Fight against terrorism: processing and protection of personal data in the framework of police and judicial cooperation in criminal matters. Framework Decision

2005/0202(CNS) - 07/06/2007 - Text adopted by Parliament after reconsultation

The European Parliament adopted a resolution drafted by Martine **ROURE** (PES, FR) amending-in the framework of a renewed consultation of Parliament on this dossier - the proposal on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. The principal amendments were as follows:

- **new recitals** state that the Framework Decision should not be interpreted as a measure requiring Member States to reduce the level of protection resulting from national provisions intended to extend the principles laid down in Directive 95/46/EC to the field of judicial and police cooperation. With a view to ensuring that the international obligations of the Member States are fulfilled, the Framework Decision may not be interpreted as guaranteeing a level of protection lower than that resulting from Convention 108 of the Council of Europe and the Additional Protocol thereto or from Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or the case-law relating thereto. Similarly, in keeping with Article 6(2) of the Treaty on European Union and the Charter of Fundamental Rights of the EU, with particular reference to Articles 1, 7, 8 and 47 thereof, the interpretation of the level of protection laid down by this Framework Decision must be the same as that laid down by those two Conventions.

- a further new recital states that the Framework Decision is merely the first step towards a more comprehensive and consistent framework for the protection of personal data used for security purposes. Such a framework may be based on the principles annexed to it, which were the result of a trialogue between the rapporteur, the Council and the Commission;

- **scope:** Parliament felt that the Framework Decision should apply to all national authorities without exception and therefore deleted Article 1(4) which would have excluded "authorities or other offices dealing specifically with matters of national security". It also added a new clause providing for the Commission to submit proposals after 3 years with a view to extending the scope of the Framework Decision to cover the processing of personal data within the framework of police and judicial cooperation at national level;

- the **definition** of "the data subject's consent" was deleted;

- **the content and accuracy of personal data**: personal data shall be evaluated taking into account their degree of accuracy or reliability, their source, the categories of data subjects, the purposes for which they are processed and the phase in which they are used. Data which are inaccurate or incomplete shall be erased or rectified. Data mining and any form of large-scale processing of massive quantities of personal data, in particular where related to non-suspects, including the transfer of such data to a different controller, shall be permitted only under specified circumstances. Personal data shall be processed by separating facts and objective evaluations from opinions or personal assessments, and the data relating to the prevention and prosecution of offences from data lawfully held for administrative purposes. Member

States shall ensure that the quality of personal data made available to the competent authorities of other Member States is verified regularly. Personal data that are no longer accurate or up to date must be neither transmitted nor made available.

- Parliament inserted a number of exceptions to the general prohibition on the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life;

- **subsequent processing of data**: Parliament amended the clause allowing for the processing of data "for any other purpose" as referred to in Article 12(1)(d), saying that personal data may be further processed only for a "specified" purpose, "provided that it is legitimate and not excessive" in relation to the purposes for which the data were collected;

- **transfer of data to third countries**: Parliament specified that personal data can be transferred to third countries or international organisations only if this is necessary for the prevention, investigation, detection or prosecution of terrorist offences and other serious criminal offences", if this complies with the national law of the Member State from which the data were obtained and if the country or organisation concerned ensures an adequate level of protection for the intended data processing. However, it will be possible to transfer data in exceptional circumstances, in order to safeguard the essential interests of a Member State or for the purpose of averting imminent serious threats to public safety or to the safety of one or more persons in particular, even if the third country does not guarantee an adequate level of protection;

- **transfer of data to authorities other than competent authorities**: this should be allowed only in particular individual and well-founded cases and if certain prescribed requirements are met;

- **transfer of data to private persons and access to data relating to private persons**: Parliament adopted provisions aimed at strictly regulating the communication of personal data to private persons, which should be clearly authorised. When collecting and processing such data as part of a public service remit, private persons should be subject, at least, to the same conditions on data security as apply to the competent public authorities. Members of the public have the right to be informed if their personal data are used;

- the **joint supervisory authority** shall gather the national supervisory authorities provided for in the Framework Decision and the European Data Protection Supervisor;

- **assessment and revision**: not more than three years after the date of entry into force of the Framework Decision, the Commission shall submit to the European Parliament and the Council an assessment of its application, accompanied by proposals for any amendments which are necessary in order to extend its scope;

- lastly, an **annex** contains the principles on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, referred to above.