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Subject: Proposal for a directive of the European Parliament and of the Council facilitating cross-border exchange of information on road safety related traffic offences.

Delegations will find attached formal comments by the European Data Protection Supervisor (EDPS) on the above-mentioned proposal.



PETER HUSTINX
SUPERVISOR

President of the Council of the European
Union
General Secretariat
Council of the European Union
Rue de la Loi 175
1048 Brussels

Brussels, 03 October 2014
PH/IC/mk D(2014)2003 C2007-0740

Subject: Formal comments on a proposal for a Directive of the European Parliament and of the Council facilitating cross-border exchange of information on road safety related traffic offences

Dear Mr President,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 28(2), we send you our formal comments on a proposal for a Directive of the European Parliament and of the Council facilitating cross-border exchange of information on road safety related traffic offences.

We have sent our formal comments to the European Commission and the European Parliament as well.

Yours sincerely,

Peter HUSTINX

Annex: Formal comments

Cc: Mr Uwe CORSEPIUS, Secretary-General
Mr Stefano SANNINO, Permanent Representative of Italy
Mr Guy STESENS, Secretariat General of the Council

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EDPS comments on a proposal for a Directive of the European Parliament and of the Council facilitating cross-border exchange of information on road safety related traffic offences

In July 2014, the EDPS was consulted by the Commission pursuant to Article 28(2) of Regulation 45/2001 on a proposal for a Directive of the European Parliament and of the Council facilitating cross-border exchange of information on road safety related traffic offences (hereafter 'the Proposal')¹.

The Proposal replaces Directive 2011/82/EU adopted on 25 October 2011 by the European Parliament and the Council, which was annulled by the Court of Justice of the European Union due to an incorrect legal basis². The Court concluded that, since both the aim and the content of the Directive were intended to improve transport safety, Article 87(2) TFEU on police cooperation could not provide a valid legal basis for the Directive. As a result, this Proposal is now put forward with the view to enacting the measure on the correct legal basis of Article 91 TFEU on transport.

I. GENERAL COMMENTS

We welcome the consultation of the EDPS at this stage of the procedure and that a reference is made to it in the recitals³.

The Proposal is almost identical to the annulled Directive, except for those legal changes that became necessary due to the correction of the legal basis. In 2008, the EDPS issued an Opinion on the original proposal for a Directive facilitating cross-border enforcement in the field of road safety⁴. Some but not all of our recommendations were taken into account in the final text of the Directive as adopted on 25 October 2011. Consequently, as this Proposal is almost identical to the annulled Directive, we consider that the further recommendations we made in our Opinion of 2008 remain valid.

In this regard, we note with satisfaction that recitals 14, 19, 20, 21, 22, 23 reflect the recommendations made in our Opinion and that Article 7 is dedicated to data protection.

II. APPLICABLE DATA PROTECTION LAW

We welcome the reference in recital 23 of the Proposal to the fundamental rights and principles recognised by the Charter of Fundamental Rights of the EU, including those set forth in Articles 7 and 8 of the Charter as regards the respect for private and family life and the protection of personal data.

We also welcome that it states that the Directive must be implemented according to these rights and principles. Indeed, any processing of personal data in the frame of the Proposal

¹ COM(2014) 476 final.

² C-43/12, Commission v European Parliament and Council, 6 May 2014.

³ Recital 27.

⁴ Opinion of the European Data Protection Supervisor on the Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety of 8 May 2008.

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must comply with the essential elements set forth in Article 8 of the Charter, which include (i) the right to have data processed fairly for specified purposes and on a legitimate basis, (ii) the right to have access to one's own data and to have it rectified, and (iii) supervision by an independent authority. The principles laid down in Article 8 of the Charter are further elaborated and specified in EU secondary legislation on the right to data protection.

In that respect, we note that recital 21 and Article 7 of the Proposal refer to the applicability of Directive 95/46/EC to the data processed and exchanged among Member States in the frame of the Proposal. This is different from the annulled Directive which referred, in view of its police cooperation legal basis, to the applicability of Council Framework Decision 2008/977/JHA as regards the protection of data exchanged in the frame of the Directive. We understand that the reference to the applicable data protection law was changed due to the change in the legal basis of the Proposal.

We welcome the reference in Article 7 to the applicability of Directive 95/46/EC. It should be noted in this respect that the processing activities foreseen in the frame of the Proposal would normally fall within the scope of Directive 95/46/EC, except for some of them which might be subject to specific rules including the Prüm Decisions 2008/615/JHA and 2008/616/JHA and Council Framework Decision 2008/977/JHA⁵. However, we believe that the reference in Article 7 to Directive 95/46/EC is appropriate and that all processing activities involved should respect the obligations under Article 8 of the Charter, which must be interpreted in the light of more detailed rules such as notably those set forth in Directive 95/46/EC.

In this respect, we also welcome that Article 7 explicitly requires, in paragraphs 2 and 3 thereof, that Member States should ensure that individuals are appropriately informed about data transmitted about them (including the date of the request and the competent authority of the Member State of the offence), that a time limit for the storage of data is established, and that data are rectified, erased or blocked within an appropriate time period, in accordance with the relevant provisions of Directive 95/46/EC.

III.SPECIFIC COMMENTS

As to the list of offences concerned, we note that there are now four more offences concerned by the exchange of data⁶. We are aware that these offences were already added to the text during the legislative procedure and negotiations that preceded the adoption of Directive 2011/82/EU. However, we recommend adding in the recitals a justification of the necessity to include those offences in the scope of the Proposal as this inclusion leads to the processing of personal data of more individuals and it seems that no impact assessment has been carried out in this regard.

Done in Brussels, 3 October 2014



Peter HUSTINX
European Data Protection Supervisor

⁵ This will depend on the nature of the competent authority (administrative body v police and justice authorities) and of the type of data concerned.

⁶ See Article 2 of the Proposal relating to its scope.

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SIGNATURE
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