



Council of the European Union  
General Secretariat

Brussels, 8 April 2016

CM 2214/16

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## COMMUNICATION

### WRITTEN PROCEDURE

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Subject: Draft Directive of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

– Adoption of the Council's position at first reading and of the statement of the Council's reasons

– Outcome of the written procedure initiated by CM 2200/16

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I am pleased to inform you that the written procedure for the adoption of the Council's position at first reading and the statement of the Council's reasons on the **Draft Directive of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA** was completed today, 8 April 2016, with all delegations agreeing except the Austrian delegation, which abstained. The statement submitted is annexed to this communication.

**Statement by the Czech Republic**

The Czech Republic welcomes the adoption of the Council's position and finalization of the negotiations. The Czech Republic supported the negotiations in active and constructive manner and appreciates that many concerns have been solved, such as the relationship with existing international agreements or recognition that combating crime and protection of public security are closely and often inseparably intertwined in the activities of law enforcement authorities.

Nevertheless, the Czech Republic remains gravely concerned about several issues.

First, the Czech Republic is of the opinion that regulating in the proposed Directive national processing of personal data, without a cross border element, by competent authorities in the area of law enforcement and criminal justice is not in full conformity with the principle of subsidiarity as defined in Article 5 of the Treaty on European Union and the Protocol (No. 2) on the application of the principles of subsidiarity and proportionality. More precisely, we are of the opinion that Member States are better placed to regulate national processing of personal data in the area of law enforcement and criminal justice taking into account national specificities and established national rules on law enforcement and criminal proceedings that are underlying the processing of personal data.

Second, the Czech Republic regrets that the Commission has failed to include a repeal of relevant data protection rules in many particular instruments of judicial cooperation in criminal matters or police cooperation. The complex relationship between new directive and certain other instruments will complicate their use in practice. Protection of personal data in these areas will thus remain fragmented due to the existence of separate European, rather than national, rules.

Third, the Czech Republic regrets that certain requirements impose disproportionate burdens on competent authorities. The whole of the law enforcement activity is regulated by the law and regularly or at least potentially supervised by the judiciary. In these circumstances, the added value of new obligation to designate data protection officers is uncertain.

Finally, the Czech Republic considers the implementation period to be unreasonably short, since several laws must be amended significantly. Moreover, potential conflicts with other European instruments of judicial cooperation in criminal matters or police cooperation, which the Commission has failed to address, will need to be taken into account by national legislator.