COUNCIL OF THE EUROPEAN UNION

Brussels, 27 September 2000

7381/2/00 REV 2

LIMITE

JAI 30

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Initiative of the Portuguese Republic with a view to the adoption of a Council Decision establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)

COUNCIL DECISION

of

establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 30 of the Treaty on the European Union,

Having regard to Article 2 of the Protocol integrating the Schengen acquis into the framework of the European Union,

Having regard to the initiative of the Portuguese Republic,

Having considered the Opinion of the European Parliament,

Whereas:

(1) The Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) have created Joint Supervisory Bodies in order to monitor the correct application of data protection provisions in those instruments.

(2) In order for those Joint Supervisory Bodies to function effectively and to reduce costs, they should be supported by one single, independent Data Protection Secretariat which, in the exercise of its tasks, is bound only by instructions of those bodies.

(3) For practical reasons the administration of the Data Protection Secretariat should be closely linked to the General Secretariat of the Council, while safeguarding its independence in the exercise of its tasks.

(4) In order to ensure this independence, decisions on the appointment and removal from office of the head of the Data Protection Secretariat should be taken by the Deputy Secretary-General of the Council, acting on a proposal of the Joint Supervisory Bodies, and the other officials assigned to the Data Protection Secretariat should be placed exclusively under the instructions of the <u>of the head of the Data Protection Secretariat</u>.

(5) The administrative expenses of the Data Protection Secretariat should be charged to the general budget of the European Union. Europol should contribute to the financing of certain expenses in respect of meetings relating to matters of implementation of the Europol Convention.

(6) Since Council Decision 1999/438/EC of 20 May 1999 concerning the Joint Supervisory Authority set up under Article 115 of the Convention applying the Schengen Agreement of 14 June 1985, on the gradual abolition of checks at common borders, signed on 19 June 1990 [1], is superseded by this Decision, it should be repealed as from the date on which this Decision becomes applicable.

(7) The existing Joint Supervisory Bodies have expressed their approval to the principles set out in the present document,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment and tasks of the Data Protection Secretariat

1. A Secretariat (hereinafter referred to as the "Data Protection Secretariat") is hereby established for the Joint Supervisory Bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention).

2. The Data Protection Secretariat shall fulfil the tasks provided for the secretariats of the Joint Supervisory Bodies as laid down in the respective rules of procedure of those bodies.

[1] OJ L 176, 10.7.1999, p. 34.

Article 2

Data Protection Secretary

1. The Data Protection Secretariat shall be headed by a Data Protection Secretary who shall have the independence in the performance of his tasks safeguarded, subject to instructions from the Joint Supervisory Bodies and their chairmen only. The Deputy Secretary-General of the Council, acting on a proposal by the Joint Supervisory Bodies, shall appoint the Data Protection Secretary for a period of three years. The Data Protection Secretary may be reappointed.

2. The Data Protection Secretary shall be chosen from among the persons who are European Union citizens, have full civil and political rights, can bring to bear appropriate experience and expertise in the performance of the duties concerned, and offer every guarantee of independence. He shall refrain from any action incompatible with his duties and, during his term of office, not engage in any other occupation, whether gainful or not. He shall after his term of office behave with integrity and discretion as regards the acceptance of appointments and benefits.

3. The Data Protection Secretary shall be removed from office by the Deputy Secretary-General of the Council, acting on a proposal from the Joint Supervisory Bodies, if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct.

4. Apart from normal replacement on expiry of his term of office or in the event of his death and removal from office in accordance with paragraph 3, the office of the Data Protection Secretary shall end when his resignation takes effect. In the case of the expiration of his term of office and in case of his resignation, he shall at the request of the Joint Supervisory Bodies remain in office until he has been replaced.

5. The Data Protection Secretary shall, both during and after termination of his term of office, be subject to a duty of professional secrecy with regard to the confidential information which has come to his knowledge in the course of the performance of his duties.

6. During his term of office, the Data Protection Secretary shall, except where otherwise stated in this Decision, be subject to the rules applicable to persons having the status of a temporary agent within the meaning of Article 2(a) of the Conditions of employment of other servants of the European Communities, including Articles 12 to 15 and 18 of the Protocol on Privileges and Immunities of the European Communities. The Data Protection Secretary shall be in grade A, the level and step at which he is employed shall be determined by the criteria applicable to the officials and other agents of the Communities. If the person appointed is already an official of the Communities, he shall be seconded for the term of his office in the interest of the service by virtue of Article 37(a), first indent of the Staff Regulations of officials of the European Communities (Staff Regulations). The first sentence of the last paragraph of Article 37 of the Staff Regulations shall apply without prejudice to paragraph 1 of this Article.

Article 3

Staff

1. The Data Protection Secretariat shall be provided with the staff necessary for the performance of its tasks. The staff members assigned to the Data Protection Secretariat shall fill posts included in the list of posts appended to the section of the general budget of the European Union relating to the Council.

2. In the exercise of their duties the staff members referred to in paragraph 1 shall be subject exclusively to the instructions of the Data Protection Secretary and the Joint Supervisory Bodies and their Chairmen. In that context, they may neither seek nor accept instructions from any government, authority, organisation or person apart from the Data Protection Secretary and the Joint Supervisory Bodies and their Chairmen.

3. Notwithstanding paragraph (2), the staff assigned to the Data Protection Secretariat shall be subject to the Regulations and rules applicable to officials and other servants of the European Communities. As regards the exercise of the powers conferred by the Staff Regulations of officials of the European Communities on the appointing authority and the powers under the Conditions of employment of other servants of the European Communities, the staff shall be subject to the same rules as the officials and other agents of the European Communities.

Article 4

Administrative support

1. The General Secretariat of the Council shall provide the office space and equipment necessary for the performance of the duties of the Data Protection Secretariat. It shall provide facilities for meetings of the Joint Supervisory Bodies within the premises of the Council, including interpretation facilities.

2. As far as meetings to be convened in the premises of the Council are concerned, the Chairmanships of the Joint Supervisory Bodies shall set these dates subject to prior agreement of the Presidency of the Council.

Article 5

Financing

1. The Data Protection Secretariat, including the Data Protection Secretary, shall at least consist of three persons, two of whom shall be in grade A and one in grade C. The administrative overhead expenses of the Data Protection Secretariat (in particular equipment, remuneration, allowances and other personnel expenses) shall be charged to the section of the general budget of the European Union relating to the Council.

2. The costs related directly to meetings shall be borne

– by the Council (in particular travel expenses of up to four persons per delegation and interpretation and translation costs): for meetings in the premises of the Council relating to matters of implementation of the provisions of the Schengen Convention as well as travelling expenses for carrying out of controls at the C.SIS and for meetings relating to matters of implementation of the Convention on the Use of Information Technology for Customs Purposes;

– by Europol: for meetings relating to matters of implementation of the Europol Convention.

If a participant from a Member State in a meeting of the Europol Joint Supervisory Body attends two or more meetings of the Joint Supervisory Bodies within one single mission, his travel expenses shall be borne by Europol. [1]

Article 6

Final provisions

1. This Decision shall enter into force the day following that of its adoption by the Council.

It shall apply from 1 September 2001 .

2. As from the date of entry into force of this Decision, the decisions and acts necessary to implement this Decision can be adopted. They shall not take effect before the date on which this Decision becomes applicable.

3. This Decision shall be published in the Official Journal of the European Communities.

[1] The Netherlands and Italian delegations entered a reservation to this provision, calling for a more equal division of expenses between Europol and the Council.

4. At the date on which this Decision becomes applicable, Decision 1999/438/EC [1] shall be repealed. It shall, however, continue to apply to expenses caused by events preceding that date.

Done at

For the Council
The President

[1] OJ L 176, 10.7.1999, p. 34.