



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 October 2006

13958/06

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

**CRIMORG 151
DROIPEN 65
ENFOPOL 170
DATAPROTECT 40
COMIX 831**

NOTE

From : General Secretariat
To : Multidisciplinary Group on Organised Crime

No. prev. doc. : 13426/1/06 REV 1 CRIMORG 143 DROIPEN 61 ENFOPOL 161
DATAPROTECT 33 COMIX 780

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
- List of data protection provisions in other Title VI instruments

1. One of the outstanding questions on the 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 ('DPFD') is the relationship between this instrument and *ad hoc* data protection provisions in other EU instruments.
2. The General Secretariat thought it might facilitate the discussion if delegations would have a clear view of the content of the main specific data protection provisions that have been adopted over the past years. To that end it has endeavoured to compile these provisions in this document. The list obviously relates only to Title VI instruments. Agreements between the EU and third countries on the basis of Articles 24-38 TEU have also not been included in the list.

3. Other than the provisions of the Schengen Implementation Convention, the following provisions seem relevant:
- a. Article 10 of the Draft Council Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters;
 - b. Article 6 of the Draft Council Decision concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification proceeds from, or other property related to, crime;
 - c. Article 8 of the Draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union;
 - d. Article 6 of Council Decision of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes;
 - e. Article 23 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States;
 - f. Article 7 of the Second Protocol of 19 June 1997 to the Convention on the protection of the European Communities' financial interests;
 - g. Article 25 of the Convention of 18 December 1997 on Mutual Assistance and Cooperation between Customs Administrations.

Draft Council Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters

Article 10

Conditions on the use of personal data

1. Personal data obtained under this Framework Decision may be used by the issuing State for the purpose of:
 - (a) proceedings for which the European Evidence Warrant may be issued;
 - (b) other judicial and administrative proceedings directly related to the proceedings referred to under point (a);
 - (c) for preventing an immediate and serious threat to public security.

For any purpose other than those set out in points (a), (b) and (c), personal data obtained under this Framework Decision can be used only with the prior consent of the executing State, unless the issuing State has obtained the consent of the data subject.

2. (...)

3. In the circumstances of the particular case, the executing State may require the Member State to which the personal data have been transferred to give information on the use made of the data.

4. This Article does not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

Draft COUNCIL DECISION

concerning cooperation between

Asset Recovery Offices of the Member States in the field of tracing and identification proceeds from, or other property related to, crime

Article 6

Data protection

1. Each Member State shall ensure that the established rules on data protection are applied also within the procedure on exchange of information and intelligence provided for by this Decision.
2. The use of information and intelligence which has been exchanged directly or bilaterally under this Decision shall be subject to the national data protection provisions of the receiving Member State, where the information and intelligence shall be subject to the same data protection rules, as if they had been gathered in the receiving Member State. The personal data processed in the context of the application of this Decision shall be protected in accordance with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and, for those Member States which have ratified it, the Additional Protocol of 8 November 2001 to that Convention, regarding Supervisory Authorities and Transborder Data Flows. The principles of Recommendation No. R(87) 15 of the Council of Europe Regulating the Use of Personal Data in the Police Sector should also be taken into account when law enforcement authorities handle personal data obtained under this Decision.

**Draft Framework Decision on simplifying the exchange of information and intelligence
between law enforcement authorities of the Member States of the European Union**

Article 8

Data protection

1. Each Member State shall ensure that the established rules on data protection provided for when using the communication channels referred to in Article 6(1) are applied also within the procedure on exchange of information and intelligence provided for by this Framework Decision.

2. The use of information and intelligence which has been exchanged directly or bilaterally under this Framework Decision shall be subject to the national data protection provisions of the receiving Member State, where the information and intelligence shall be subject to the same data protection rules as if they had been gathered in the receiving Member State. The personal data processed in the context of the implementation of this Framework Decision shall be protected in accordance with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and, for those Member States which have ratified it, the Additional Protocol of 8 November 2001 to that Convention, regarding Supervisory Authorities and Transborder Data Flows. The principles of Recommendation No. R(87) 15 of the Council of Europe Regulating the Use of Personal Data in the Police Sector should also be taken into account when law enforcement authorities handle personal data obtained under this Framework Decision.

3. Information and intelligence provided under this Framework Decision may be used by the competent law enforcement authorities of the Member State to which it has been provided solely for the purposes for which it has been supplied in accordance with this Framework Decision or for preventing an immediate and serious threat to public security; processing for other purposes shall be permitted solely with the prior authorisation of the communicating Member State and subject to the national law of the receiving Member State. The authorisation may be granted insofar as the national law of the communicating Member State permits.

4. When providing information and intelligence in accordance with this Framework Decision, the providing competent law enforcement authority may pursuant to its national law impose conditions on the use of the information and intelligence by the receiving competent law enforcement authority. Conditions may also be imposed on reporting the result of the criminal investigation or criminal intelligence operation within which the exchange of information and intelligence has taken place. The receiving competent law enforcement authority shall be bound by such conditions, except in the specific case where national law lays down that the restrictions on use be waived for judicial authorities, legislative bodies or any other independent body set up under the law and made responsible for supervising the competent law enforcement authorities. In such cases, the information and intelligence may only be used after prior consultation with the communicating Member State whose interests and opinions must be taken into account as far as possible. The receiving Member State may, in specific cases, be requested by the communicating Member State to give information about the use and further processing of the transmitted information and intelligence.

**Council Decision of 8 May 2003 on the investigation and prosecution of genocide, crimes
against humanity and war crimes**

Article 6

Compliance with data protection legislation

Any kind of exchange of information or other kind of processing of personal data under this Decision shall take place in full compliance with the requirements flowing from the applicable international and domestic data protection legislation.

Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States

Article 23

Personal data protection

1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:
 - (a) for the purpose of proceedings to which this Convention applies;
 - (b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);
 - (c) for preventing an immediate and serious threat to public security;
 - (d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.

2. This Article shall also apply to personal data not communicated but obtained otherwise under this Convention.

3. In the circumstances of the particular case, the communicating Member State may require the Member State to which the personal data have been transferred to give information on the use made of the data.

4. Where conditions on the use of personal data have been imposed pursuant to Articles 7(2), 18(5)(b), 18(6) or 20(4), these conditions shall prevail. Where no such conditions have been imposed, this Article shall apply.

5. The provisions of Article 13(10) shall take precedence over this Article regarding information obtained under Article 13.

6. This Article does not apply to personal data obtained by a Member State under this Convention and originating from that Member State.

7. Luxembourg may, when signing the Convention, declare that where personal data are communicated by Luxembourg under this Convention to another Member State, the following applies: Luxembourg may, subject to paragraph 1(c), in the circumstances of a particular case require that unless that Member State concerned has obtained the consent of the data subject, the personal data may only be used for the purposes referred to in paragraph 1(a) and (b) with the prior consent of Luxembourg in respect of proceedings for which Luxembourg could have refused or limited the transmission or use of the personal data in accordance with the provisions of this Convention or the instruments referred to in Article 1.

If, in a particular case, Luxembourg refuses to give its consent to a request from a Member State pursuant to the provisions of paragraph 1, it must give reasons for its decision in writing.

**Second Protocol of 19 June 1997 to the Convention on the protection of the European
Communities' financial interests**

Article 7

Cooperation with the Commission of the European Communities

1. The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering.

To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against fraud, active and passive corruption and money laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed.

Convention of 18 December 1997 on Mutual Assistance and Cooperation between Customs Administrations

Article 25

Data protection for the exchange of data

1. When information is exchanged, the customs administrations shall take into account in each specific case the requirements for the protection of personal data. They shall respect the relevant provisions of the Convention of the Council of Europe of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. In the interest of data protection, a Member State may, in accordance with paragraph 2, impose conditions concerning the processing of personal data by another Member State to which such personal data may be passed.

2. Without prejudice to the provisions of the Convention concerning the use of information technology for customs purposes, the following provisions shall apply to personal data which are communicated pursuant to the application of this Convention:
 - (a) processing of the personal data by the recipient authority shall be authorized only for the purpose referred to in Article 1(1). That authority may forward them, without prior consent from the Member State supplying them, to its customs administrations, its investigative authorities and its judicial bodies to enable them to prosecute and punish infringements within the meaning of Article 4(3). In all other cases of data transmission, the consent of the Member State which supplied the information is necessary;

 - (b) the authority of the Member State which communicates data shall ensure that they are accurate and up-to-date. If it emerges that inaccurate data have been communicated or data have been communicated which should not have been communicated or that lawfully communicated data are required at a later stage to be erased in accordance with the law of the communicating Member State, the recipient authority shall be immediately informed thereof. It shall be obliged to correct such data or have them erased. If the recipient authority has reason to believe that communicated data are inaccurate or should be erased, it shall inform the communicating Member State;

- (c) in cases where communicated data should, according to the law of the communicating Member State, be erased or amended, the persons concerned must be given the effective right to correct the data;
- (d) the forwarding and receipt of exchanged data shall be recorded by the authorities concerned;
- (e) if so requested, the communicating and recipient authorities shall inform the person concerned, at that person's request, of the personal data communicated and the use to which they are to be put. There is no obligation to provide the information if it is found, on consideration of the matter, that the importance to the public of the information being withheld outweighs the importance to the person concerned of receiving it. Moreover, the right of the person concerned to receive information about the personal data communicated shall be determined in accordance with the national laws, regulations and procedures of the Member State in whose territory the information is requested. Before any decision is taken on providing information, the communicating authority shall be given the opportunity of stating its position;
- (f) Member States shall be liable, in accordance with their own laws, regulations and procedures, for injury caused to a person through the processing of data communicated in the Member State concerned. This shall also be the case where the injury was caused by the communication of inaccurate data or the fact that the communicating authority communicated data in violation of the Convention;
- (g) the data communicated shall be kept for a period not exceeding that necessary for the purposes for which they were communicated. The need to keep them shall be examined at the appropriate moment by the Member State concerned;
- (h) in any event, the data shall enjoy at least the same protection as is given to similar data in the Member State which received them;

(i) every Member State shall take the appropriate measures to ensure compliance with this Article by the application of effective controls. Every Member State may assign the task of control to the national supervisory authority mentioned in Article 17 of the Convention concerning the use of information technology for customs purposes.

3. For the purposes of this Article, "the processing of personal data" shall be understood in accordance with the definition in Article 2(b) of 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 data.
