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NOTE

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 7842/21, 7843/21
No. Cion doc.: 5708/21

Subject: Draft Directive of the European Parliament and of the Council amending Council Framework Decision 2002/465/JHA, as regards its alignment with EU rules on the protection of personal data
- Mandate for negotiations with the European Parliament

On 21 April 2021, Coreper agreed to start negotiations with the European Parliament on the above-mentioned draft Directive on the basis of the text set out in the Annex.

The main differences compared to the Commission proposal (5708/21) have been indicated by **bold** and underlined characters, and by [...].

(draft)

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
(EU) 2021/[...]

of ..

**amending Council Framework Decision 2002/465/JHA, as regards its alignment with EU rules
on the protection of personal data**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Articles 16(2) **and 82** thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Pursuant to Article 62(6) of Directive (EU) 2016/680¹, the Commission is to review other acts of Union law which regulate the processing of personal data by the competent authorities for the purposes set out in Article 1(1) of that Directive, in order to assess the need to align those acts with that Directive and to make, where appropriate, the necessary proposals to amend those acts in order to ensure a consistent approach to the protection of personal data within the scope of that Directive. That review has led to the identification of Council Framework Decision 2002/465/JHA² as one of those other acts to be amended.
- (2) In the interests of consistency and the effective protection of personal data, the processing of personal data carried out under Framework Decision 2002/465/JHA should respect the rules set out in Directive (EU) 2016/680. **In particular, personal data contained in the information lawfully obtained by a joint investigation team may be processed for purposes other than those for which the team has been set up, such as subsequent or relevant administrative or civil procedures or parliamentary scrutiny, only in accordance with the conditions laid down in Directive (EU) 2016/680. The processing of such personal data should be carried out in accordance with Union or Member State law and should be necessary and proportionate to its purpose.**
- (3) In accordance with Article 6a of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland is bound by Framework Decision 2002/465/JHA and is therefore taking part in the adoption of this Directive. [...]

¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 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 (OJ L 119, 4.5.2016, p. 89).

² Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (5) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725³ and delivered an opinion on **10 March 2021**⁴,
- (6) Framework Decision 2002/465/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁴ [Letter of 10 March 2021 (6701/21)]

Article 1

Amendments to Framework Decision 2002/465/JHA

In Framework Decision 2002/465/JHA, Article 1(10) is amended as follows:

(a) point (d) is replaced by the following:

'(d) 'For other purposes to the extent that this is agreed between Member States setting up the team, in particular for subsequent or relevant civil or administrative proceedings, or parliamentary scrutiny.'

(b) the following subparagraph is added:

'Insofar as the information used for purposes referred to in points b), c) and d) of the first subparagraph includes personal data, it shall only be processed in accordance with Directive (EU) 2016/680, in particular Article 4(2), Article 9(1) and Article 9(3) thereof.'

[...]

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within a period of one year from the date of its entry into force. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 4

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
