* his resignation *takes effect*. In the case of his resignation, he shall remain in office until he has been replaced.

4. Apart from *normal replacement on expiry of his term of office or in the event of his death and* removal from office in accordance with paragraph 3, the office of the Data Protection Secretary shall end *on* his resignation. In the case of his resignation, he shall remain in office until he has been replaced.

*Justification:*

*Death has been included as a possible circumstance in which the Secretary's term of office might come to an end. In addition, the text has been recast to make for greater clarity and precision. (Translator's note: in the English version, there is no reference in the second sentence to a request from the Joint Supervisory Bodies).*

(Amendment 10)

Article 2(5)

5. The Data Protection Secretary shall, both during and after termination of his office, be subject to a duty of professional secrecy with regard to **any** confidential **matters** which **have** come to his knowledge in the course of the performance of his duties.

5. The Data Protection Secretary shall, both during and after termination of his office, be subject to a duty of professional secrecy with regard to **the** confidential **information** which **has** come to his knowledge in the course of the performance of his duties.

*Justification:*

*The term 'confidential information' is more comprehensive than 'confidential matters', an expression which has narrower connotations. The effect of the substitution is to strengthen the legal protection afforded to individuals when personal data are processed by computer.*

(Amendment 11)

Article 2(6)

6. During his term of office, the Data Protection Secretary shall, **except where otherwise stated in this Decision**, be subject to the rules applicable to persons having the status of a temporary agent (*sic*) within the meaning of Article 2(a) of the Conditions of employment of other servants of the European Communities, including Articles 12 to 15 and 18 of the Protocol on Privileges and Immunities of the European Communities. The grade and step at which he is employed shall be determined by the criteria applicable to the officials and other agents of the **General Secretariat of the Council**. If the person appointed is already an official of the Communities, he shall be seconded for the term of his office in the interest of the

6. During his term of office, the Data Protection Secretary shall be subject to the rules applicable to persons having the status of a temporary agent (*sic*) within the meaning of Article 2(a) of the Conditions of employment of other servants of the European Communities, including Articles 12 to 15 and 18 of the Protocol on Privileges and Immunities of the European Communities. **He shall be placed in Category A**. The grade and step at which he is employed shall be determined by the criteria applicable to the officials and other agents of the **Communities**. If the person appointed is already an official of the Communities, he shall be seconded for the term of his office in the interest of the service by virtue of Article 37(a), first

service by virtue of Article 37(a), first indent of the Staff Regulations of officials of the European Communities (Staff Regulations). The first sentence of the last paragraph of Article 37 of the Staff Regulations shall apply without prejudice to paragraph 1 of this Article.

indent of the Staff Regulations of officials of the European Communities (Staff Regulations) **and benefit from a guarantee of automatic reinstatement in his parent institution**. The first sentence of the last paragraph of Article 37 of the Staff Regulations shall apply without prejudice to paragraph 1 of this Article.

*Justification:*

*The legal status of member of the temporary staff will best serve to reconcile the legitimate interests of the EU institution concerned and of the Data Protection Secretary as regards his own position.*

*A new sentence has also been inserted in order to specify that, as far as ranking is concerned, the post of Data Protection Secretary should be classed in Category A, in view of the highly responsible administrative and advisory duties that the Secretary will be called upon to perform.*

*In addition, to widen the range of selection options, a guarantee must be provided to enable the Data Protection Secretary, if he is a Community official, to return to his parent institution once he has completed his term of office.*

(Amendment 12)

Article 3(1)

1. The Data Protection Secretariat shall be provided with the staff necessary for the performance of its tasks. ***The staff members assigned to the Data Protection Secretariat shall fill posts included in the list of posts appended to the section of the general budget of the European Union relating to the Council.***

1. The Data Protection Secretariat shall be provided with the staff necessary for the performance of its tasks. ***Expenditure in respect of staff, and other expenditure required to bring the Data Protection Secretariat into operation, shall be entered in section VIII-B of the general budget of the European Communities. The Council shall seek to ensure that the necessary legislative and financial steps are taken for that purpose.***

*Justification:*

*For essential reasons of independence, expenditure in respect of staff, like all other expenditure incurred in the operation of the Data Protection Secretariat, has to be entered in a specific section of the general budget of the European Communities.*

*The fundamental nature of the tasks that it will perform is such that the Data Protection Secretariat must, by definition, be in a position to operate independently of every other Union institution or body. In practice, that independence will be impossible to achieve unless it is*

*underpinned by financial independence. That is why we are calling for a new section to be added to the general budget of the European Communities, and the Council, in agreement with the other budgetary authorities, will accordingly have to embark on the necessary legislative and financial reforms.*

(Amendment 13)

Article 3(3)

3. Without prejudice to paragraph (2), the staff assigned to the Data Protection Secretariat shall be subject to the Regulations and rules applicable to officials and other servants of the European Communities. As regards the exercise of the powers conferred by the Staff Regulations on the appointing authority and the powers under the Conditions of employment of other servants of the European Communities, the staff shall be subject to the same rules as the officials and other agents of the **General Secretariat of the Council**.

3. Without prejudice to paragraph (2), the staff assigned to the Data Protection Secretariat shall be subject to the Regulations and rules applicable to officials and other servants of the European Communities. As regards the exercise of the powers conferred by the Staff Regulations **of officials of the European Communities** on the appointing authority and the powers under the Conditions of employment of other servants of the European Communities, the staff shall be subject to the same rules as the officials and other agents of the **European Communities**.

*Justification:*

*It is vitally important that Community legislation be drafted to a high standard because the principle of legal certainty, enshrined in Community law, requires Community legislation to be clear, exact, and enforceable without unforeseeable consequences for the public, as stipulated in the case law of the Court of Justice. Declaration 39 of 2 October 1997, annexed to the Treaty of Amsterdam, has set down and enlarged upon that principle, which the Union institutions have to observe in accordance with the interinstitutional agreement of 22 December 1998 laying down joint guidelines on the quality of drafting of Community legislation. That is why I have chosen to clarify the reference to the Staff Regulations.*

*Furthermore, the term 'General Secretariat of the Council' has been replaced by 'European Communities' because the Staff Regulations of officials of the European Communities apply to all the institutions and not one institution in particular.*

(Amendment 14)

Article 3(3a) (new)

**3a. Staff assigned to the Data Protection Secretariat shall be obliged to refrain from circulating information and**

*documents that may have come to their knowledge in the course of their work and shall be bound, even after they have left the service, to observe the obligation of professional secrecy with regard to the confidential information to which they may have had access when carrying out their duties.*

*Justification:*

*The principle that personal data must be processed in confidence is a corner-stone of protection of the basic right of natural persons to privacy, especially where the most intimate spheres of their lives are concerned. That is why all staff working for the Data Protection Secretariat who may have access to such data must be bound by the above principle by virtue of the professional secrecy requirement imposed upon them. This obligation should not lapse when staff leave the service.*

(Amendment 15)  
Article 5(1)

1. *Within the limits set out in the **Financial Statement**, the administrative overhead expenses of the Data Protection Secretariat (in particular equipment, remuneration, allowances and other personnel expenses) shall be charged to **the** section of the general budget of the European Union relating to the **Council**.*

1. The administrative overhead expenses of the Data Protection Secretariat (in particular equipment, remuneration, allowances and other personnel expenses) shall be charged to **Section VIII-B** of the general budget of the European Union relating to the **Data Protection Secretariat**.

*Justification:*

*The administrative expenditure of the Data Protection Secretariat should be entered in the new Section VIII-B of the general budget of the European Communities, which should be brought into being as soon as possible.*

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the initiative of the Portuguese Republic with a view to the adoption of a Council Decision establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)  
(7381/2000 – C5-0230/2000 – 2000/0804(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative of the Portuguese Republic (7381/2000<sup>2</sup>),
  - having regard to Article 34(2)(c) of the EU Treaty,
  - having been consulted by the Council pursuant to Article 39(1) of the EC Treaty (C5-0230/2000),
  - having regard to Rules 106 and 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0225/2000),
1. Approves the initiative of the Portuguese Republic, as amended;
  2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  3. Asks to be consulted again if the Council intends to amend the initiative of the Portuguese Republic substantially;
  4. Instructs its President to forward its position to the Council and Commission and the Portuguese Government.

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<sup>2</sup> OJ C 141, 19.5.2000, p. 20.

## **EXPLANATORY STATEMENT**

### **I. - HUMAN RIGHTS**

Human rights could be defined as 'the inalienable prerogatives of the person in his or her relations with individuals and the authorities'.

At national level these rights have been set out in various different texts such as the 1689 Habeus Corpus Act and Bill of Rights in England. They have also been set out in various declarations such as the American Declaration of 1776 or the French Declaration of 1792. The constitutions of the different countries of the world set forth in differing degrees a broad range of these rights, granting them - formally at least - to their citizens.

At international level, after the initial hesitant steps, there is now an abundance of human rights declarations. It was a long and painful road from the Utopian dreams of idealists such as Bartolomé de las Casas in the sixteenth century, Grotius in the seventeenth century, or Kant and the Abbé Saint Pierre later, to the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on 10 December 1948.

Nevertheless, the celebrated remark with which Jean-Jacques Rousseau began the first chapter of his Social Contract: 'Man is born free but everywhere is in chains', is still valid today, for human rights can be violated both brutally and openly as well as insidiously and stealthily.

### **II. THE FUNDAMENTAL RIGHT TO RESPECT FOR PRIVACY**

Article 12 of the Universal Declaration of Human Rights recognises every individual's right to privacy in the following terms: 'No-one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his reputation. Everyone has the right to the protection of the law against such interference or attacks.'

The same right is recognised in Article 8 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Rome on 4 November 1950, which reads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Nowadays, almost all constitutions in force in the various countries of the world recognise - formally, at least - the right to privacy, which has always included as a very minimum the right to the inviolability of the home and the confidentiality of correspondence.

Nevertheless, in view of the impressive and continuing expansion in the automatic processing of information, which makes it possible to transmit vast quantities of data in a few seconds, crossing national frontiers and continents, it has become vital to look at the problem of the protection of privacy with reference to the question of personal data.

That is why most of the world's developed countries have adopted or are adopting rules designed to prevent acts deemed to be a violation of the individual's fundamental right to privacy, such as the illegal storage of inaccurate personal data and the improper use or unauthorised dissemination of such data. Some recent constitutions, such as those of South Africa and Hungary, or the Spanish Constitution of 1978 (Article 18(4)), make specific reference to the recognition to the right to protection in connection with the automatic processing of personal data. It is also worth noting that Article 8 of the draft Charter of Fundamental Rights of the European Union refers expressly to the individual's right to protection of personal data.

This is a very recent phenomenon and the first legislation adopted to protect the privacy of individuals with regard to the automatic processing of personal data was by the Land of Hesse, in Germany in 1970, followed by the Kingdom of Sweden in 1973 and later by other developed countries.

However, the very fact that different laws exist in each country entails a danger that disparities in national laws will prevent the free movement of personal data across frontiers, something which has increased very rapidly in recent years and will continue to do so.

The widespread introduction of new computer technologies and telecommunications has led to a genuine revolution in economic relations, which could suffer serious disruption if the various national laws impose restrictions on freedom of movement.

For all these reasons it is vital that minimum standards be adopted to make it possible to harmonise national laws on the protection of privacy and to ensure that, while respecting fundamental rights, international flows of data are not interrupted.

Two vital international instruments have been adopted to meet this need introducing two fundamental rights that are apparently incompatible, namely the right to privacy and the right to freedom of information.

The first of these international instruments was adopted by the OECD on 23 September 1980 in the form of a recommendation entitled 'Guidelines governing the protection of privacy and transborder flows of personal data'.

The second was adopted by the Council of Europe shortly afterwards on 28 January 1981, in the form of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data' (Convention No 108), which has now been ratified by many countries, including the 15 Member States of the European Union. This Convention creates obligations, but only as regards the states and the European Union.

### **III.- PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF**



## **DATA IN THE AREA COVERED BY THE FIRST PILLAR OF THE EUROPEAN UNION**

The Treaty on European Union stipulates that 'the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms'.

It clearly follows from this that the European Union is obliged to apply the provisions of Council of Europe Convention No 108, since this Convention was adopted to allow for the vast international movement of computerised personal data and ensure that it is compatible with respect for and implementation of Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, whose conflicting interests need to be reconciled. This is an obligation which in your rapporteur's view extends to all fields of Union activity, whether under the first, second or third pillars.

With regard to the first pillar, prompted by the need to establish an internal area without frontiers (the internal market) provided for in Article 14 of the EC Treaty, the European Union adopted Directive 95/46 on 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Some countries have still not transposed this directive into national law even though the deadline for doing so was October 1998. The aim of the directive is to guarantee the free flow of information between the 15 countries of the Union and to make use of uniform criteria in their relations with other countries, while respecting the right to privacy of individuals.

Later, once the fields of computer and telecommunications technology begun to overlap, threatening to make personal data available to millions of geographically dispersed users at the same time, the European Union had to adopt Directive 97/66 of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, which the various states were to have transposed into national law by 24 October 1998.

Lastly, the Treaty signed on 2 October 1997 in Amsterdam inserted Article 286(1) into the Treaty establishing the European Community, which reads as follows:

'From 1 January 1999 Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.'

To comply with the provisions of this Article, the Commission submitted to the European Parliament, a proposal for a regulation on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and the free movement of such data (COM(1999) 337), which is currently under consideration by Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

## **IV. - PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF DATA IN THE AREA COVERED BY THE THIRD PILLAR OF THE EUROPEAN UNION**

As your rapporteur has pointed out before, acts adopted by the European Union in application of Title VI of the Treaty on European Union, in other words under the third pillar, also have to ensure strict respect for human rights, as laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

With regard to respect for the fundamental right to privacy with regard to the automatic processing of personal data, your rapporteur believes that attention should be drawn to the following provisions adopted by the European Union, which take this matter into account:

**1. - In the field of police cooperation:**

- (a) The Europol Convention (Council Act of 26 July 1995, OJ C 316, 27.11.1995).
- (b) The Convention implementing the Schengen Agreement of 19 June 1990.

**2. - In the field of customs cooperation:**

- (a) The Convention on the Use of Information Technology for Customs Purposes (CIS Convention - Council Act of 26 July 1995. Official Journal L 316 of 27.11.1995).
- (b) The Convention on Mutual Assistance and Cooperation between Customs Administrations (Council Act of 18 December 1997, OJ C 24, 23.1.1998).

**3. - In the field of judicial cooperation in criminal matters:**

- (a) Second protocol to the Convention on the Protection of the European Communities' Financial Interests (PFI II Protocol) (Council Act of 19 June 1997, OJ C 221, 19.7.1997).
- (b) Convention on Driving Disqualifications (Council Act of 17 June 1998, OJ C 216, 10.7.1998).

**4. - In other areas**

- (a) Joint action of 15 October 1996 concerning the creation and maintenance of a directory of specialised counter-terrorist competences skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union (OJ L 273, 25.10.1996).
- (b) Joint action of 29 November 1996 concerning the creation and maintenance of a directory of specialised competences, skills and expertise in the fight against international organised crime in order to facilitate law-enforcement cooperation between the Members of the European Union (OJ L 342, 31.12.1996).
- (c) Joint action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children (OJ L 63, 4.3.1997).

**V. COUNCIL PROPOSAL ESTABLISHING A SECRETARIAT FOR THE JOINT SUPERVISORY DATA PROTECTION BODIES**

The rules introduced at national, European Union and international level aimed at protecting

the privacy of individuals with regard to the automatic processing of personal data have always made provision for an authority to ensure respect for and protection of such data. The titles given to it have varied, it being known variously as a supervisory body or a monitoring authority, but its task are essentially the same.

The Europol Convention of 26 July 1995, the Convention implementing the Schengen Agreement of 19 June 1990 and the Convention on the Use of Information Technology for Customs Purposes of 26 July 1995 all make provision for supervisory data protection bodies at national level and for joint supervisory data protection authorities at European Union level.

This means that, in addition to the national supervisory bodies, there are three joint supervisory bodies in the European Union, each with its own secretariat and with responsibility for the matters mentioned above, although the joint supervisory body provided for by the Convention on the Use of Information Technology for Customs Purposes is not yet operative, since the Convention has not yet come into force.

Your rapporteur believes that the current situation is open to serious criticism and that there are serious doubts as to whether the system in force genuinely offers effective protection of the inalienable right to privacy which all individuals should enjoy with regard to the automatic use of personal data concerning them.

Your rapporteur believes that the Council proposal to establish a single secretariat for the three abovementioned joint supervisory data protection bodies is a timid, if positive, step, but one which will do nothing to resolve the basic problem.

This is the thinking behind the amendments your rapporteur has tabled to the Council's proposal for a decision.

In order to ensure the protection of the privacy of individuals it is clear that there is a vital need to create a single legal framework in the European Union to provide citizens with sufficient guarantees, essentially by preventing the improper use or dissemination of personal data. At present, there are many shortcomings in this protection which must be remedied without further delay.

With this in view, your rapporteur considers it vital to establish a single supervisory data protection authority, with a single secretariat, which would have legal personality, together with its own budget and staff, and would go beyond the 'pillar' structure with responsibilities extending to cover all areas of the Union's activity.

This single supervisory data protection authority must be totally impartial and fully independent of the other institutions, subject only to the jurisdiction of the Court of Justice with responsibility only for the protection of individuals with regard to the processing of personal data, with the exceptions laid down by law.

The single supervisory body must have a secretariat with the staff and resources necessary to fulfil its tasks, whether in conducting inquiries, taking initiatives or instituting legal proceedings, and should have responsibility for appointing its own head.

The independence of the supervisory body is therefore an essential element in ensuring the protection of the rights and freedoms of European citizens in the face of the invasion of our daily lives by information and telecommunications technology. That is why your rapporteur believes that the Council's proposal is fundamentally flawed, since this vital independence is lacking from all points of view.

It should therefore be for the European Parliament, fulfilling its function of exercising democratic control over the European Union institutions, to appoint the single supervisory body and to open the procedures for dismissing it should it cease to fulfil the conditions required in order to perform its duties.

Your rapporteur realises that it is unrealistic to think that these targets can be met in the short term, yet is firmly convinced that they are essential objectives which must be attained as soon as possible in order to protect the privacy and individual freedoms of European citizens, while at the same time promoting the free movement of information.