

Customs cooperation: use of information technology for customs purposes. Initiative France

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Alexander ALVARO (ALDE, DE) amending, under the consultation procedure, the initiative of the French Republic with a view to adopting a Council decision on the use of information technology for customs purposes.

The main amendments were as follows:

- MEPs consider it necessary to amend the definition of the term 'personal data' in accordance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and [Council Framework Decision 2008/977/JHA](#) of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters;
- they consider it necessary to update the Decision: (i) on the basis of the provisions included in [Regulation \(EC\) 1889/2005](#) of the European Parliament and of the Council on controls of cash entering or leaving the Community; (ii) in view of the provisions of [Regulation \(EC\) 766/2008](#) of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters;
- MEPs insist that data should only be used for **well defined and clearly limited purposes** governed by the legal framework;
- the data in the categories set out in the proposed decision may include only such personal information as is necessary and individual privacy may not be infringed thereby. Information about the personality and personal history of individuals may not be included. Any item of information about an individual that is included must relate solely to the facts of an established breach of the law, but such information may not include the fact of a person being in the same vehicle as another person accused of breaking the law;
- MEPs stipulate that '**intentions' do not provide sufficient grounds for the entry of personal data in the system**', notwithstanding the proposal's restriction of such an option to certain cases. It is essential that the information gathered should indicate that an infringement of the law is either about to be committed or has been committed;
- an amendment underlines that **access shall be refused** to the extent that such refusal is necessary and proportionate in order to avoid jeopardising any ongoing national investigations, or during a period of discreet surveillance or sighting and reporting. When the applicability of an exemption is assessed, the legitimate interests of the person concerned shall be taken into account. Given that the data concerned are personal, and thus sensitive, MEPs consider that steps must be taken to ensure that access to the customs information system is transparent and in compliance with similar information system regulations;
- according to the report, **Europol and Eurojust may not have direct access to the data in the Customs Information System**. These offices may only ask for data to be communicated to them. This request must be justified;
- the report underlines that the **publication of the list of its competent authorities** which have been designated to have direct access to the Customs Information System would help to achieve better transparency and create a practical tool for an effective supervision;

- data obtained from the Customs Information System **should not be transferred under any circumstances for use by the national authorities of third countries**. The safeguards envisaged in this provision are far from sufficient from the perspective of the protection of personal data;
- moreover, the general access to the Customs Information System **may not be authorised to undesignated regional or international organisations**, and less so to non-Member States. MEPs suggest the suppression of proposed measures concerning the lack of safeguards as regards the protection of personal data;
- the initiative provides that for the purposes of the customs files identification database, each Member State shall send the other Member States a list of serious contraventions of its national laws. MEPs consider that this list shall comprise only contraventions that are punishable by a fine of at least **EUR 25 000** (EUR 15 000 in the initiative);
- according to MEPs, data relating to investigation files which have established that an infringement has taken place but which have not yet led to a conviction or to imposition of a fine **shall not be retained beyond a period of three years** (as opposed to the 6 years proposed in the initiative);
- the obligations of Member States as regards information and supervision are also clarified: each Member State shall designate a national supervisory authority or national supervisory authorities responsible for personal data protection to carry out independent supervision of such data entered in the Customs Information System in accordance with Framework Decision 2008/977/JHA. Moreover, each Member State shall ensure that the data which it has entered in the Customs Information System in accordance with Framework Decision 2008/977/JHA are accurate, up-to-date, complete and reliable and that they are entered lawfully;
- the **European Data Protection Supervisor** shall supervise the activities of the Commission in relation to the Customs Information System;
- the draft provides that the Committee should report annually to the Council, in accordance with Title VI of the Treaty on European Union, regarding the efficiency and effectiveness of the Customs Information System, making recommendations as necessary. **That report shall be sent to the European Parliament for information;**
- lastly, the Member States shall ensure that their national law conforms to this Decision by **1 July 2011**.