Basic information

2009/0803(CNS) CNS - Consultation procedure Decision	Procedure completed
Customs cooperation: use of information technology for customs purposes. Initiative France Amended by 2023/0143(COD) **Subject** 3.30.06 Information and communication technologies, digital technologies 7.30 Police, judicial and customs cooperation in general 7.30.02 Customs cooperation	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	PICKART ALVARO Alexander Nuno (ALDE)	22/07/2009

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
CONT Budgetary Control	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	

Former committee for opinion	Former rapporteur for opinion	Appointed
CONT Budgetary Control		
IMCO Internal Market and Consumer Protection		

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2979	2009-11-30

Key events

Date	Event	Reference	Summary
20/01/2009	Legislative proposal published	17483/2008	Summary
05/02/2009	Committee referral announced in Parliament		
19/10/2009	Resumption of business from the previous parliamentary term		
05/11/2009	Vote in committee		Summary
11/11/2009	Committee report tabled for plenary, 1st reading/single reading	A7-0052/2009	
23/11/2009	Debate in Parliament		
24/11/2009	Decision by Parliament	T7-0084/2009	Summary
24/11/2009	Results of vote in Parliament		
30/11/2009	Act adopted by Council after consultation of Parliament		
30/11/2009	End of procedure in Parliament		
10/12/2009	Final act published in Official Journal		

Technical information

Procedure reference	2009/0803(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amended by 2023/0143(COD)
Legal basis	Treaty on European Union (after Amsterdam) M 030-p1 Treaty on European Union (after Amsterdam) M 034-p2c
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/00229

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE429.552	05/10/2009	
Amendments tabled in committee		PE430.327	29/10/2009	
Committee report tabled for plenary, 1st reading/single reading		A7-0052/2009	11/11/2009	
Text adopted by Parliament, 1st reading/single reading		T7-0084/2009	24/11/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	17483/2008	20/01/2009	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	JOC_2009/C229/0003 OJ C 229 23.09.2009, p. 0012	20/04/2009	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Decision 2009/0917
OJ L 323 10.12.2009, p. 0020 Summary

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

2009/0803(CNS) - 30/11/2009 - Final act

PURPOSE: to replace the Customs Information System Convention (CIS) with a view to reinforcing cooperation between customs administrations.

LEGISLATIVE ACT: Council Decision 2009/917/JHA on the use of information technology for customs purposes.

CONTENT: this decision is aimed at replacing the 1995 Convention on the use of information technology for customs purposes (Customs Information System Convention) and bringing it into line with regulation 766/2008, which amends regulation 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.

Experience gained since the CIS Convention on the use of information technology for customs purposes entered into force has shown that the use of the Customs Information System for the sole purposes of sighting and reporting, discreet surveillance or specific checks does not make it possible to achieve fully the system's objective, which is to assist in preventing, investigating and prosecuting serious contraventions of national laws.

The aim of the Customs Information System, in accordance with this Decision, shall be to assist in preventing, investigating and prosecuting serious contraventions of national laws by making information available more rapidly, thereby increasing the effectiveness of the cooperation and control procedures of the customs administrations of the Member States.

The Customs Information System shall consist of a central database facility, accessible through terminals in each Member State. It shall comprise exclusively data necessary, including personal data, in the following categories: (a) commodities; (b) means of transport; (c) businesses; (d) persons; (e) fraud trends; (f) availability of expertise; (g) items detained, seized or confiscated; (h) cash detained, seized or confiscated.

The Commission shall ensure the technical management of the infrastructure of the Customs Information System in accordance with the rules provided for by the implementing measures adopted by the Council.

The decision also aims to enhance complementarity with actions in the context of cooperation with the European Police Office (Europol) and the European Judicial Cooperation Unit (Eurojust), by granting those bodies access to the Customs Information System, including the customs files identification database, to fulfil their tasks within their mandate.

This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It does not prevent the Member States from applying their constitutional rules relating to public access to official documents.

ENTRY INTO FORCE: 30/12/2009.

TRANSPOSITION IN NATIONAL LAW: 27/05/2011.

APPLICATION: from 27/05/2011.

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

2009/0803(CNS) - 20/01/2009 - Legislative proposal

PURPOSE: to present a proposal on the use of information technology for customs purposes, and replacing the CIS Convention.

PROPOSED ACT: Council Decision (French Initiative).

BACKGROUND: experience gained since the Convention of 26 July 1995 on the use of information technology for customs purposes ("the CIS convention") entered into force has shown that the use of the Customs Information System for the sole purposes of sighting and reporting, discreet surveillance or specific checks does not make it possible to achieve fully the system's objective, which is to assist in preventing, investigating and prosecuting serious contraventions of national laws.

CONTENT: this initiative proposes that the customs administrations of the Member States shall set up and maintain a joint automated information system for customs purposes, (the "Customs Information System"). The aim of the Customs Information System shall be to assist in preventing, investigating and prosecuting serious contraventions of national laws by making information available more rapidly, thereby increasing the effectiveness of the cooperation and control procedures of the customs administrations of the Member States.

The provisions of the proposal make a distinction between strategic and operational analysis. A strategic analysis should help those responsible at the highest level to determine projects, objectives and policies for combating fraud, to plan activities and to deploy the resources needed to achieve the operational objectives laid down. An operational analysis of the activities, resources and intentions of certain persons or businesses that do not comply or appear not to comply with national laws should help the customs authorities to take the appropriate measures in specific cases to achieve the objectives laid down as regards the fight against fraud.

The Customs Information System will consist of a central database facility, accessible via terminals in each Member State. It shall comprise exclusively data necessary to achieve its aim including personal data, in the following categories: (a) commodities; (b) means of transport; (c) businesses; (d) persons;(e) fraud trends; (f) availability of expertise; (g) items detained, seized or confiscated.

Data in these categories shall be included in the Customs Information System only for the purpose of sighting and reporting, discreet surveillance, specific checks, or operational analysis.

For the purpose of these suggested actions, namely sighting and reporting, discreet surveillance, specific checks, or operational analysis, personal data within any of these categories may be included in the Customs Information System only if, especially on the basis of prior illegal activities, there are real indications to suggest that the person concerned has committed, is in the act of committing, or will commit serious contraventions of national laws.

The proposal lays down the bodies who might have direct access to the data and the purposes for which data may be used. Subject to the provisions of the Decision, the European Police Office (Europol) shall, within its mandate, have the right to have access to the data entered into the Customs Information System, to search those data directly, and to enter data into the system.

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

2009/0803(CNS) - 20/04/2009 - Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Initiative of the French Republic for a Council Decision on the use of information technology for customs purposes.

The EDPS states that he was neither asked for advice on this initiative by the Member State which put it forward, nor by the Council. However, the EDPS was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs to comment on the French Initiative, in accordance with Article 41 of Regulation (EC) No 45/2001, in the context of the European Parliament's opinion on the Initiative. Where, in similar cases, the EDPS issued an opinion on own initiative, the present opinion must also be seen as a reaction to this request of the European Parliament.

The proposal aims inter alia at:

- reinforcing cooperation between customs authorities, by laying down procedures under which customs authorities may act jointly and exchange personal and other data concerned with illicit trafficking activities, using new technology for the management and

transmission of such information. These processing operations are subject to the provisions of the Council of Europe Convention 108, the Framework Decision 2008/977/JHA and the principles contained in Recommendation R (87) 15 of the Council of Ministers of the Council of Europe of 17 September 1987, regulating the use of personal data in the police sector,

- enhancing complementarities with actions in the context of cooperation with Europol and Eurojust, by granting those bodies access to the Customs Information System.

The EDPS notes that **the proposal involves various aspects relating to fundamental rights, in particular the protection of personal data as well as the right to information and other data subject's rights**.

After some general remarks, this opinion is to address mainly the following issues relevant from the point of view of the protection of personal data: (i) data protection safeguards in the system; (ii) customs files identification database; (iii) access of Eurojust and Europol to the system (proportionality and necessity of access to be given to these bodies); (iv) the supervision model for the CIS as a whole; (v) the list of authorities with access to the CIS.

In conclusion, the EDPS supports the proposal for a Council Decision. He stresses that due to the ongoing legislative work in the Council, his comments are not based on the final text of the proposal. He regrets the lack of explanatory documents which could provide for some necessary clarification and information on the objectives and specificity of some of the provisions of the Proposal.

The EDPS sees the need for more explanation on the justification of the initiative itself as well as on some specific articles and mechanisms therein. He regrets the absence of an Impact Assessment or an explanatory memorandum accompanying the initiative. This is a necessary element enhancing the transparency and more in general the quality of the legislative process.

The EDPS calls for the following:

- more attention to be devoted in the proposal to the **need for specific data protection safeguards**. He sees a number of issues where the practical implementation of data protection safeguards should be ensured better, in particular as to the application of the purpose limitation with regard to the use of data entered in the CIS. The EDPS considers this as an essential prerequisite for the improvement of the functioning of the Customs Information System;
- a **coordinated model of supervision to be inserted in the proposal**. It should be noted that the EDPS has currently supervisory tasks over the First Pillar part of the system. He underlines that for the sake of coherence and consistency the best approach is to apply the coordinated supervision model also to the Third Pillar part of the system. This model would also ensure, where necessary and adequate, consistency with other legal instruments governing the establishment and/or use of other large-scale IT systems;
- more explanation on the **necessity and proportionality of giving access to Eurojust and Europol**. He stresses the lack of explanatory information on this issue in the proposal;
- reinforcing the provision of Article 8(4) of the Proposal regarding the **transfer of data to non-Member States or international organisations**. This includes the need to ensure a uniform system of adequacy assessment;
- lastly, insertion of a provision on the **publication of the list of the authorities having access to the CIS**, in order to increase transparency and facilitate the supervision of the system.

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

2009/0803(CNS) - 24/11/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 480 votes to 136, with 33 abstentions, a legislative resolution 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 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. This term shall mean “any information relating to an identified or identifiable natural person (data subject), an identifiable natural person being one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity”;

- the resolution states that an operational analysis of the activities of certain persons or businesses that do not comply with national laws and of the resources which they use, or have used, to commit, in a short space of time, infringements as defined in this Decision, or which have enabled such infringements to be committed, should help the customs authorities to take the appropriate measures in specific cases to achieve the objectives laid down as regards the fight against fraud;

- 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;

- Parliament stipulates 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. The amended text stipulates that personal data may be entered in the Customs Information System only if, especially on the basis of prior illegal activities, there are factual indications or reasonable grounds to suggest that the person concerned has committed, is in the act of committing, or will commit serious contraventions of national laws;

- the rights of persons with regard to personal data in the Customs Information System, in particular their right of access, rectification, erasure or blocking shall be exercised in accordance with the laws, regulations and procedures of the Member State implementing Framework Decision 2008/977/JHA in which such rights are invoked. **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;

- the resolution 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;

- MEPs consider that 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. The amended text also states **regional and international organisations shall not be authorised** general access to the information system;

- according to the Parliament, **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 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);

- 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);

- **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;

- 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**;

- the **European Data Protection Supervisor** shall supervise the activities of the Commission in relation to the Customs Information System. The national supervisory authorities and the European Data Protection Supervisor, each acting within the scope of their respective competences, shall cooperate actively within the framework of their responsibilities and shall ensure coordinated supervision of the Customs Information System;

- it is necessary to ensure that **persons authorised to access** the Customs Information System have access only to the data covered by their access authorisation and only by means of individual and unique user identities and confidential access modes (data access control). It is also necessary to ensure that all authorities with a right of access to the Customs Information System create profiles describing the functions and responsibilities of persons who are authorised to access, enter, rectify, erase and search the data and make those profiles available to the national supervisory authorities without delay at their request (personnel profiles);

- 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;

- lastly, the Member States shall ensure that their national law conforms to this Decision by **1 July 2011**.