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REPORT

on the initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic in view of the adoption of a Council Act drawing up a Protocol amending the Convention on the use of information technology for customs purposes as regards the creation of a customs files identification database
(13187/2001 – C5-0607/2001 – 2001/0829(CNS))

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

Rapporteur: Jorge Salvador Hernández 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)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. 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). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 19 November 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic in view of the adoption of a Council Act drawing up a Protocol amending the Convention on the use of information technology for customs purposes as regards the creation of a customs files identification database (13187/2001 – 2001/0829(CNS)).

At the sitting of 10 December 2001 the President of Parliament announced that she had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Budgets, the Committee on Budgetary Control, the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy for their opinions (C5-0607/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Ana Palacio Vallelersundi rapporteur at its meeting of 22 January 2002 and Jorge Salvador Hernández Mollar replaced her as from 11 September 2002.

At its meetings of 8 July, 11 November and 10 December 2002 the committee considered the Commission proposal and the draft report.

At the last meeting it adopted the draft legislative resolution by 32 votes to 3.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman and rapporteur; Robert J.E. Evans and Giacomo Santini, vice-chairmen; Mary Elizabeth Banotti, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Patsy Sørensen), Michael Cashman, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Adeline Hazan, Anna Karamanou (for Martin Schulz), Margot Keßler, Eva Klamt, Ole Krarup, Alain Krivine (for Fodé Sylla), Hartmut Nassauer, Bill Newton Dunn, Arie M. Oostlander (for Timothy Kirkhope), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Bernd Posselt), Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt (for Lousewies van der Laan), Ole Sørensen (for Baroness Sarah Ludford), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher, Christos Zacharakis (for Thierry Cornillet) and Olga Zrihen Zaari (for Walter Veltroni).

The Committee on Budgets, the Committee on Budgetary Control, the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy decided on 22 January, 21 February, 24 January and 19 February 2002 respectively not to deliver opinions.

The report was tabled on 10 December 2002.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic in view of the adoption of a Council Act drawing up a Protocol amending the Convention on the use of information technology for customs purposes as regards the creation of a customs files identification database (13187/2001 – C5-0607/2001 – 2001/0829(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic (13187/2001¹),
 - having regard to document 10624/02 (ENFOCUSTOMS 22²),
 - having regard to Article 34(2)(d) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0607/2001),
 - 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 (A5-0450/2002),
1. Approves the initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic, subject to Parliament's amendments;
 2. Calls on the Council to alter the original text accordingly;
 3. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic;
 5. Instructs its President to forward this opinion to the Council, the Commission and the governments of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic.

¹ Not yet published in the OJ.

² Document of 9 July 2002, see <http://register.consilium.eu.int>.

Amendment 1
Recital 1 (new)

1. Whereas customs cooperation in the European Union is an important component of the area of freedom, security and justice.

Justification

The importance of customs cooperation should be emphasised. It represents a significant, but much undervalued, component of the area of freedom, security and justice.

Amendment 2
Recital 2 (new)

2. Whereas the exchange of information between customs services in the various Member States is central to such cooperation.

Justification

Self-explanatory.

Amendment 3
Recital 3 (new)

3. Whereas, in connection with the storage, processing and use of personal data in the customs sphere, due account should be taken of the principles laid down in the Council of Europe Convention of 28 January 1981 and

***Recommendation No R 87/15 of the
Committee of Ministers of the Council of
Europe of 17 September 1987.***

Justification

Self-explanatory.

Amendment 4
Recital 4 (new)

4. Whereas the protection of natural persons in connection with the processing of personal data is a central concern for the institutions of the European Community, in particular the European Parliament,

Justification

In connection with the exchange of information and the incorporation of such information in databases, efforts should be made to strike a balance between effective customs cooperation and the protection of natural persons against unjustified breaches of their privacy.

Amendment 5
Recital 5 (new)

5. Whereas every individual has the right to protection of his or her personal data, as stipulated in Article 8 of the Charter of Fundamental Rights of the European Union.

Justification

Self-explanatory.

Amendment 6
Recital 6 (new)

6. Whereas the inalienable right to privacy enjoyed by every citizen must be guaranteed in connection with the computerised use of personal data.

Justification

Self-explanatory.

Amendment 7
Recital 7 (new)

7. Whereas a (framework) decision must be adopted with a view to guaranteeing, under the Third Pillar, a level of protection as regards the processing of personal data commensurate with that afforded by Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹.

¹ OJ L 281, 23.11.1995, p. 31.

Justification

In view of the greatly increased volumes of customs information which are now exchanged, it is becoming more and more important to offer a sound level of protection in connection with the processing of personal data under the third pillar as well.

Amendment 8
Recital 8 (new)

8. Whereas in the near future a Union information system should be set up, under the responsibility of the Commission, which should take the form of a single computer system for the reception of data compiled under three conventions (Schengen, Europol and the CIS Convention), whereby account should be taken of the need to keep the respective sets of data separate and to guarantee the operational separation (access level, security arrangements and powers) required by the end-user services.

Justification

In order to prevent the proliferation of databases, in future efforts should be made to set up a single computer system under the responsibility of the Commission (OLAF).

Amendment 9
Article 12 A, paragraph 2 a (new)

2a. Subject to certain conditions, Europol and Eurojust may also be granted access to the customs files identification database in cases where this is vital to fulfilment of their task of supporting investigations in the Member States.

Justification

It may be useful to grant access to the FIDE in response to certain requests for information from Europol and Eurojust.

Amendment 10
Article 12 A, paragraph 3 a¹ (new)

3a. For the purposes of implementing this Protocol the competent services of a Member State shall take the measures required to guarantee a level of protection of personal data which is at least equivalent to that afforded by the application of the principles set out in the Council of Europe Convention of 28 January 1981 and the subsequent amended versions of that Convention and in Recommendation No R 87/15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

¹ (Article 12 A, paragraph 4 a (new))

Justification

Self-explanatory.

Amendment 11
Article 12 I, paragraph -i (new)¹

-i. Storage periods shall be determined in accordance with the laws, regulations and procedures of the Member State introducing the data. However, the following time-limits, starting on the date on which the data were entered in the file, may on no account be exceeded.

¹ (Article 12 E, paragraph 1 (new))

Justification

Clarification of the provision.

Amendment 12
Article 12 I, paragraph iv¹

(iv) at all stages of an investigation as referred to in points (i), (ii) and (iii), as soon as ***a person is*** eliminated from an investigation, all data relating to the corresponding investigation file must be deleted immediately.

(iv) at all stages of an investigation as referred to in points (i), (ii) and (iii), as soon as ***all the persons concerned are*** eliminated from an investigation, all data relating to the corresponding investigation file must be deleted immediately.

¹ (Article 12 E, paragraph 2 (new))

Justification

If a file contains data concerning several persons, then it is not fair that all the data relating to the file should be deleted even though only one of the persons concerned has been eliminated from an investigation.

Amendment 13
Article 12 I, Article 3, paragraph 3¹

3. This Protocol shall enter into force ***90 days after the notification referred to in paragraph 2 by the State, a member of the European Union at the time of signing, which is the last to complete that formality.***

3. This Protocol shall, ***once adopted by at least half of the Member States***, enter into force ***for those Member States.***

¹ (Article 12 E, paragraph 3 (new))

Justification

Article 34(2)(d) of the EU Treaty stipulates that conventions may enter into force once adopted by at least half of the Member States. This provision should be applied, given the need to speed up the entry into force of the instrument in question.

Amendment 14
Article 12 I a (new)¹

1. Member States shall guarantee every individual concerned the right to obtain from the competent services:

(a) freely and without restriction, at reasonable intervals and without excessive delays or costs:

- definitive confirmation that the FIDE does not contain data concerning them, or at least information concerning the purposes behind the presence of such data;

- details, in comprehensible form, of the data which are being processed and information concerning the source of the data;

(b) where necessary, the amendment, exchange or protection of data the processing of which is not consistent with the purpose of the FIDE, in particular by virtue of the incomplete or incorrect nature of the data.

¹ (Chapter V B, Article 12 D a (new))

Justification

With a view to protecting the privacy of members of the public, guarantees should be given that care will be taken when processing personal data. In that connection, members of the public should be able to obtain information as to what data concerning them the FIDE contains. Should the data in question not be correct, members of the public should have the right to secure their amendment.

Amendment 15
Article 12 I b (new)¹

Member States shall stipulate that any individual may take legal action if his or her guaranteed rights under the national law applicable to the processing operation in question are violated.

¹ (Chapter V B, Article 12 D b (new))

Justification

In a constitutional state legal action must be possible if Member States violate citizens' rights when processing their data in the database.

EXPLANATORY STATEMENT

By letter of 19 November 2001 the Council consulted Parliament, pursuant to Article 39 of the EU Treaty, on an initiative of the Federal Republic of Germany, the Kingdom of Belgium and the French Republic in view of the adoption of a Council Act drawing up a Protocol amending the Convention on the use of information technology for customs purposes (CIS Convention of 1995) as regards the creation of a customs files identification database (FIDE). The legal basis for the Protocol is Article 34 of the EU Treaty.

Background

Although an important area, customs cooperation in the European Union is probably the least well-known component of the area of freedom, security and justice. Article 29 of the EU Treaty lays down, as one of the European Union's objectives, that of providing citizens with a high level of safety by developing common action among the Member States. In accordance with the second paragraph of Article 29, this objective is to be achieved by means of closer cooperation between police forces, customs authorities and other competent authorities in the Member States. The starting point for cooperation in the customs sphere is the exchange of information. Such exchanges chiefly take place on the basis on the 1997 Convention on mutual assistance and cooperation between customs administrations¹. By mid-October 2002, however, that Convention had not yet been ratified by all the Member States². Under the terms of the Convention, the Member States of the European Union are to provide each other with mutual assistance and cooperate with one another through their customs administrations, with a view to:

- preventing and detecting infringements of national customs provisions
- prosecuting and punishing infringements of Community and national customs provisions (Article 1).

The exchange of customs information has been improved by the introduction of the Customs Information System (CIS). The CIS is based on a regulation under the first pillar³ and a convention under the third pillar⁴. The CIS consists of a central database accessible via terminals in each Member State (Article 3 of the CIS Convention). The Commission is responsible for the technical management of the CIS infrastructure⁵. The aim of the CIS Convention is to assist in preventing, investigating and prosecuting serious contraventions of national laws by increasing, through the rapid dissemination of information, the effectiveness of the cooperation and control procedures of the customs administrations of the Member States (Article 2(2) of the CIS Convention).

The CIS Convention thus sets up a sighting and reporting system to be used only for operational purposes. It is striking that by mid-October 2002 the CIS Convention has likewise not been ratified by all the Member States¹. Nevertheless, the Convention is being

¹ OJ C 24, 23.1.1998, p. 1.

² Germany, Italy, Portugal, Belgium, Finland and Austria have not yet ratified the Convention. See Council register, <http://www.consilium.eu.int/accords/en/details.asp>.

³ OJ L 82, 22.3.1997, p. 1.

⁴ OJ C 316, 27.11.1995, p. 34.

⁵ Through OLAF, the Community Anti-Fraud Office.

¹ The CIS Convention has not been ratified by the Federal Republic of Germany, the Kingdom of Belgium and

provisionally implemented by all the Member States with the exception of the Kingdom of Belgium, the Federal Republic of Germany and the Grand Duchy of Luxembourg². The CIS database is ready for use, but not yet in operation. Now, the Kingdom of Belgium, the Federal Republic of Germany and the French Republic have submitted an initiative which seeks to amend the CIS Convention. As regards its substance, the initiative has been broadly welcomed by the Member States, even though the procedural approach is somewhat inelegant: a protocol is being proposed to a basic convention which has not yet been ratified by all the Member States.

Substance of the initiative

The initiative concerning the establishment of a computerised database can be traced back to a German proposal from 1999. That database would make available to the Member State authorities responsible for conducting customs investigations reference numbers of customs files drawn up in connection with ongoing or completed investigations concerning infringements detected by the competent services of other Member States. The customs files identification database (FIDE) is intended to contribute to the fight against organised crime. In addition, the establishment of the FIDE will prevent parallel investigations being carried out into the same natural or legal persons and will help to make for more effective coordination. The FIDE is intended to provide confirmation of the *existence* of customs files, but not to act as a computerised database facilitating the rapid exchange of information contained in such files. The FIDE would merely contain concise information confirming that an investigation has been opened in a Member State. Like the CIS Convention, the FIDE would consist of two databases, one under the first pillar and the other under the third pillar. It goes without saying that, with this aim in view, a decision has been taken to amend Regulation (EC) No 515/97³. That regulation concerns irregularities in the sphere of customs rules and the common agricultural policy. The database under the third pillar will contain information concerning infringements of national laws.

Rapporteur's comments

In July 2002, the Working Group on Customs Cooperation drew up an amended, more compact text which has been made available to Parliament. The negotiations are now continuing on the basis of that document⁴. Your rapporteur acknowledges the significance of that instrument and can endorse its substance.

The proposed customs files identification database offers clear added value over the current arrangements. At present, there is little or no coordination among the competent customs authorities of the Member States, a shortcoming which is hampering effective efforts to combat fraud and organised crime, an important aspect of the area of freedom, security and

the Grand Duchy of Luxembourg, even though Germany and Belgium are behind the initiative under consideration here. See Council register, <http://www.consilium.eu.int/accords/en/details.asp>.

² See Council register, <http://www.consilium.eu.int/accords/en/details.asp>.

³ Regulation on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 82, 22.2.1997, p. 1. The Commission's work programme includes the proposal to amend this regulation.

⁴ Council document 10624/02, Enfocustoms 22, of 9 July 2002.

justice. The FIDE should facilitate such measures. However, your rapporteur has some comments to make. First of all, he would like to express his concern at the instrument chosen, a protocol. The initiative seeks to meet an urgent need in the form of more effective coordination in the sphere of customs cooperation. The choice of such a cumbersome instrument as a protocol is therefore regrettable, given that the protocol would have to be ratified by the Member States. Consideration should therefore be given to a more flexible instrument under Article 34 of the EU Treaty, for example a decision (Article 34(2)(c)). Moreover, in connection with the establishment of the FIDE, respect for human rights and fundamental freedoms is a key concern. Measures adopted by the European Union under Title VI of the EU Treaty must respect human rights as set out in the European Convention on the Protection of Human Rights and Fundamental Freedoms and in Article 8 of the Charter of Fundamental Rights of the European Union. Close heed must be paid to the issue of the protection of personal data, a basic right enjoyed by European citizens. What is more, in connection with the storage, processing and use of personal data in the customs sphere due account should be taken of the principles laid down in the Council of Europe Convention of 28 January 1981 and in Recommendation No 87/15 of the Committee of Ministers of the Council of Europe of 17 September 1987. Members of the public should be granted access to the data concerning them stored in the FIDE database and the right to secure the amendment of any inaccurate data. Furthermore, members of the public should have the right to appeal against the incorporation of data in the FIDE, if necessary by means of legal action. It is also important that the Joint Supervisory Authority, which is empowered to supervise the implementation of the CIS Convention, should carry out its task effectively vis-à-vis the CIS Convention and the FIDE. In conclusion, it can be said that the need to protect natural persons in connection with the processing of personal data has become much more pressing. It is essential, therefore, that a binding instrument making provision for such protection should be adopted under the third pillar.

Looking ahead to the near future, your rapporteur would like to emphasise the following point. Recently, a substantial number of databases, including the Schengen databases and the Eurojust and Europol databases, have been set up. There is little or no coordination between these databases. In addition, provision has been made for three separate supervisory authorities, for Schengen, for Europol and for the customs information system. In the future, a legal framework should be established in the form of a Union information system, preferably under the responsibility of the Commission. This would then form a single computer network dealing with data from the various databases (Schengen, Europol, Eurojust and the CIS Convention), although the respective sets of data should be kept separate and this separation should be scrutinised. This arrangement should serve to protect members of the public against the misuse or dissemination of data concerning their private lives. It would also seem to be a useful way of preventing the pointless proliferation of databases.

In conclusion, your rapporteur would like to point out that the existence of parallel legal provisions governing customs cooperation, under the first and third pillars, undermines the effectiveness of that cooperation. This issue is one which should be dealt with by the Convention on the Future of Europe.