Exchange of information and intelligence (serious offences, including terrorism) *

European Parliament legislative resolution on the initiative by the Kingdom of Sweden with a view to the adoption of a Council Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, in particular as regards serious offences, including terrorist acts (10215/2004 — C6-0153/2004 — 2004/0812(CNS))

(Consultation procedure)

The European Parliament,

— having regard to the initiative by the Kingdom of Sweden (10215/2004) (1),
— having regard to Article 34(2)(b) of the Treaty on European Union,
— having regard to Article 39(1) of the Treaty on European Union, pursuant to which the Council consulted Parliament (C6-0153/2004),
— having regard to Rules 93 and 51 of its Rules of Procedure,
— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0162/2005),

1. Approves the initiative by the Kingdom of Sweden as amended;
2. Calls on the Council to alter the text accordingly;
3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
4. Asks the Council to consult Parliament again if it intends to amend the initiative by the Kingdom of Sweden substantially;
5. Instructs its President to forward its position to the Council, the Commission and the Government of the Kingdom of Sweden.

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Amendment 24
Recital 1
(1) One of the Union’s core objectives is to provide its citizens with a high level of security within an area of freedom, security and justice.

Amendment 1
Recital 6
(6) Currently, effective and expeditious exchange of information and intelligence between law enforcement authorities is seriously hampered by formal procedures, administrative structures and legal obstacles laid down in Member States’ legislation; such a state of affairs is unacceptable to the citizens of the European Union which call for greater security and more efficient law enforcement while protecting human rights.

(1) One of the Union’s core objectives is to provide its citizens with a high level of security within an area of freedom, security and justice **whilst respecting their integrity.**

(6) Currently, effective and expeditious exchange of information and intelligence between law enforcement authorities is seriously hampered by formal procedures, administrative structures and legal obstacles laid down in Member States’ legislation; such a state of affairs **must be weighed against the need for** greater security and more efficient law enforcement while protecting human rights, **with particular regard to Article 8 of the European Convention on Human Rights and Articles 7 and 8 of the Charter of Fundamental Rights.**

Amendment 2
Recital 8a (new)

(8a) It is necessary to establish a high degree of confidence between law enforcement authorities of the Member States and with Europol and Eurojust, a lack of which has so far hindered an efficient exchange of information and intelligence, inter alia by:

— establishing common standards for data protection in the third pillar under the authority of an independent joint supervisory body;
— providing police forces with a handbook of good practices that sets out in a simple and practical manner their data protection responsibilities and duties;
— establishing minimum standards for criminal and procedural law;
— giving the Court of Justice general jurisdiction in the third pillar;
— ensuring full parliamentary scrutiny.

Amendment 3
Recital 9a (new)

(9a) This Framework Decision applies mutatis mutandis the same level of data protection as provided for under the first pillar by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1) and sets up a joint personal data protection supervisory authority under the third pillar which should carry out its tasks completely independently and which, taking that specific role into account, should advise the European institutions and contribute, in particular, to the uniform application of the national rules adopted pursuant to this Framework Decision.


Amendment 4
Recital 12

(12) The personal data processed in the context of the implementation of this Framework Decision will be protected in accordance with the principles of the Council of Europe Convention of 28 January 1981 for the protection of individuals with regards to the automatic processing of personal data.

(12) The personal data processed in the context of the implementation of this Framework Decision will be protected in accordance with the European Union’s common standards of personal data protection, under the supervision of the joint personal data protection supervisory authority in the area of police and judicial cooperation in criminal matters.
The purpose of this Framework Decision is to establish the rules under which Member States’ law enforcement authorities effectively and expeditiously can exchange existing information and intelligence for the purpose of conducting crime investigations or crime intelligence operations and in particular as regards serious offences, including terrorist acts. It shall not affect more favourable provisions in national law, bilateral or multilateral agreements or arrangements between the Member States or between Member States and third countries and shall be without prejudice to instruments of the European Union on mutual legal assistance or mutual recognition of decisions regarding criminal matters.

1. The purpose of this Framework Decision is to establish the rules under which Member States’ law enforcement authorities effectively and expeditiously can exchange existing information and intelligence for the purpose of conducting crime investigations or crime intelligence operations and in particular as regards serious offences, including terrorist acts. It shall not affect more favourable provisions in national law, bilateral or multilateral agreements or arrangements between the Member States or between Member States and third countries and shall be without prejudice to instruments of the European Union on mutual legal assistance or mutual recognition of decisions regarding criminal matters and to the provisions and instruments relating to the provision of information and intelligence to Europol and Eurojust.

Exchange of information and intelligence under this Framework Decision may take place concerning offences punishable by the law of the requesting Member State by a custodial sentence or a detention order for a maximum period of at least 12 months. Member States may agree on a bilateral basis to make the procedures applicable under this Framework Decision applicable on a broader basis.

2. Member States shall ensure that conditions not stricter than those applicable at national level for providing and requesting information and intelligence are applied for providing information and intelligence to competent law enforcement authorities of other Member States.

Exchange of information and intelligence under this Framework Decision may take place concerning offences punishable by the law of the requesting Member State by a custodial sentence or a detention order for a maximum period of at least 12 months and concerning all the offences referred to in Articles 1 to 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (1). Member States may agree on a bilateral basis to make the procedures applicable under this Framework Decision applicable on a broader basis.

2. Member States shall ensure that conditions corresponding to those applicable at national level for providing and requesting information and intelligence are applied for providing information and intelligence to competent law enforcement authorities of other Member States.

2a. Member States shall ensure that the information or intelligence provided to the competent law enforcement authorities of the other Member States pursuant to paragraph 1 is also provided to Europol and Eurojust if the exchange relates to an offence or criminal activity falling within the remit of Europol or Eurojust.

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Amendment 9
Article 4 a, paragraph 1

1. Information and intelligence shall be provided without delay and to the furthest possible extent within the timeframe requested. If information or intelligence cannot be provided within the requested timeframe, the competent law enforcement authority having received a request for information or intelligence shall indicate the timeframe within which it can be provided. Such an indication shall be made immediately.

Amendment 10
Article 4 a, paragraph 1 a (new)

1 a. If information or intelligence cannot be provided immediately, the competent law enforcement authority having received a request for information or intelligence shall indicate immediately the timeframe within which it can be provided.

Amendment 11
Article 4 a, paragraph 2, introductory part

2. Member States shall ensure that they have procedures in place so that they may respond within at most 12 hours to requests for information and intelligence where the requesting State indicates that it is carrying out a crime investigation or a criminal intelligence operation as regards the following offences, as defined by the law of the requesting State:

Amendment 12
Article 4 a, paragraph 2 a (new)

2 a. The time-limits laid down in paragraph 2 shall run from the time when the requested competent law enforcement authority receives the request for information or intelligence.

Amendment 13
Article 5, paragraph 1

1. Information and intelligence may be requested for the purpose of detection, prevention or investigation of an offence or a criminal activity involving the offences referred to in Article 3 where there are reasons to believe that relevant information and intelligence is available in another Member State.
Amendment 14

Article 5, paragraph 3a (new)

3a. The State providing the information shall have the right, on certain grounds relating to human rights or national law, to refuse to provide information in the light of Article 8 of the European Convention on Human Rights and Articles 7 and 8 of the Charter of Fundamental Rights, and where justified in terms of respect for the integrity of natural persons or the protection of business secrets.

Amendment 15

Article 9, paragraph 1

1. Each Member State shall ensure that the established rules and standards on data protection provided for when using the communication channels referred to in Article 7(1) are applied also within the procedure on exchange of information and intelligence provided for by this Framework Decision.

Amendment 16

Article 9, paragraphs 2, 3 and 4

2. Each Member State shall ensure that where a communication channel referred to in Article 7(2) is used, the equivalent standards of data protection as referred to in paragraph 1, are applied within the simplified procedure for exchange of information and intelligence provided for by this Framework Decision.

3. Information and intelligence, including personal data, provided under this Framework Decision may be used by the competent law enforcement authorities of the Member State to which it has been provided for the purpose of:
   a) proceedings to which this Framework Decision applies;
   b) other law enforcement proceedings directly related to the one referred to under a);
c) for preventing an immediate and serious threat to public security;

d) for any other purpose including prosecution or administrative proceedings only with the explicit prior consent of the competent law enforcement authority having provided the information or intelligence.

4. When providing information and intelligence in accordance with this Framework Decision, the providing competent law enforcement authority may pursuant to its national law impose conditions on the use of information and intelligence by the receiving competent law enforcement authority. Conditions may also be imposed on reporting the result of the criminal investigation or criminal intelligence operation within which the exchange of information and intelligence has taken place. The receiving competent law enforcement authority shall be bound by such conditions.

Amendment 17
Article 9, paragraph 2 a (new)

2a. Information and intelligence provided in accordance with this Framework Decision may not be used to prosecute any offence other than that for which it was obtained. Surplus information may not be used at all for prosecution.

Amendment 18
Article 9 a (new)

Article 9a
Principles governing the collection and processing of data

1. Information and intelligence, including personal data, exchanged or provided pursuant to this Framework Decision must:

(a) be accurate, appropriate and relevant to the purposes for which it is collected and subsequently processed;

(b) be collected and processed for the exclusive purpose of carrying out legal tasks.

Data relating to aspects of private life and data relating to individuals not under suspicion may only be collected in cases of absolute necessity and subject to compliance with strict conditions.

2. The integrity and confidentiality of data provided pursuant to this Framework Decision shall be guaranteed at all stages of their exchange and processing.

Information sources shall be protected.
Amendment 19
Article 9b (new)

Article 9b
Right of access to data of the person concerned

The person concerned by the data collected must:

(a) be informed of the existence of the data relating to them, except where there is a major obstacle thereto;

(b) have a cost-free right of access to the data concerning them and the right to rectify inaccurate data, except where such access is likely to be prejudicial to public security or public order or to the rights and freedoms of third parties, or to hamper inquiries that are under way;

(c) where there is misuse of the data having regard to this Article, have a right to object cost-free with a view to redressing the legal situation and, where applicable, to obtaining compensation if the principles set out in this Article have not been adhered to.

Amendment 20
Article 9c (new)

Article 9c
Joint personal data protection supervisory authority

1. A joint personal data protection supervisory authority shall be set up, hereinafter referred to as the ‘authority’.

The authority shall be advisory in nature and independent.

2. The authority shall be made up of a representative of the supervisory authority or authorities designated by each Member State, a representative of the authority or authorities set up for the institutions, the European Data Protection Supervisor and the Community bodies and a representative of the Commission.

Each member of the authority shall be designated by the institution, authority or authorities he or she represents. Where a Member State has designated more than one supervisory authority, the latter shall appoint a joint representative. The same procedure shall apply for the authorities set up for the Community institutions and bodies.

3. The authority shall reach its decisions by a simple majority of the representatives of the supervisory authorities.

4. The authority shall elect its chairman. The chairman’s term of office shall be two years. This term of office shall be renewable.
5. The authority shall be assisted by the Secretariat for the joint supervisory data-protection bodies set up by Council Decision 2000/641/JHA of 17 October 2000 (1).

The Secretariat shall be transferred to the Commission as soon as possible.


Amendment 21
Article 9d (new)

**Article 9d**

Remit of the joint personal data protection supervisory authority

1. **The remit of the authority shall be:**

   (a) to examine any matter relating to the implementation of the national provisions adopted in application of this Framework Decision;

   (b) to deliver to the Commission an opinion on the level of protection in the European Union;

   (c) to advise on any proposed change to this Framework Decision, any proposal for additional or specific measures to safeguard the rights and freedoms of natural persons with regard to the processing of personal data, and any other proposal for European legislation with implications for these rights and freedoms;

   (d) to deliver an opinion on codes of conduct drawn up at European level.

2. If the authority ascertains the existence of disparities between the laws and practices of the Member States likely to prejudice the equivalence of protection of persons in respect of personal data processing in the European Union, it shall inform the Commission.

3. The authority may issue recommendations on its own initiative on any matter relating to protection of persons in respect of the processing of personal data under the third pillar.

4. The opinions and recommendations of the authority shall be forwarded to the Commission.

Amendment 22
Article 11, point (c)

(c) in case the requested information and intelligence is **clearly** disproportionate or irrelevant with regard to the purposes for which it has been requested.
Amendment 25

Article 11, paragraph 1a (new)

A competent law enforcement authority may also refuse to provide information where it has reason to believe that the state requesting the information might use that information for the prosecution of offences other than that stated in the request. The information received may only be used for the prosecution of the crime for which it is requested.

Amendment 23

Article 11a (new)

Article 11a

Competence of the Court of Justice

Each Member State shall accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the validity and interpretation of this Framework Decision in accordance with Article 35(2) of the Treaty on European Union.