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COMIX 174**

NOTE

From : Presidency
To : Multidisciplinary Group on Organised Crime

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

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

1. On 4 October 2005, the Commission forwarded 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 to the Secretary-General of the Council. 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 proposal². On 11 January 2006, the Hungarian delegation submitted an extensive note on the Commission proposal³.

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

² doc. 6329/06 CRIMORG 28 DROIPEN 12 ENFOPOL 26 DATAPROTECT 4 COMIX 156.

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

DK, 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.

2. The Commission presented its proposal to the Multidisciplinary group on organised crime (MDG)- Mixed Committee on 9 November 2005, when a first discussion ensued⁴. On 12 January 2006, the MDG-Mixed Committee discussed a number of questions related to the scope of the draft Framework Decision⁵.
3. At the meeting of the MDG - Mixed Committee of 8 February 2006, Articles 1, 3 and 4 (paragraphs 1 to 3) were discussed in-depth. At the meeting of the MDG - Mixed Committee of 9 March 2006, Articles 2, 4 (paragraph 4), 5, 6 and 7 were discussed in-depth. Further to those discussions the Presidency has amended the text of Articles 2, 4 (paragraph 4), 5, 6 and 7.
4. *The MDG-Mixed Committee is invited to continue the article-by-article discussion of the proposal.*

⁴ doc. 14326/05 CRIMORG 135 DROIPEN 55 ENFOPOL 151 DATAPROTECT 6 COMIX 761.

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

COUNCIL FRAMEWORK DECISION

of

on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30, Article 31 and Article 34 (2)(b) thereof,

Having regard to the proposal from the Commission,⁶

Having regard to the opinion of the European Parliament,⁷

Whereas:

- (1) The European Union has set itself the objective to maintain and develop the Union as an area of freedom, security and justice; a high level of safety shall be provided by common action among the Member States in the fields of police and judicial cooperation in criminal matters.
- (2) Common action in the field of police cooperation according to Article 30(1)(b) of the Treaty on European Union and common action on judicial cooperation in criminal matters according to Article 31 (1)(a) of the Treaty on European Union imply the necessity of the processing of relevant information which should be subject to appropriate provisions on the protection of personal data.

⁶

⁷ ...

...

- (3) Legislation falling within the ambit of Title VI of the Treaty on European Union should foster police and judicial cooperation in criminal matters with regard to its efficiency as well as its legitimacy and compliance with fundamental rights, in particular the right to privacy and to protection of personal data. Common standards regarding the processing and protection of personal data processed for the purpose of preventing and combating crime can contribute to achieving both aims.
- (4) The Hague Programme on strengthening freedom, security and justice in the European Union, adopted by the European Council on 4 November 2004, stressed the need for an innovative approach to the cross-border exchange of law-enforcement information under strict observation of key conditions in the area of data protection and invited the Commission to submit proposals in this regard by the end of 2005 at the latest. This was reflected in the *Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union*⁸.
- (5) The exchange of personal data in the framework of police and judicial cooperation in criminal matters, notably under the principle of availability of information as laid down in the Hague Programme, should be supported by clear binding rules enhancing mutual trust between the competent authorities and ensuring that the relevant information is protected in a way excluding any obstruction of this cooperation between the Member States while fully respecting fundamental rights of individuals. Existing instruments at the European level do not suffice. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁹ does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as those provided for by VI of the Treaty on European Union and in any case to processing operations concerning public security, defence, State security and the activities of the State in areas of criminal law.

⁸ OJ C 198, 12.8.2005, p. 1.

⁹ OJ L 281, 23.11.1995, p. 31.

- (6) A legal instrument on common standards for the protection of personal data processed for the purpose of preventing and combating crime should be consistent with the overall policy of the European Union in the area of privacy and data protection. Wherever possible, taking into account the necessity of improving the efficiency of legitimate activities of the police, customs, judicial and other competent authorities, it should therefore follow existing and proven principles and definitions, notably those laid down in Directive 95/46/EC of the European Parliament and of the Council or relating to the exchange of information by Europol, Eurojust, or processed via the Customs Information System or other comparable instruments.
- (7) The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union.
- (8) It is necessary to specify the objectives of data protection in the framework of police and judicial activities and to lay down rules concerning the lawfulness of processing of personal data in order to ensure that any information that might be exchanged has been processed legitimately and in accordance with fundamental principles relating to data quality. At the same time the legitimate activities of the police, customs, judicial and other competent authorities should not be jeopardized in any way.
- (9) Ensuring a high level of protection of the personal data of European citizens requires common provisions to determine the lawfulness and the quality of data processed by competent authorities in other Member States.
- (10) It is appropriate to lay down at the European level the conditions under which competent authorities of the Member States should be allowed to transmit and make available personal data to authorities and private parties in other Member States.
- (11) The further processing of personal data received from or made available by the competent authority of another Member State, in particular the further transmission of or making available such data, should be subject to common rules at European level.

- (12) Where personal data are transferred from a Member State of the European Union to third countries or international bodies, these data should, in principle, benefit from an adequate level of protection.
- (13) This Framework Decision should define the procedure for the adoption of the measures necessary in order to assess the level of data protection in a third country or international body.
- (14) In order to ensure the protection of personal data without jeopardising the purpose of criminal investigations, it is necessary to define the rights of the data subject.
- (15) It is appropriate to establish common rules on the confidentiality and security of the processing, on liability and sanctions for unlawful use by competent authorities as well as judicial remedies available for the data subject. Furthermore, it is necessary that Member States provide for criminal sanctions for particularly serious and intentionally committed infringements of data protection provisions.
- (16) The establishment in Member States of supervisory authorities, exercising their functions with complete independence, is an essential component of the protection of personal data processed in the framework of police and judicial cooperation between the Member States.
- (17) Such authorities should have the necessary means to perform their duties, including powers of investigation and intervention, particularly in cases of complaints from individuals, and powers to engage in legal proceedings. These authorities should help to ensure transparency of processing in the Member States within whose jurisdiction they fall. However, the powers of these authorities should not interfere with specific rules set out for criminal proceedings and the independence of the judiciary.
- (18) A Working Party on the protection of individuals with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences should be set up and be completely independent in the performance of its functions. It should advise the Commission and the Member States and, in particular, contribute to a uniform application of the national rules adopted pursuant to this Framework Decision.

- (19) Article 47 of the Treaty on European Union provides that none of its provisions shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them. Accordingly, this Framework Decision does not affect the protection of personal data under Community law, in particular, as provided for in Directive 95/46/EC of the European Parliament and of the Council, in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁰ and in Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)¹¹.
- (20) The present Framework Decision is without prejudice to the specific data protection provisions laid down in the relevant legal instruments relating to the processing and protection of personal data by Europol, Eurojust and the Customs Information System.
- (21) The provisions regarding the protection of personal data, provided for under Title IV of the Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders¹² (hereinafter referred to as the “Schengen Convention”) and integrated into the framework of the European Union pursuant to the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community, should be replaced by the rules of this Framework Decision for the purposes of matters falling within the scope of the EU Treaty.
- (22) It is appropriate that this Framework Decision applies to the personal data which are processed in the framework of the second generation of the Schengen Information System and the related exchange of supplementary information pursuant to Decision JHA/2006/ ... on the establishment, operation and use of the second generation Schengen information system.

¹⁰ OJ L 8, 12.1.2001, p. 1.

¹¹ OJ L 201, 31.7.2001, p. 37.

¹² OJ L 239, 22.9.2000, p. 19.

- (23) This Framework Decision is without prejudice to the rules pertaining to illicit access to data as foreseen in the Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems¹³.
- (24) It is appropriate to replace Article 23 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union¹⁴.
- (25) Any reference to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal data should be read as reference to this Framework Decision.
- (26) Since the objectives of the action to be taken, namely the determination of common rules for the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, cannot be sufficiently achieved by the Member States acting alone, and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the European Union, the Council may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty and referred to in Article 2 of the EU Treaty. In accordance with the principle of proportionality as set out in Article 5 of the EC Treaty, this Framework Decision does not go beyond what is necessary to achieve those objectives.
- (27) The United Kingdom is taking part in this Framework Decision, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the EU Treaty and to the EC Treaty, and Article 8 (2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis¹⁵.

¹³ OJ L 69, 16.3.2005, p. 67.

¹⁴ OJ C 197, 12.7.2000, p. 3.

¹⁵ OJ L 131, 1.6.2000, p. 43.

- (28) Ireland is taking part in this Framework Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the EU Treaty and to the EC Treaty, and Article 6 (2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis.
- (29) As regards Iceland and Norway, this Framework Decision constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1(H) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement¹⁶.
- (30) As regards Switzerland, this Framework Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1 (H) of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 4 (1) of the Council Decision 2004/849/EC on the signing, on behalf of the European Union, and on the provisional application of certain provisions of that Agreement¹⁷.
- (31) This Framework Decision constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(1) of the 2003 Act of Accession.
- (32) This Framework Decision respects the fundamental rights and observes the principles recognized, in particular by the Charter of Fundamental Rights of the European Union. This Framework Decision seeks to ensure full respect for the rights to privacy and the protection of personal data in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union,

¹⁶ OJ L 176, 10.7.1999, p. 31.

¹⁷ OJ L 368, 15.12.2004, p. 26.

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

OBJECT, DEFINITIONS AND SCOPE

Article 1

Object and scope¹⁸

1. This Framework Decision determines common standards to ensure the protection of individuals with regard to the processing of personal data in the framework of police and judicial co-operation in criminal matters, provided for by Title VI of the Treaty on European Union¹⁹.
2. This Framework Decision shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system by a competent authority for the purpose of the prevention, investigation, detection and prosecution of criminal offences^{20 21}.

¹⁸ As several delegations (AT, DE, FI, IT) argued in favour of a merger of Articles 1 and 3, the Presidency has inserted the text of the previous Article 3 in paragraphs 2 and 3 of Article 1.

¹⁹ CH, CZ, DK, FI, IE and UK thought the scope of the draft Framework Decision should be confined to transfer of data between Member States and should not cover data which are processed in a purely domestic context. 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. AT, DE, ES, HU, IT and PL thought the domestic handling of data should be covered by the Framework Decision.

²⁰ ES pointed out that Article 1(1) gave a broader definition of the goal of the Framework Decision than Article 3(1) (now Article 1(2)) and that the language of the two provisions should be aligned.

²¹ The UK thinks that processing of personal data in connection with national security purposes is outside the scope of the draft Framework Decision, and would like express clarification of this in the instrument.

3. This Framework Decision shall not apply to the processing of personal data by
- the European Police Office (Europol),
 - the European Judicial Cooperation Unit (Eurojust),
 - the Customs Information System as set up according to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes, and any amendments made thereto.
4. This Framework Decision does not preclude Member States to provide safeguards for the protection of personal data in the context of police and judicial cooperation in criminal matters higher than those established in this Framework Decision, but such provisions may not restrict nor prohibit the disclosure of personal data to the competent authorities of other Member States for reasons connected with the protection of personal data as provided for in this Framework Decision²².

Article 2
*Definitions*²³

For the purposes of this Framework Decision:

- (a) 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (b) 'processing of personal data' ('processing') shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation,

²² New text at the proposal of ES.

²³ Several delegations proposed that new indents would be added with additional definitions. DE asked for a definition of 'blocking' and 'mark' and NO asked for a definition of '(explicit) consent'. The Presidency invited these delegations to propose wording for these additional indents, further to which DE proposed the following definitions, based of the Prüm Treaty. "Marking" = "the marking of stored personal data without the aim of limiting their processing in future", and "blocking" = " the marking of stored personal data with the aim of limiting their processing in future".

use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

- (c) 'personal data filing system' ('filing system') shall mean any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;
- (d) 'controller' shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of the processing are determined by national law or by law adopted in accordance with Title VI of the Treaty on European Union, the controller or the specific criteria for his nomination may be designated by national law or by law under Title VI of the Treaty on European Union;
- (e) 'processor' shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;
- (f) 'third party' shall mean any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;
- (g) 'recipient' shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not;
- (h) 'the data subject's consent' shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed;
- (i) 'international bodies' shall mean bodies or organisations established by international agreements²⁴;

²⁴ Reserve from DK.

- (j) ‘competent authorities’ shall mean police (...), customs, judicial and other competent authorities of the Member States that are authorized by national law to detect, prevent, investigate or prosecute offences or criminal activities²⁵ within the meaning of Article 29 of the Treaty on European Union.

Article 3
*(...)*²⁶

CHAPTER II

GENERAL RULES ON THE LAWFULNESS OF PROCESSING OF PERSONAL DATA

Article 4
Principles relating to data quality

1. Member States shall provide that personal data must be:
 - (a) processed fairly and lawfully;
 - (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes²⁷. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards;

²⁵ Clarification at the suggestion of HU (see doc. 5193/06 CRIMORG 3 DROIPEN 2 ENFOPOL 3 DATAPROTECT 1 COMIX 26). This change could also accommodate the concerns raised by several States (DK, NO) whose customs authorities do not have criminal powers.

²⁶ As several delegations (AT, DE, FI, IT) argued in favour of a merger of Articles 1 and 3, the Presidency has inserted the text of the previous Article 3 in paragraphs 2 and 3 of Article 1.

²⁷ CZ, DE, ES, IE, NL and SE thought this paragraph was drafted too narrowly. The Presidency proposes either to insert at the end of the phrase: “including the purposes referred to in Article 1 para. 2” or to insert a recital that makes clear the relationship between the purposes referred to in Article 1 para. 2 and the provision in Art. 4 para. 1 (b).

- (c) adequate, relevant and not excessive in relation to the purposes for which they are collected;
- (d) accurate²⁸ and, where necessary, kept up to date. Every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected²⁹ for which they are further processed, are erased or rectified³⁰. Member States may provide for the processing of data to varying degrees of accuracy and reliability in which case they must provide that data are distinguished in accordance with their degree of accuracy and reliability, and in particular that data based on facts are distinguished from data based on opinions or personal assessments³¹;
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.

2. It shall be for the controller to ensure that paragraph 1 is complied with.

3. (...) ³²

²⁸ NO thought there are many situations, where, certainly at the beginning of investigations, it is not possible to ascertain that information be accurate for the purpose for which it has been collected and/or is being processed. This was supported by CH, DK and SI. NL and PT referred to paragraphs 60 and 61 of the Opinion of the European Data Protection Supervisor (doc. 16050/05 CRIMORG 160 DROIPEN 64 ENFOPOL 185 DATAPROTECT 8 COMIX 864). The Presidency is inclined to agree with this view and would like to point out that that even in cases where it turns out that certain information was not relevant to the purpose for which it has been collected and/or is being processed, it may be relevant for other law enforcement purposes. See proposal in footnote 26.

²⁹ The Presidency proposes either to insert here: “including the purposes referred to in Article 1 para. 2” or to insert a recital that makes clear the relationship between the purposes referred to in Article 1 para. 2 and the provision in Art. 4 para. 1 (d).

³⁰ NO took fault with the proposed requirement that inaccurate or incomplete data, having regard to the purposes for which they were collected or for which they are further processed, be erased or rectified. DE thought that the concept of 'accuracy' was a problematic one in the context of law enforcement, where there is no scientific truth.

³¹ AT suggested that the part of the paragraph starting with 'in particular ...' be deleted.

³² In view of the generally held view that this paragraph was not necessary, the Presidency proposes to delete it.

4. (...) ³³

Article 5

Criteria for making data processing legitimate

1. Member States shall provide that personal data may be processed by the competent authorities³⁴ only if provided for by (...) ³⁵ law (...) ^{36 37}.

³³ The Presidency has followed the suggestion of several delegations to place the content of this paragraph in Article 5(2).

³⁴ See the amended version of the definition in Article 2(j).

³⁵ Change proposed by the Presidency in order to make clear that not only acts of parliament, but any form of law may provide a legal basis (as wished by FR, UK). This corresponds to the case law of the European Court on Human Rights on Article 8 ECHR. The Presidency submits that the precise form and content of the legal basis should be left to Member States. A recital could, however, spell out the idea that the principle should be laid down in an act of parliament, whereas the details could be worked out in secondary legislation.

³⁶ The Presidency proposes to delete the last part of the sentence ("necessary for the fulfilment of the legitimate task of the authority concerned and for the purpose of the prevention, investigation, detection or prosecution of criminal offences"), as it duplicates the first indent of paragraph 2. Several delegations (IE, LU, UK) had moreover argued that paragraph 1 in its entirety was superfluous. Reservation by HU on paragraph 1.

³⁷ Scrutiny reservation by AT, DE, ES, NL and NO related to the absence of a reference to the situation in which a data subject gives his consent to processing. FR, GR and HU were opposed to the insertion of such a reference to consent, which, according to GR, made sense only in the context of data processing for commercial purposes.

2. Member States shall provide that processing of personal data is only legitimate if
- there are (...) ³⁸ factual indications to believe that the personal data concerned would make possible, facilitate or accelerate the prevention, investigation, detection ³⁹ or prosecution of a criminal offence ^{40, 41}, and
 - there is no other means less affecting the data subject, and
 - the processing of the data is not excessive in relation to the offence(s) concerned ⁴².

Article 6

Processing of special categories of data

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life ⁴³.
2. Paragraph 1 shall not apply where
- processing is provided for by (...) ⁴⁴ law, and

³⁸ The Presidency agrees with DK and FR that the requirement of 'on established facts' is too stringent in combination with the 'reasonable grounds' requirement.

³⁹ DE thought that the concepts 'investigation' and 'detection' could be deleted. They do, however, also figure in Article 1(2) and in Article 13(1)(d) of the Data Protection Directive.

⁴⁰ Some delegations (FI, NO, UK) argued that there was a contradiction with Article 11(1)(b), which also makes provision for the prevention of threats to public security or to a person. The Presidency tends to agree with the those delegations (AT, BE, ES, FR, HU), which pointed out that other purposes than prevention, investigation, detection and protection of criminal offences could not be included in a Title VI instrument. There is no contradiction with Article 11(1)(b), as that provision merely allows the wider use of information which was initially gathered for the purpose of prevention, investigation, detection or prosecution of a criminal offence.

⁴¹ SK suggested to add here "or the execution of a penalty imposed for a criminal offence". Should the Working Party agree with this proposal, this addition will have to be introduced in other parts of the draft Framework Decision as well (probably in Art. 1 para 2) in order to arrive at a coherent text.

⁴² DK thought the three criteria were too stringent and would hamper effective law enforcement. NL and UK thought Article 5(2) (previously Article 4(4)) could be deleted as a whole as the proportionality requirement was already covered in Article 4(1)(c). The Presidency agrees that the relation between Article 4(1)(c) and Article 5(2) should be clarified at a later stage.

⁴³ Reservation by CH, DE, IE, NL and UK, who thought that there should not be a prohibition of the processing of these data but that this should be allowed only under specific conditions.

- processing is (...) ⁴⁵ necessary for the fulfilment of the legitimate task of the authority concerned for the purpose of the prevention, investigation, detection or prosecution of criminal offences [or if the data subject has given his or her explicit consent to the processing] ⁴⁶, and
- the Member State has provided for suitable specific safeguards[, for example access to the data concerned only for personnel that are responsible for the fulfilment of the legitimate task that justifies the processing]. ⁴⁷

Article 7

Time limits for the storage of personal data

1. Member States shall provide that personal data shall be stored for no longer than necessary for the purpose for which it was collected or stored ⁴⁸ (...). (...) ⁴⁹.
2. Member States shall provide for, ⁵⁰ appropriate (...) time limits [or for a periodic review] for the storage of personal data and shall have procedural and technical measures in place to ensure that these are observed. (...).

⁴⁴ Change proposed by the Presidency in order to make clear that not only acts of parliament, but any form of law may provide a legal basis (as wished by FR, UK). This corresponds to the case law of the European Court on Human Rights on Article 8 ECHR. The Presidency submits that the precise form and content of the legal basis should be left to Member States.

⁴⁵ In view of the remarks by several delegations on the word 'absolutely', the Presidency has deleted it.

⁴⁶ DK, GR and LU queried as to why consent was mentioned here and not in Article 5. The Presidency agrees that it does not seem logical to insert this possibility here, which adds very little, and therefore should probably be deleted.

⁴⁷ AT, DE, FR and BE queried the added value of this paragraph in relation to the general data protection requirements which apply across the board.

⁴⁸ A number of Member States (DE, LU) opposed the idea that data should be stored only as long as required by the goal for which they were collected, but thought that data should be stored as long as they could be useful for law enforcement purposes. LU draws delegations' attention to the change of the wording of Art. 21 para. 3 of the Europol-Convention by the Protocol of 27 November 2003 (O.J. 2004 C 2, p. 1) – the time limit of storage of three years in the original version is replaced by a review every year. The Presidency hopes that the insertion of the words 'or stored' (as proposed by FR) can accommodate these concerns.

⁴⁹ The Presidency proposes to delete the reference to Article 4(3) as it has proposed to delete that paragraph.

⁵⁰ Text suggestion by the Presidency in view of the legitimate remarks by several delegations (BE, CH, NO) that these time limits, if there are to be any, should be different according to the type of data at hand.

CHAPTER III – Specific Forms of Processing

SECTION I – TRANSMISSION OF AND MAKING AVAILABLE PERSONAL DATA TO THE COMPETENT AUTHORITIES OF OTHER MEMBER STATES

Article 8

Transmission of and making available personal data to the competent authorities of other Member States

Member States shall provide that personal data shall only be transmitted or made available to the competent authorities of other Member States if necessary for the fulfilment of a legitimate task of the transmitting or receiving authority and for the purpose of the prevention, investigation, detection or prosecution of criminal offences.

Article 9

Verification of quality of data that are transmitted or made available

1. Member States shall provide that the quality of personal data is verified at the latest before they are transmitted or made available. As far as possible, in all transmissions of data, judicial decisions as well as decisions not to prosecute should be indicated and data based on opinions or personal assessments checked at source before being transmitted and their degree of accuracy or reliability indicated.
2. Member States shall provide that the quality of personal data, which are made available by direct automated access to the competent authorities of other Member States, are regularly verified in order to ensure that accurate and updated data are accessed.
3. Member States shall provide that personal data which are no longer accurate or up to date shall not be transmitted or made available.

4. Member States shall provide that a competent authority that transmitted or made available personal data to a competent authority of another Member State shall inform the latter immediately if it should establish, either on its own initiative or further to a request by the data subject, that the data concerned should not have been transmitted or made available or that inaccurate or outdated data were transmitted or made available.
5. Member States shall provide that a competent authority that has been informed according to paragraph 4 shall delete or rectify the data concerned. Furthermore, that authority shall rectify the data concerned if it detects that these data are inaccurate. If that authority has reasonable grounds to believe that received personal data are inaccurate or to be deleted, it shall inform without delay the competent authority that transmitted or made available the data concerned.
6. Member States shall, without prejudice to national criminal procedure, provide that personal data are marked on request of the data subject if their accuracy is denied by the data subject and if their accuracy or inaccuracy cannot be ascertained. Such mark shall only be deleted with the consent of the data subject or on the basis of a decision of the competent court or of the competent supervisory authority.
7. Member States shall provide that personal data received from the authority of another Member State are deleted
 - if these data should not have been transmitted, made available or received,
 - after a time limit laid down in the law of the other Member State if the authority that transmitted or made available the data concerned has informed the receiving authority of such a time limit when the data concerned were transmitted or made available, unless the personal data are further needed for judicial proceedings,
 - if these data are not or no longer necessary for the purpose for which they were transmitted or made available.

8. If personal data were transmitted without request the receiving authority shall verify without delay whether these data are necessary for the purpose for which they were transmitted.
9. Personal data shall not be deleted but blocked in accordance with national law if there are reasonable grounds to believe that the deletion could affect the interests of the data subject worthy of protection. Blocked data shall only be used or transmitted for the purpose they were not deleted for.

Article 10

Logging and documentation

1. Member States shall provide that each automated transmission and reception of personal data, in particular by direct automated access, is logged in order to ensure the subsequent verification of the reasons for the transmission, the transmitted data, the time of transmission, the authorities involved and, as far as the receiving authority is concerned, the persons who have received the data and who have given rise to their reception.
2. Member States shall provide that each non automated transmission and reception of personal data is documented in order to ensure the subsequent verification of the reasons for the transmission, the transmitted data, the time of transmission, the authorities involved and, as far as the receiving authority is concerned, the persons who have received the data and who have given rise to their reception.
3. The authority that has logged or documented such information shall communicate it without delay to the competent supervisory authority on request of the latter. The information shall only be used for the control of data protection and for ensuring proper data processing as well as data integrity and security.

SECTION II – FURTHER PROCESSING, IN PARTICULAR FURTHER TRANSMISSION AND TRANSFER, OF DATA RECEIVED FROM OR MADE AVAILABLE BY THE COMPETENT AUTHORITIES OF OTHER MEMBER STATES

Article 11

Further processing of personal data received from or made available by the competent authority of another Member State

1. Member States shall provide that personal data received from or made available by the competent authority of another Member State are only further processed, in accordance with this Framework Decision, in particular its Articles 4, 5 and 6,
 - (a) for the specific purpose they were transmitted or made available or
 - (b) if necessary for the purpose of the prevention, investigation, detection or prosecution of criminal offences or for the purpose of the prevention of threats to public security or to a person, except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.
2. The personal data concerned shall be further processed for the purposes referred to in paragraph 1 (b) of this article only with the prior consent of the authority that transmitted or made available the personal data.
3. Paragraph 1 (b) shall not apply if specific legislation under Title VI of the Treaty on European Union explicitly stipulates that personal data received from or made available by the competent authority of another Member State shall only be further processed for the purposes they were transmitted or made available for.

Article 12

Transmission to other competent authorities

Member States shall provide that personal data received from or made available by the competent authority of another Member State are further transmitted or made available to other competent authorities of a Member State only if all of the following requirements are met:

- (a) the transmission or making available is provided for by law clearly obliging or authorising it.
- (b) the transmission or making available is necessary for the fulfilment of the legitimate task of the authority that has received the data concerned or of the authority to which they shall be further transmitted.
- (c) the transmission or making available is necessary for the specific purpose they were transmitted or made available for or for the purpose of the prevention, investigation, detection or prosecution of criminal offences or for the purpose of the prevention of threats to public security or to a person, except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.
- (d) the competent authority of the Member State that has transmitted or made available the data concerned to the competent authority that intends to further transmit them or make them available has given its prior consent to their further transmission or making available.

Article 13

Transmission to authorities other than competent authorities

Member States shall provide that personal data received from or made available by the competent authority of another Member State are further transmitted to authorities, other than competent authorities, of a Member State only in particular cases and if all of the following requirements are met:

- (a) the transmission is provided for by law clearly obliging or authorising it and

(b) the transmission is

necessary for the specific purpose the data concerned were transmitted or made available for or for the purpose of the prevention, investigation, detection or prosecution of criminal offences or for the purpose of the prevention of threats to public security or to a person, except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject,

or

necessary because the data concerned are indispensable to the authority to which the data shall be further transmitted to enable it to fulfil its own lawful task and provided that the aim of the collection or processing to be carried out by that authority is not incompatible with the original processing, and the legal obligations of the competent authority which intends to transmit the data are not contrary to this,

or

undoubtedly in the interest of the data subject and either the data subject has consented or circumstances are such as to allow a clear presumption of such consent.

(c) The competent authority of the Member State that has transmitted or made available the data concerned to the competent authority that intends to further transmit them has given its prior consent to their further transmission.

Article 14

Transmission to private parties

Member States shall, without prejudice to national criminal procedural rules, provide that personal data received from or made available by the competent authority of another Member State can be further transmitted to private parties in a Member State only in particular cases and if all of the following requirements are met:

(a) the transmission is provided for by law clearly obliging or authorising it, and

- (b) the transmission is necessary for the purpose the data concerned were transmitted or made available for or for the purpose of the prevention, investigation, detection or prosecution of criminal offences or for the purpose of the prevention of threats to public security or to a person, except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject, and
- (c) the competent authority of the Member State that has transmitted or made available the data concerned to the competent authority that intends to further transmit them has given its prior consent to their further transmission to private parties.

Article 15

Transfer to competent authorities in third countries or to international bodies

1. Member States shall provide that personal data received from or made available by the competent authority of another Member State are not further transferred to competent authorities of third countries or to international bodies except if such transfer is in compliance with this Framework Decision and, in particular, all the following requirements are met.
 - (a) The transfer is provided for by law clearly obliging or authorising it.
 - (b) The transfer is necessary for the purpose the data concerned were transmitted or made available for or for the purpose of the prevention, investigation, detection or prosecution of criminal offences or for the purpose of the prevention of threats to public security or to a person, except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.
 - (c) The competent authority of another Member State that has transmitted or made available the data concerned to the competent authority that intends to further transfer them has given its prior consent to their further transfer.
 - (d) An adequate level of data protection is ensured in the third country or by the international body to which the data concerned shall be transferred.

2. Member States shall ensure that the adequacy of the level of protection afforded by a third country or international body shall be assessed in the light of all the circumstances for each transfer or category of transfers. In particular, the assessment shall result from an examination of the following elements: the type of data, the purposes and duration of processing for which the data are transferred, the country of origin and the country of final destination, the general and sectoral rules of law applicable in the third country or body in question, the professional and security rules which are applicable there, as well as the existence of sufficient safeguards put in place by the recipient of the transfer.
3. The Member States and the Commission shall inform each other of cases where they consider that a third country or an international body does not ensure an adequate level of protection within the meaning of paragraph 2.
4. Where, under the procedure provided for in Article 16, it is established that a third country or international body does not ensure an adequate level of protection within the meaning of paragraph 2, Member States shall take the measures necessary to prevent any transfer of personal data to the third country or international body in question.
5. In accordance with the procedure referred to in Article 16, it may be established that a third country or international body ensures an adequate level of protection within the meaning of paragraph 2, by reason of its domestic law or of the international commitments it has entered into, for the protection of the private lives and basic freedoms and rights of individuals.
6. Exceptionally, personal data received from the competent authority of another Member State may be further transferred to competent authorities of third countries or to international bodies in or by which an adequate level of data protection is not ensured if absolutely necessary in order to safeguard the essential interests of a Member State or for the prevention of imminent serious danger threatening public security or a specific person or persons.

Article 16

Committee

1. Where reference is made to this Article, the Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall adopt its rules of procedure on a proposal made by the Chair on the basis of standard rules of procedure which have been published in the Official Journal of the European Union.
3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairperson may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty establishing the European Community, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairperson shall not vote.
4. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament thereof.
5. The Council may act by qualified majority on the proposal, within two months from the date of referral to the Council.

If within that period, the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, resubmit its proposal or present a legislative proposal. If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

Article 17

Exceptions from Articles 12, 13, 14 and 15

Articles 12, 13, 14 and 15 shall not apply if specific legislation under Title VI of the Treaty on European Union explicitly stipulates that personal data received from or made available by the competent authority of another Member State shall not be further transmitted or only be further transmitted under more specific conditions.

Article 18

Information on request of the competent authority

Member States shall provide that the competent authority from or by whom personal data were received or made available will be informed on request about their further processing and the achieved results.

CHAPTER IV

RIGHTS OF THE DATA SUBJECT

Article 19

Right of information in cases of collection of data from the data subject with his knowledge

1. Member States shall provide that the controller or his representative must provide a data subject from whom data relating to himself are collected with his knowledge with at least the following information free of cost, except where he already has it:
 - (a) the identity of the controller and of his representative, if any;
 - (b) the purposes of the processing for which the data are intended;

(c) any further information such as

- the legal basis of the processing,
- the recipients or categories of recipients of the data,
- whether replies to questions or other forms of cooperation are obligatory or voluntary, as well as the possible consequences of failure to reply or to cooperate,
- the existence of the right of access to and the right to rectify the data concerning him or her

in so far as such further information is necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject.

2. The provision of the information laid down in paragraph 1 shall be refused or restricted only if necessary

- (a) to enable the controller to fulfil its lawful duties properly,
- (b) to avoid prejudicing of ongoing investigations, inquiries or proceedings or the fulfilment of the lawful duties of the competent authorities,
- (c) to protect public security and public order in a Member State,
- (d) to protect the rights and freedoms of third parties,

except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.

3. If the information referred to in paragraph 1 is refused or restricted, the controller shall inform the data subject that he may appeal to the competent supervisory authority, without prejudice to any judicial remedy and without prejudice to national criminal procedure.

4. The reasons for a refusal or restriction according to paragraph 2 shall not be given if their communication prejudices the purpose of the refusal. In such case the controller shall inform the data subject that he may appeal to the competent supervisory authority, without prejudice to any judicial remedy and without prejudice to national criminal procedure. If the data subject lodges an appeal to the supervisory authority, the latter shall examine the appeal. The supervisory authority shall, when investigating the appeal, only inform him of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

Article 20

Right of information where the data have not been obtained from the data subject or have been obtained from him without his knowledge

1. Where the data have not been obtained from the data subject or have been obtained from him without his knowledge or without his awareness that data are being collected concerning him, Member States shall provide that the controller or his representative must, at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, within a reasonable time after the data are first disclosed, provide the data subject with at least the following information free of cost, except where he already has it or the provision of the information proves impossible or would involve a disproportionate effort:
 - (a) the identity of the controller and of his representative, if any;
 - (b) the purposes of the processing;
 - (c) any further information such as
 - the legal basis of the processing,
 - the categories of data concerned,

- the recipients or categories of recipients,
 - the existence of the right of access to and the right to rectify the data concerning him
- in so far as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.

2. The information laid down in paragraph 1 shall not be provided if necessary

- (a) to enable the controller to fulfil its lawful duties properly,
- (b) to avoid prejudicing of ongoing investigations, inquiries or proceedings or the fulfilment of the lawful duties of the competent authorities,
- (c) to protect public security and public order in a Member State,
- (d) to protect the rights and freedoms of third parties,

except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.

Article 21

Right of access, rectification, erasure or blocking

1. Member States shall guarantee every data subject the right to obtain from the controller:

- (a) without constraint, at reasonable intervals and without excessive delay or expense:
 - confirmation as to whether or not data relating to him are being processed and information at least as to the purposes of the processing, the categories of data concerned, the legal basis of the processing and the recipients or categories of recipients to whom the data have been disclosed,

- communication to him in an intelligible form of the data undergoing processing and of any available information as to their source;
- (b) as appropriate, the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Framework Decision, in particular because of the incomplete or inaccurate nature of the data;
- (c) notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves a disproportionate effort.

2. Any act the data subject is entitled to according to paragraph 1 shall be refused if necessary

- (a) to enable the controller to fulfil its lawful duties properly,
- (b) to avoid prejudicing of ongoing investigations, inquiries or proceedings or the fulfilment of the lawful duties of the competent authorities,
- (c) to protect public security and public order in a Member State,
- (d) to protect the rights and freedoms of third parties,

except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.

3. A refusal or restriction of the rights referred to in paragraph 1 shall be set out in writing. If the right referred to in paragraph 1 is refused or restricted, the controller shall inform the data subject that he may appeal to the competent supervisory authority, without prejudice to any judicial remedy and without prejudice to national criminal procedure.

4. The reasons for a refusal according to paragraph 2 shall not be given to the data subject if their communication prejudices the purpose of the refusal. In such case the controller shall inform the data subject that he may appeal to the competent supervisory authority, without prejudice to any judicial remedy and without prejudice to national criminal procedure. If the data subject lodges an appeal to the supervisory authority, the latter shall examine the appeal. The supervisory authority shall, when investigating the appeal, only inform him of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

Article 22

Information to third parties following rectification, blocking or erasure

Member States shall provide that appropriate technical measures are taken to ensure that, in cases where the controller rectifies, blocks or erases personal data following a request, a list of the suppliers and addressees of these data is automatically produced. The controller shall ensure that those included in the list are informed of the changes performed on the personal data.

CHAPTER V

Confidentiality and security of processing

Article 23

Confidentiality

Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller, unless he is required to do so by law. All persons called upon to work with or within a competent authority of a Member State shall be bound by strict confidentiality rules.

Article 24

Security

1. Member States shall provide that the controller must implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission over a network or the making available by granting direct automated access, and against all other unlawful forms of processing, taking into account in particular the risks represented by the processing and the nature of the data to be protected.

Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected. Measures shall be deemed necessary where the effort they involve is not disproportionate to the objective they are designed to achieve in terms of protection.

2. In respect of automated data processing each Member State shall implement measures designed to:
 - (a) deny unauthorized persons access to data processing equipment used for processing personal data (equipment access control);
 - (b) prevent the unauthorized reading, copying, modification or removal of data media (data media control);
 - (c) prevent the unauthorized input of data and the unauthorized inspection, modification or deletion of stored personal data (storage control);
 - (d) prevent the use of automated data processing systems by unauthorized persons using data communication equipment (user control);
 - (e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);

- (f) ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment (communication control);
 - (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data processing systems and when and by whom the data were input (input control);
 - (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
 - (i) ensure that installed systems may, in case of interruption, be immediately restored (recovery);
 - (j) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).
3. Member States shall provide that the controller must, where processing is carried out on his behalf, choose a processor providing sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out, and must ensure compliance with those measures.
4. The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
- the processor shall act only on instructions from the controller,
 - the obligations set out in paragraphs 1 and 2, as defined by the law of the Member State in which the processor is established, shall also be incumbent on the processor.
5. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in paragraph 1 shall be in writing or in another equivalent form.

Article 25

Register

1. Member States shall provide that every controller keeps a register of any processing operation or sets of such an operation intended to serve a single purpose or several related purposes. The information to be contained in the register shall include
 - (a) the name and address of the controller and of his representative, if any;
 - (b) the purpose or purposes of the processing;
 - (c) a description of the category or categories of data subject and of the data or categories of data relating to them;
 - (d) the legal basis of the processing operation for which the data are intended;
 - (e) the recipients or categories of recipient to whom the data might be disclosed;
 - (f) proposed transfers of data to third countries;
 - (g) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 24 to ensure security of processing.
2. Member States shall specify the conditions and procedures under which information referred to in paragraph 1 must be notified to the supervisory authority.

Article 26

Prior checking

1. Member States shall determine the processing operations likely to present specific risks to the rights and freedoms of data subjects and shall check that these processing operations are examined prior to the start thereof.

2. Such prior checks shall be carried out by the supervisory authority following receipt of a notification from the controller or by the data protection official, who, in cases of doubt, must consult the supervisory authority.
3. Member States may also carry out such checks in the context of preparation either of a measure of the national parliament or of a measure based on such a legislative measure, which define the nature of the processing and lay down appropriate safeguards.

CHAPTER VI

JUDICIAL REMEDIES AND LIABILITY

Article 27

Remedies

Without prejudice to any administrative remedy for which provision may be made, inter alia before the supervisory authority referred to in Article 30, prior to referral to the judicial authority, Member States shall provide for the right of every person to a judicial remedy for any breach of the rights guaranteed to him by the applicable national law pursuant to this Framework Decision to the processing in question.

Article 28

Liability

1. Member States shall provide that any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this Framework Decision is entitled to receive compensation from the controller for the damage suffered. The controller may be exempted from this liability, in whole or in part, if he proves that he is not responsible for the event giving rise to the damage.

2. However, a competent authority that received personal data from the competent authority of another Member State is liable vis-à-vis the injured party for damages caused because of the use of inaccurate or outdated data. It can not disclaim its liability on the ground that it received inaccurate or outdated data from another authority. If damages are awarded against the receiving authority because of its use of inaccurate data transmitted or made available by the competent authority of another Member State, the latter shall refund in full to the receiving authority the amount paid in damages.

Article 29

Sanctions

1. The Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Framework Decision and shall in particular lay down effective, proportionate and dissuasive sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Framework Decision.
2. Member States shall provide for effective, proportionate and dissuasive criminal sanctions for intentionally committed offences implying serious infringements of provisions adopted pursuant to this Framework Decision, notably provisions aimed at ensuring confidentiality and security of processing.

CHAPTER VII

**SUPERVISORY AUTHORITY AND WORKING PARTY ON THE
PROTECTION OF INDIVIDUALS WITH REGARD TO THE
PROCESSING OF PERSONAL DATA**

Article 30

Supervisory authority

1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Framework Decision. These authorities shall act with complete independence in exercising the functions entrusted to them.
2. Each Member State shall provide that the supervisory authorities are consulted when drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences.
3. Each authority shall in particular be endowed with:
 - investigative powers, such as powers of access to data forming the subject-matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties,
 - effective powers of intervention, such as, for example, that of delivering opinions before processing operations are carried out, in accordance with Article 26, and ensuring appropriate publication of such opinions, of ordering the blocking, erasure or destruction of data, of imposing a temporary or definitive ban on processing, of warning or admonishing the controller, or that of referring the matter to national parliaments or other political institutions,

- the power to engage in legal proceedings where the national provisions adopted pursuant to this Framework Decision have been violated or to bring these violations to the attention of the judicial authorities.

Decisions by the supervisory authority which give rise to complaints may be appealed against through the courts.

4. Each supervisory authority shall hear claims lodged by any person concerning the protection of his rights and freedoms in regard to the processing of personal data. The person concerned shall be informed of the outcome of the claim.
5. Each supervisory authority shall draw up a report on its activities at regular intervals. The report shall be made public.
6. Each supervisory authority is competent, whatever the national law applicable to the processing in question, to exercise, on the territory of its own Member State, the powers conferred on it in accordance with paragraph 3. Each authority may be requested to exercise its powers by an authority of another Member State.
7. The supervisory authorities shall cooperate with one another as well as with the supervisory bodies set up under Title VI of the Treaty on European Union and the European Data Protection Supervisor to the extent necessary for the performance of their duties, in particular by exchanging all useful information.
8. Member States shall provide that the members and staff of the supervisory authority, even after their employment has ended, are to be subject to a duty of professional secrecy with regard to confidential information to which they have access.
9. The powers of the supervisory authority shall not affect the independence of the judiciary and the decision taken by this authority shall be without prejudice to the execution of the legitimate tasks of the judiciary in criminal proceedings.

Article 31

Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the prevention, investigation, detection and prosecution of criminal offences

1. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the prevention, investigation, detection and prosecution of criminal offences, hereinafter referred to as 'the Working Party', is hereby set up. It shall have advisory status and act independently.
2. The Working Party shall be composed of a representative of the supervisory authority or authorities designated by each Member State, of a representative of the European Data Protection Supervisor, and of a representative of the Commission.

Each member of the Working Party shall be designated by the institution, authority or authorities which he represents. Where a Member State has designated more than one supervisory authority, they shall nominate a joint representative.

The chairpersons of the joint supervisory bodies set up under Title VI of the Treaty on European Union shall be entitled to participate or to be represented in meetings of the Working Party. The supervisory authority or authorities designated by Iceland, Norway and Switzerland shall be entitled to be represented in meetings of the Working Party insofar as issues related to the Schengen Acquis are concerned.

3. The Working Party shall take its decisions by a simple majority of the representatives of the supervisory authorities of the Member States.
4. The Working Party shall elect its chairperson. The chairperson's term of office shall be two years. His appointment shall be renewable.
5. The Working Party's secretariat shall be provided by the Commission.
6. The Working Party shall adopt its own rules of procedure.

7. The Working Party shall consider items placed on its agenda by its chairperson, either on his own initiative or at the request of a representative of the supervisory authorities, the Commission, the European Data Protection Supervisor or the chairpersons of the joint supervisory bodies.

Article 32

Tasks

1. The Working Party shall,
 - (a) examine any question covering the application of the national measures adopted under this Framework Decision in order to contribute to the uniform application of such measures,
 - (b) give an opinion on the level of protection in the Member States and in third countries and international bodies, in particular in order to guarantee that personal data are transferred in compliance with Article 15 of this Framework Decision to third countries or international bodies that ensure an adequate level of data protection,
 - (c) advise the Commission and the Member States on any proposed amendment of this Framework Decision, on any additional or specific measures to safeguard the rights and freedoms of natural persons with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences and on any other proposed measures affecting such rights and freedoms.
2. If the Working Party finds that divergences likely to affect the equivalence of protection for persons with regard to the processing of personal data in the European Union are arising between the laws and practices of Member States it shall inform the Council and the Commission.

3. The Working Party may, on its own initiative or on the initiative of the Commission or the Council, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the European Union for the purpose of the prevention, investigation, detection and prosecution of criminal offences.
4. The Working Party's opinions and recommendations shall be forwarded to the Council, to the Commission and to the European Parliament and to the committee referred to in Article 16.
5. The Commission shall, based on information provided by the Member States, inform the Working Party of the action taken in response to its opinions and recommendations. It shall do so in a report which shall also be forwarded to the European Parliament and the Council. The report shall be made public. Member States shall inform the Working Party of any action taken by them pursuant to Paragraph 1.
6. The Working Party shall draw up an annual report on the situation regarding the protection of natural persons with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences in the European Union and in third countries, which it shall transmit to the Commission, the European Parliament and the Council. The report shall be made public.

CHAPTER VIII

Final provisions

Article 33

Amendment of the Schengen Convention

For the purposes of matters falling within the scope of the EU Treaty, this Framework Decision replaces Articles 126 to 130 of the Schengen Convention.

Article 34

Relation to other instruments concerning the processing and protection of personal data

1. This Framework Decision replaces Article 23 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union..
2. Any reference to the Convention No 108 of the Council of Europe of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data shall be construed as a reference to this Framework Decision.

Article 35

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision on 31 December 2006.
2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into national law the obligations imposed on them under this Framework Decision, as well as information on the designation of the supervisory authority or authorities referred to in Article 29. On the basis of this information and a written report from the Commission, the Council shall before 31 December 2007 assess the extent to which Member States have taken the measures necessary to comply with this Framework Decision.

Article 36

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President
