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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a 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 - Outcome of the European Parliament's first reading (Strasbourg, 13-16 December 2021)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the rapporteur, Jeroen LENAERS (EPP, NL), presented a compromise amendment (amendment number 1) to the abovementioned proposal for a Directive on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 14 December 2021, the plenary adopted the compromise amendment (amendment number 1) to the abovementioned proposal for a Directive.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2021)0487

Joint investigation teams: alignment with Union rules on the protection of personal data *I**

European Parliament legislative resolution of 14 December 2021 on the proposal for a 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 (COM(2021)0020 – C9-0005/2021 – 2021/0008(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0020),
 - having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0005/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 17 November 2021 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0236/2021),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 14 December 2021 with a view to the adoption of Directive (EU) 2021/... of the European Parliament and of the Council amending Council Framework Decision 2002/465/JHA, as regards its alignment with Union 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 Article 16(2) 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 procedure³,

³ Position of the European Parliament of 14 December 2021.

Whereas:

- (1) Pursuant to Article 62(6) of Directive (EU) 2016/680 of the European Parliament and of the Council⁴, the Commission is to review legal acts adopted by the Union, other than that Directive, which regulate *the* processing of personal data by the competent authorities for the purposes set out in Article 1(1) of that Directive. The purpose of that review is to assess the need to align those legal acts with that Directive and to make, where appropriate, the necessary proposals to amend *them 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/JHA⁵ as one of the legal acts to be amended.

⁴ 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).

⁵ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (2) *The processing of personal data under Framework Decision 2002/465/JHA involves the processing, exchange and subsequent use of relevant information for the purposes set out in Article 82 of the Treaty on the Functioning of the European Union (TFEU). In the **interests** of consistency and the effective protection of personal data, the processing of personal data under Framework Decision 2002/465/JHA should comply with Directive (EU) 2016/680. It should be possible for **personal data contained in information lawfully obtained by a joint investigation team to be processed for purposes other than those for which the team was set up, such as subsequent criminal or related administrative or civil procedures or parliamentary scrutiny, only in accordance with the conditions laid down in Directive (EU) 2016/680. Such processing of personal data should only be carried out in accordance with the conditions laid down in Directive (EU) 2016/680, including that it be carried out in accordance with Union or Member State law and 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 (TEU) and *to the TFEU, Ireland is bound by Framework Decision 2002/465/JHA and is therefore* taking part in the adoption of this Directive .
- (4) In accordance with Articles 1, 2 and 2a of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, 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(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁶ and delivered an opinion on 10 March 2021.*
- (6) *Framework Decision 2002/465/JHA should therefore be amended accordingly,*

HAVE ADOPTED THIS DIRECTIVE:

⁶ *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).*

Article 1

Amendment to of Framework Decision 2002/465/JHA

In Article 1(10) of Framework Decision 2002/465/JHA, the following subparagraph is added:

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

* *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).’*

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [one year after the *entry into force of this amending Directive*]. 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 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 ■ measures 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 ...,

For the European Parliament

The President

For the Council

The President
