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LIMITE

**CRIMORG 11
DROIPEN 5
ENFOPOL 9
DATAPROTECT 2
COMIX 62**

OUTCOME OF PROCEEDINGS

From : Multidisciplinary Group on Organised Crime (Mixed Committee)

On : 12 January 2006

No. prev. doc. : 13019/05 CRIMORG 104 DROIPEN 41 ENFOPOL 124 DATAPROTECT 4
COMIX 642 + ADD 1

15554/05 CRIMORG 154 DROIPEN 62 ENFOPOL 181 DATAPROTECT 7
COMIX 821

No. Cion Prop. COM(2005) 475 final

Subject : Proposal for a Council Framework Decision on the protection of personal data
processed in the framework of police and judicial co-operation in criminal matters

At the MDG meeting of 12 January 2006, the Presidency submitted a number of questions related to the scope of the draft Framework Decision (see doc. 15554/05 CRIMORG 154 DROIPEN 62 ENFOPOL 181 DATAPROTECT 7 COMIX 821). NL and SI entered a general scrutiny reservation. NL also has a parliamentary reservation.

- 1) On the first question whether both police and judicial co-operation should be included in the scope of the draft Framework Decision, almost all delegations which intervened¹, were in favour of the inclusion of both police and judicial co-operation, though some indicated that

¹ CY, CZ, DE, DK, ES, FR, HU, IT, NL, PT and SE.

specific rules might be required in respect of judicial co-operation. One delegation¹ queried whether the Framework Decision should also cover any kind of data processing by courts in non-cross border situations.

- 2) As to the second, related, question whether Article 23 of the 2000 Mutual Assistance Convention should be kept or repealed by the Framework Decision, all delegations which intervened², were in favour of keeping the provision, though some thought the negotiations were not yet sufficiently advanced to decide this.
- 3) As far as the question of extending the scope to other law enforcement agencies than the police is concerned, most delegations³ were in favour of including customs authorities, whilst some were against this⁴. The fact that data protection in customs co-operation is already regulated and the great variety in legal status of customs authorities in the Member States were adduced as reasons for not including customs authorities. The Chair concluded that he would endeavour to have customs authorities included in the scope of the draft Framework Decision.

As far as the CIS is concerned, however, no delegation was in favour of bringing it under the scope of the draft Framework Decision and it was therefore concluded that it would be excluded from the scope. Regarding SIS II, it resulted from the discussion that this issue was not yet ripe for decision. The need to ensure coherence between the legislative work being carried out on SIS II and the current proposal was emphasised.

- 4) Regarding the question whether the Framework Decision should also cover information which is transmitted to third States, the Commission emphasised that its proposal limited the extent to which information exchange with third countries would be subjected to the EU data protection regime to data which had been received from other Member States. This limitation is rooted in the rationale of the proposal, namely to establish the required mutual confidence between Member States authorities by establishing common data protection rules for processing of data by the Member States authorities.

¹ UK.

² AT, DE, ES, FI, GR, HU, LU, NL, PT and UK.

³ AT, DE, ES, FR, HU, PT.

⁴ NL and SE.

This part of the Commission's proposal received a mixed response. Whereas some Member States agreed with the Commission¹, others thought there was no need or legal basis for an EU instrument on data protection of data exchanged with third countries². Regarding the latter argument, it was, however, pointed out that the Data Protection Directive in the first pillar covered exchange of data with third countries and that it was difficult to see why a third pillar instrument could not cover this. A limited number of other Member States were inclined to take the view that the draft Framework Decision should cover all data exchanged by Member States with third countries, including domestically gathered data³. In that context, the practicability of distinguishing between domestically gathered data and data obtained from other Member States was questioned.

Various Member States pointed to the possible impact of any future EU data protection regime on existing legal relationships with third States and stated that existing bilateral or multilateral arrangements should be safeguarded.

The chair concluded that this issue was not ripe for decision.

- 5) On the last question of doc. 15554/05, the Commission recalled that it had proposed to cover also domestic processing of data because good co-operation between Member States requires that there is mutual trust in, not only the data protection of information received from other Member States, but also on the data protection (and the ensuing reliability) of information which may be transferred to other Member States.

Whilst some delegations had not yet determined a final position on this question, most tended to agree with the Commission's position⁴. Some Member States, however, doubted whether there was a TEU legal basis to regulate data protection in purely domestic cases⁵.

¹ CZ and NL.

² DE, DK, FI, GR, LT, NO and UK.

³ AT, BE, ES, HU and PT.

⁴ AT, BE, CH, DE, ES, FR, IT, PT and SE.

⁵ CZ, DK, IE and UK.