



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**CRIMORG 146
DROIPEN 89
ENFOPOL 166
DATAPROTECT 44
ENFOCUSTOM 99
COMIX 871**

NOTE

from : Presidency
to : JHA Counsellors

Nos prev. doc : 13496/07 CRIMORG 144 DROIPEN 88 ENFOPOL 160 DATAPROTECT 42
ENFOCUSTOM 97 COMIX 837

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. Following the discussions at Coreper on 11 October, the Presidency submits the following proposals to JHA Counsellors in order to be discussed at the meeting of 15 October 2007. Other outstanding issues on the DPFDD will also be discussed by JHA Counsellors on the basis of 11365/3/07 REV 3 CRIMORG 118 DROIPEN 66 ENFOPOL 130 DATAPROTECT 30 COMIX 621 ENFOCUSTOM 77.

2. ***National security***

All delegations, except one, accepted the wording of Article 1(4).

In accordance with the wish of several delegations the Presidency proposes to redraft the text of recital 7a so as to align it to the wording of Article 1(4).

Delegations are invited to agree to the reworded text of recital 7a, as set out in Annex I to 11365/3/07 REV 3 CRIMORG 118 DROIPEN 66 ENFOPOL 130 DATAPROTECT 30 COMIX 621 ENFOCUSTOM 77.

3. ***Possibility for Member States to provide higher level of data protection***

At its meeting of 18 September 2007, the Council reached an understanding that the DPF text would apply only to the cross-border exchange of personal data. This understanding was linked to the possibility for Member States to apply the data protection principles contained in the DPF to national data processing as well. Recital 6a captures this idea.

4. At the Coreper meeting of 11 October all delegations agreed that, as far as domestic processing of data is concerned, Member States that wish to provide for more protective data protection rules, should have the possibility to do so, as stated in Article 1(5). Several delegations, however, expressed a wish to obtain clarification that Article 1(5) applies only to domestic data processing [and does not derogate from Article 13]. The Presidency therefore proposes to add a sentence to the already agreed recital 6a to emphasise this.

5. The question whether and to what extent, in the context of cross-border data processing, a Member State which transmits personal data to another Member State may impose its own data protection rules on the receiving Member State, is governed by Article 13. As far as this provision is concerned, the Presidency refers to the proposals that have been made at the MDG meeting of 4-5 October 2007 and asks delegations to agree to them.

The Presidency therefore invites delegations to agree to the new language in recital 6a and to the proposed wording of Article 13, as set out in Annex I to 11365/3/07 REV 3 CRIMORG 118 DROIPEN 66 ENFOPOL 130 DATAPROTECT 30 COMIX 621 ENFOCUSTOM 77.

6. *Draft Council declaration on a joint supervisory authority*

At the Coreper meeting of 11 October all delegations agreed to replace the text of Article 26 by a draft declaration. One delegation indicated it thought Eurojust should not be included in such declaration.

The Presidency has redrafted the text of the draft declaration so as to take account of some remarks by the CLS.

The Presidency therefore invites delegations to agree to the new language of the draft Council declaration, as set out in Annex II to 11365/3/07 REV 3 CRIMORG 118 DROIPEN 66 ENFOPOL 130 DATAPROTECT 30 COMIX 621 ENFOCUSTOM 77.
