



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 18 January 2007 (19.01)
(OR. de)**

5435/07

**Interinstitutional File:
2005/0202 (CNS)**

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NOTE

from Presidency
to Article 36 Committee

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

1. The Commission proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ("Data Protection Framework Decision") has been discussed extensively in the Multidisciplinary Group on Organised Crime (MDG). Many questions have already been resolved to a large extent in the process, but a large number of reservations and scrutiny reservations entered by Member States remain.

2. During its Presidency, Germany will work intensively to secure an agreement among Member States which advances data protection within the third pillar beyond the existing sector-specific provisions, which have signally proven their worth in recent years. In the Presidency's opinion, before discussions in the MDG continue, the Member States and the Commission need to review the substantive aims of the Framework Decision which could bring about a real improvement in data protection within the third pillar, over and above the high level of sector-specific protection already achieved.
3. Improving data protection within the third pillar depends on the Framework Decision covering the whole of the third pillar. The Framework Decision should therefore also apply to Europol, Eurojust and the third-pillar Customs Information System, without affecting more extensive specific data protection provisions in the relevant instruments. If the Data Protection Framework Decision is to replace existing specific data protection provisions, this would need to be stipulated explicitly in the Data Protection Framework Decision.
4. Covering the whole of the third pillar should also, and especially, have the objective of combining the existing data protection supervisory bodies, which have hitherto been established separately for the Schengen Information System, Europol, Eurojust and the third-pillar Customs Information System, into a single data protection supervisory authority. The coexistence of the current supervisory bodies (the joint supervisory authority under Art. 115 of the Schengen Convention, the joint supervisory body under Art. 24 of the Europol Convention, the joint supervisory body under Art. 23 of the Eurojust Decision, the joint supervisory authority under Art. 18 of the Convention drawn up on the basis of Article K.3 of the TEU, on the use of information technology for customs purposes, etc.) makes for unnecessary bureaucracy and prevents synergies being achieved in the supervision of data protection. A single supervisory authority should be created, which could, where appropriate, act in an advisory capacity. With a single supervisory authority, a decisive improvement in third-pillar data protection could be made.

5. In addition, the Framework Decision should contain the basic principles of data protection law, which not only make for close and confident cooperation between Member States in all areas of the third pillar but also guarantee comprehensive protection of personal data. Efforts to adopt the Framework Decision speedily should not be hampered by different views on the detailed rules already contained in tried and tested, sector-specific – and if necessary further to be developed – data protection provisions of the individual legal acts on information exchange. For good reasons these provisions have taken specific forms which cannot be replaced by a general Framework Decision on data protection.
6. On the basis that the rights of the data subject must also be protected when an item of information is transferred to another Member State or processed by an EU institution, the Framework Decision should contain principles on
- (a) the legality of the processing of personal data and their collection and processing for specific legal purposes, including protection against further processing which is not compatible with the reason for collecting them;
 - (b) observance of the proportionality principle;
 - (c) the conditions for transfer between Member States (e.g. requirement for a legal basis) and on processing in the recipient country (e.g. possibility of change of purpose);
 - (d) the processing of particularly sensitive data, such as information on racial or ethnic origin, political opinions, religious or philosophical convictions, membership of a trade union, health or sex life (sexuality);
 - (e) the technical and organisational protection of data against unauthorised access, unauthorised alteration and unauthorised disclosure;
 - (f) the right to information;
 - (g) the right to rectification or deletion and the duty of the processor to rectify or delete incorrect data and to inform the data recipient if incorrect data are transferred;

- (h) the possibility of legal redress when the rights of the data subject are infringed;
- (i) observance of the deletion and review periods by the transferring Member State;
- (j) deletion of the data by the data recipient when they are no longer required for the purposes allowed under the Framework Decision or to achieve its task;
- (k) the right to compensation;
- (l) observance of transfer bans and restrictions on use which apply at national level in the transferring State;
- (m) possible information and notification requirements;
- (n) documenting or logging data transfer;
- (o) data protection monitoring.

7. In the Presidency's view, the above points constitute a viable basis for a speedy agreement between the Member States. The Presidency therefore proposes that the Commission be requested to revise the Data Protection Framework Decision on that basis.

8. The Presidency is aware that in addition to the points mentioned above, on which it believes consensus can be reached, there are differing views on central issues which require political clarification. Prominent among those issues are the scope of the Framework Decision in relation to national data processing in the area of police and justice and the transfer of personal data by Member States to third States. The Presidency intends to bring these issues forward as soon as they have been discussed in detail by the Article 36 Committee.
- (a) As regards the question whether the Data Protection Framework Decision should apply only to cross-border matters or should include domestic data processing, the Presidency feels it could be helpful for the political decision-making process to mention specific cases in which existing different national rules on domestic data processing have led to difficulties in cross-border data processing or further use of transferred data. In addition, it could be helpful to discuss problems which would arise if the scope of the Directive were extended to domestic data processing. Member States are requested to communicate any such problems.
- (b) With regard to data exchange with third countries, it might be appropriate to have a provision to the effect that the Member State which transfers an item of data to another Member State can make further transfer of the data to third States conditional on its prior agreement or on other conditions. However, the Framework Decision should not contain any provisions on data exchange with third countries which affect the conclusion of agreements between Member States and third States. Moreover, existing agreements between Member States on data transfer to third States should not be affected by the Framework Decision.
