Council of the European Union

Brussels, 5 April 2018
(OR. en)

7580/18

Interinstitutional File:
2018/0002 (COD)

LIMITE

DATAPROTECT 41
JAI 259
DAPIX 80
EUROJUST 37
FREMP 39
ENFOPOL 148
COPEN 84
DIGIT 52
RELEX 268
FRONT 75
CODEC 456

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals 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 [First reading] - Comments by Member States

Delegations will find in Annex a compilation of Member States' written contributions on document 7504/18.

ANNEX

CZECH REPUBLIC

re: document 7504/18

recital 8

In the last sentence of the first part, the word „specific“ should be deleted, as even rules of general nature applicable to certain agency (such as rules on right of access) should apply instead of this Regulation, where such rules exist.

The same applies to the second part, i.e. the word „specific“ in the last sentence of the recital.

Article 3

Point 2

In this point, operational personal data are defined. That is probably necessary for Frontex, as Eurojust and EPPO have their definitions and Europol has negative definition. It is the understanding of CZ that where there are definitions of operational personal data in Eurojust and EPPO, those definitions apply as legi speciali.

Has the Presidency considered to refer not only to „objectives“, but alternatively to „tasks“, in order to capture all necessary cases and reduce discrepancies (definitions in EJ an EPPO refer to tasks)?

Article 69a

While CZ can accept moving the issue of relationship of this Regulation with other rules to this place, CZ has other serious concerns regarding the new solution.

Paragraph 1

The word „specific“ should be deleted in the para 1, for the same reasons as in recital 8. Any rule applicable to certain agency and related to processing of data should prevail over and apply instead of Chapter VIIIa.

Paragraph 2

First, the word „specific“ should be deleted in the para 2, for the same reasons as in recital 8. Any rule applicable to certain agency and related to processing of data should prevail over and apply instead of Chapter VIIIa.

Second, the paragraph 2 is either too vague or too restrictive. Let us consider the Europol Regulation. It is evident that there are rules outside Chapter VI that are, in effect, data protection rules, e.g. Art. 47, Art. 25 or Art. 19. Therefore, either the term „data protection rules“ is a material reference, and does not provide sufficient certainty, because all the rules still have to be analyzed, or it is a formal reference and has potential to cause significant problems to EU agencies.

CZ could probably live with this paragraph only if a new recital explained that all rules applicable to the agencies have to be analyzed and their data protection impact considered, and that their formal designation or systematic classification is not decisive.

Article 69h

Paragraph 1

CZ appreciates removal of the last part.

Paragraph 2

CZ appreciates removal of the word „immediately“. However, CZ is not sure that such rule is really ballanced. Articles 30(6) and 31(3) of the Europol Regulation offer more practicable approach. As the mere single fingerprint or information on wounds caused by offender or that witness apologized from interrogation due to health issues (which could be construed as data concerning health), would need to be handled by national member, CZ would urge more flexibility.

Article 69ma

In Directive 2016/680 this rule, unnecessarily, stipulates that the Directive may be implemented by laws on criminal procedure. This Article could be even construed to mean that limits to the relevant rights may be stricter that Directive allows, but only if provided for by laws on criminal procedure.

However, what is the purpose of such Article in this Regulation? Will Member States be allowed to use their laws on criminal procedure to limit rights imposed by this Regulation on EU agencies? Or will there be EU rules – within this Regulation or founding documents – that will limit the application of rights by reference to Member State law; if so, is this „pre-rule“ necessary? Or will the national assessment be decisive in determination of whether limitation of certain right shall be used?

CZ is generally supportive of the coordination between national authorities and EU bodies where it comes to exercise of data subject rights which could defeat the purpose of processing, however this wording is so unclear that it would need explanation in a separate recital.

Article 69nb

CZ welcomes deletion of the second sentence in paragraph 2.

If this Article is to be retained, CZ would consider it necessary to include a recital to the effect that this is without prejudice to the relationship between an EU agency and the Member State which provides or receives personal data, and that such relationship should be regulated in appropriate founding instrument.

Article 69p

CZ still finds this Article quite confusing for the practitioners.

CZ also believes that at least in Article 69p(1)(c), the precedence of adequacy decision should be stipulated similarly to Article 35(1)(d) of the Directive 2016/680 („in the absence of the Commission adequacy decision").

Article 69q

Paragraph 1

CZ notes that yet another definition of „legi speciali" is proposed by the wording „specific rules contained in the respective founding legal relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data".

This may or may not be construed in the same way as „data protection rules" in Article 69a(2). We should probably use the same term in both places.

CZ continues to object to word „specific", for reasons given above.

CZ would also like to point out that a word (such as „instrument" or „act") is missing after „legal" and that directive 2016/680 speaks about „rights and freedoms" of data subject much more frequently that about „fundamental rights and freedoms".

The most serious problem, however, is that EDPS is made responsible for something without being given tools (powers) to achieve it (see comments to para 2).

Paragraph 2

CZ certainly appreciates the spirit of this provision, but does not understand what this provision intends to achieve.

First, there are no „supervision powers“ for EDPS given in Chapter VIIIa or Article 3, therefore such powers must be given by founding instruments (such as Article 43 of the Europol Regulation).

A solution could be to say that powers and tasks of EDPS conferred upon it by founding instrument include enforcement of applicable rules of Chapter VIIIa of this Regulation by relevant agency. Even that is actually a step above the original FR suggestion, which focused only on powers EDPS already has, therefore CZ is not advocating that.

Second, EU agencies do not conduct investigations and prosecutions (with the exception of EPPO, which is excluded), Member States' authorities do. It is not clear how the EDPS could have interfered with that as it is not competent to supervise them. Perhaps, participation of Europol in JITs, or maybe even running of its analytical databases, or activity of Eurojust in facilitating of MLA is envisaged, as those can have impact on ongoing national procedures. Probably, this should be explained in a recital.

However, given the first problem, the paragraph 1 should be deleted.

Article 70b

Word „specific“ should be deleted in the last sentence for reasons given above

GERMANY

IMPORANT GENERAL REMARKS:

First of all, as long as it is not clear which specific data protection provisions the future Eurojust Regulation should still contain according to the Commission and the Presidency, Germany cannot accept any text on Chapter VIIIa of the future Regulation 45/2001. It is essential that specific data protection provisions such as Articles 29d § 4, 38 § 4, 44 et seqq. remain in the Eurojust Regulation. It must be ensured that the remaining data protection provisions and references included in them are coherent. Both texts are linked and need to be on the table before Germany can take a definite decision on Chapter VIIIa of the future Regulation 45/2001. Therefore, all our remarks can only be regarded as preliminary.

Moreover, our comments are based on the indispensable requirement that Europol is excluded from the scope of Chapter VIIIa subject to the 2022 evaluation. Many provisions of Chapter VIIIa deviate considerably from the data protection provisions of the Europol Regulation and could hamper the proper functioning of Europol.

On the following pages you find our comments concerning the recitals and Articles.

Proposal of the Presidency of 26 March 2018	Comments and Proposals of Germany
(8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. A specific Chapter of this Regulation should therefore apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities in the fields of judicial cooperation and criminal matters and police cooperation **~~only to the extent that Union law applicable to such agencies does not contain specific rules on the processing of personal data which fall~~** w**ithin the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, unless specific rules applicable to those Union bodies, offices or agencies provide otherwise.** The **specific** rules **~~contained in the legal acts establishing these~~ applicable to those Union** bodies, offices, or agencies should be regarded as *lex specialis* to the provisions in Chapter VIIIa of this Regulation (*lex specialis derogat legi generali*).	• The second sentence of this recital needs an adjustment: It should not speak of a "specific" Chapter. Chapter VIIIa is intended to contain general rules on the processing of operational personal data - not specific rules. We suggest the second sentence of this recital to have the following wording: "A **separate** Chapter of this Regulation **containing general rules** should therefore apply to the processing of operational personal data, […]" • In our view, the last sentence of this recital needs some adjustment: It does not make a lot of sense to state that *specific* rules should be regarded as lex *specialis*. We understand that there might be other legal sources in Union law containing specific rules on the processing of operational personal data than the founding legal acts of the agencies. However, it is mainly - although not exclusively - the founding legal acts of the agencies that contain the specific rules. In this situation the word "particularly" might be helpful. We therefore suggest the following formulation for the last sentence: **"Particularly, the rules contained in the legal acts establishing those Union bodies, offices, or agencies should be regarded as *lex specialis* to the provisions in Chapter VIIIa of this Regulation (*lex specialis derogat legi generali*)."**

(8a) The Chapter of this Regulation containing general rules on the processing of operational personal data **should apply to ~~by~~** Union bodies, offices or agencies **when** carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU**. Such Union bodies, offices or agencies should in particular include the European Border and Coast Guard Agency only when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, for example where this agency within its mandate processes personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States of crime, such as migrant smuggling, trafficking of human beings or terrorism. ~~should apply to Eurojust and any other such Union bodies, offices or agencies. It would also apply to Frontex when carrying out its law enforcement activities.~~** However, it should not apply to Europol and the European Public Prosecutor's Office unless the legal acts establishing Europol and the European Public Prosecutor's Office are amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data as revised, applicable to them. The Commission should conduct a review of this Chapter and the other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. After such a review, the Commission may, if appropriate, propose***, inter alia,*** to revise this Chapter and to apply it to Europol and the European Public Prosecutor's Office, while preserving the *lex specialis derogat legi generali* principle.	• The following part of sentence 2 in recital 8a should be **deleted**: "**,for example where this agency within its mandate processes personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States of crime, such as migrant smuggling, trafficking of human beings or terrorism."** We do not consider the example to be very helpful. • Moreover, we have a question concerning the mentioning of Frontex in this recital: Why is there the reference to Frontex? Recital 8a refers to processing activities within in the scope of Chapter 4 or 5 of Title V of Part Three of the TFEU. As far as we know, Frontex activities are based on Chapter 2 of Title V of Part Three of the EU according to Regulation (EU) 2016/1624.

Article 2 **Scope** […] 1ab. Article 3 and Chapter VIIIa shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office unless Regulation (EU) 2016/794 and Regulation (EU) 2017/1939 are adapted following the Commission's review provided for in Article 70b.	Article 2 § 1ab should have the following wording (necessary because the word "only" was deleted in Article 2 § 1a): 1ab. **~~Article 3 and Chapter VIIIa~~** **This Regulation** shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office unless Regulation (EU) 2016/794 and Regulation (EU) 2017/1939 are adapted following the Commission's review provided for in Article 70b.
Article 3 ***Definitions*** For the purposes of this Regulation, the following definitions shall apply: […] **(2a) 'administrative personal data' means all personal data processed by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU apart from operational personal data;**	The new definition of "administrative personal data" would only be applicable for JHA agencies working within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU. However, the term has in our understanding a wider meaning. In other words: Shouldn't staff data of, for example, the Office for Harmonisation in the Internal Market in Alicante (Spain) also be considered "administrative personal data"?

Article 69a ***Scope of the Chapter*** 1. This Chapter shall apply only to the processing of operational personal data by Union bodies, offices or agencies when carrying out activities which fall within the scope of Chapter 4 and 5 of Title V of Part Three of the TFEU, **unless specific rules applicable to those Union bodies, offices or agencies provide otherwise ~~without prejudice to the rules contained in the founding legal acts of those Union bodies, offices and agencies.~~** **2. The data protection rules on processing of operational personal data contained in the legal acts applicable to Union bodies, offices or agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU shall be considered as specific data protection rules to the general rules laid down in Article 3 and Chapter VIIIa of this Regulation.**	First of all: We welcome that the formulation "unless" (instead of the formulation "without prejudice to") is used. We also welcome, in general terms, the idea contained in paragraph 2. The text of paragraph 2 was previously contained in Article 2 § 2a. However, there is a problem with the present version: In the previous version the lex-specialis-principle was also contained *expressis verbis* in Article 2 § 1a. It therefore allowed that specific rules would prevail over the provisions of Chapter VIIIa **and Article 3**. If the lex-specialis-principle is now only contained in Article 69 § 1 the rules in the founding legal acts could prevail over provisions of Chapter VIIIa, **but not over the definitions contained in Article 3**! This needs to be fixed. It might be worth to consider putting the lex-specialis-rule back to Article 2 § 1a. It has to be kept in mind that e.g. the Europol Regulation has a different definition for Union institutions and bodies (it also covers CSDP missions because data exchanges between Europol and these missions shall be possible). **Concerning paragraph 2: The word "general" needs to be deleted.** Otherwise there could be the misleading impression that not all rules contained in Article 3 and Chapter VIIIa are general compared to the provisions of the founding legal acts of the JHA agencies. Consequently, the lex-specialis-rule would not completely work.

Article 69d ***Distinction between different categories of data subjects*** The controller shall, where applicable and as far as possible, make a clear distinction between operational personal data of different categories of data subjects, such as the categories listed in the founding acts of Union institutions and bodies.	The formulation "such as" does not seem to make a lot of sense in this context. Article 27d of the Eurojust regulation contains examples of such categories. How will these provisions correspond to each other? Will this Article be kept in the Eurojust Regulation?
Article 69e ***Distinction between operational personal data and verification of quality of operational personal data*** […] 2. The controller shall take all reasonable steps to ensure that operational personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, the controller shall, as far as practicable and where relevant, verify, for example by consulting with the competent authority the data originates from, the quality of operational personal data before they are transmitted or made available. As far as possible, in all transmissions of operational personal data, the controller shall add necessary information enabling	The part in § 2 reading *",for example by consulting with the competent authority the data originates from,"* does make sense only where the JHA agency does not collect the data directly but receives it from authorities of the Member States. Although this might be the common situation for Eurojust, it might not be necessarily true for other agencies such as Frontex. It is therefore suggested to delete this example. By the way, Article 7 § 2 of the LED does not contain these words either.
Article 69f ***Specific processing conditions***	The current text does not contain any rules for cases in which JHA agencies receive operational personal data from third country authorities. If these authorities come up with specific processing conditions, are the JHA agencies allowed to respect these conditions? This might be necessary to a certain extent in order to respect the "data owner principle" and to ensure the trust of the authority in the respective partner (third) country. It seems important to still discuss this question.

Article 69h **Processing of special categories of operational personal data** ***[…]*** 2. The data protection officer shall be informed ~~**immediately**~~ of recourse to this Article.	We ask for the **deletion of the entire § 2** since it contains an exorbitant requirement. JHA agencies are likely to process special categories of personal data very often. The necessity to inform the DPO each and every time of these processing activities - without considering the specific risk of the processing at all - would largely contribute to bureaucracy. The LED also does not contain such a requirement.
Article 69ia ***[…]*** 3. Eurojust shall inform the data subject in writing about the follow up to his or her request without undue delay, and in any case at the latest after three months after receipt of the request by the data subject.	In § 3 there is a requirement not contained in the LED. We therefore ask for deletion. "3. The controller shall inform the data subject in writing about the follow up to his or her request without undue delay ~~**and in any case at the latest after three months after receipt of the request by the data subject**~~."
Article 69k **Right of access by the data subject** The data subject shall have the right to obtain from the controller confirmation as to whether or not operational personal data concerning him or her are processed, and, where **that** ~~**this**~~ is the case, **have the right to** ~~**be given**~~ access to **personal data and** the following information: […]	***We suggest the following formulation in order to align it with the Council's General Approach on the Eurojust Regulation:*** "The data subject shall have the right to obtain from the controller confirmation as to whether or not operational personal data concerning him or her are processed, and, where that is the case, ~~**have the right to**~~ access to **the operational** personal data and the following information: […]"
Article 69l **Limitations to the right of access**	Please check: Could the security of the **Union** also be a reason to restrict the rights?

<u>Article 69ma</u> **<u>Rights of the data subject in criminal investigations and proceedings</u>** **<u>Where deemed appropriate, specific rules may provide for the exercise of the rights referred to in Articles 69j, 69k and 69m to be carried out in accordance with Member State law where the personal data are contained in a judicial decision or record or case file processed in the course of criminal investigations and proceedings.</u>**	This provision allows coming up with specific rules in other legal acts of the Union in order to respect certain restrictions that exist in Member State law on information contained in judicial decisions, records or case files in criminal proceedings. The protection of this information certainly makes sense. However, the lex-specialis-principle is already enshrined in Art. 69a. Therefore, it seems that there is no real need to set up the lex-specialis-principle here again for this specific situation. In addition to that, it is rather unclear what is meant by "where deemed appropriate".
Article 69o **Logging** **[…]** 2. The logs shall be used solely for verification of the lawfulness of processing, self monitoring, ensuring the integrity and security of the operational personal data, and for criminal proceedings. Such logs shall be deleted after three years, unless they are required for on-going control.	Sentence 2 of § 2 is not contained in the LED and should therefore be deleted: **"Article 69o** **Logging** 2. The logs shall be used solely for verification of the lawfulness of processing, self monitoring, ensuring the integrity and security of the operational personal data, and for criminal proceedings. ~~Such logs shall be deleted after three years, unless they are required for on-going control.~~

Article 69p **Transfer of operational personal data to third countries and international organisations** **[…]**	Article 69p still needs to be worked upon. It covers the complex questions of data transfers to third countries and international organisations in just one Article whereas the LED contains an entire chapter on this subject (Chapter V, Articles 35 - 40). The Presidency is asked to ensure consistency with the LED here. For example, the derogations contained in Article 38 of the LED are not covered at all! Due to the fundamental importance of the Eurojust provisions on such transfers (e.g. Article 38 § 4, Article 45), it is essential that this Article (or additional Articles on this issue) make it explicitly clear that the Eurojust Regulation may contain additional requirements which shall prevail. Moreover, in § 3 it is unclear what is meant by "detailed records". This paragraph was copy-pasted from the EP proposal. We strongly suggest using Chapter V of the LED as a basis for redrafting Article 69p.
Article 69q **Supervision by the European Data Protection Supervisor** **1. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of Article 3 and Chapter VIIIa of this Regulation, as well as the specific rules contained in the respective founding legal relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.** […]	First of all, we have a question: How will this Article correspond to Article 31e of the Eurojust Regulation, which includes more extensive provisions? **The word "Union" must be included in the text of § 1:** "1. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of Article 3 and Chapter VIIIa of this Regulation, as well as the specific rules contained in the respective founding legal relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by **Union** bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU."

~~***Article 71h***~~ ~~***Amendments to Regulation (EU) 2016/794***~~ **Not addressed with this compromise proposal**	Since Europol is not to be covered from the scope of Chapter VIIIa subject to the 2022 evaluation, it is necessary to **<u>delete</u>** Article 71h. ~~***Article 71h***~~ ~~***Amendments to Regulation (EU) 2016/794***~~ **Suggestion to delete**

CROATIA

We believe that the proposed text is a compromise between the general approach of the Council and EP amendments. In this regard, we can generally support the efforts of the BG PRES aimed at deblocking the negotiations in this file.

In line with the position that we advocated before, we support that the processing of operational data by Europol and Eurojust is excluded from the application of Chapter VIIIa and we are not against adding the clause on reviewing the rules on the processing of operational data contained in Regulations on Europol, Eurojust, EPPO and FRONTEX until 2022 (Recital 8a and Article 70b).

In addition, we support the wording of Recital 10a and Article 2(1b) (not to apply the Regulation to CSDP missions), and the proposed modification of wording in Recital 8 and Article 69a as this would further clarify the relationship between rules on personal data protection contained in the founding acts of agencies and rules under Chapter VIIIa.

HUNGARY

- Article 69k: „have the right to access to the operational personal data".

- Within this context, we also note that according to Article 69a(1) Chapter VIIIa applies only to processing of *operational personal data*. It follows from this that personal data in the context of Chapter VIIIa means operational personal data, even if 'operational' is not explicitly mentioned in the subsequent articles. However, rules of Chapter VIIIa tend to use the phrase *'operational' personal data* systematically. Although this does not seem to be necessary, if it is the case, the same term should be used throughout the text. In the absence of such clear terminology it would be unclear whether where the text refers only to "personal data" [e.g. Article 69b(1)(d) and 69b(2), Article 69oe(2)(e)-(h)], it has a different meaning or it should also considered *'operational' personal data*.

- Article 69q(1): „respective ~~founding~~ legal acts relating".

PORTUGAL

28th March 2018

I. Introduction

PT welcomes the Presidency's compromise suggestions (ST7504/18) and takes note that these suggestions accommodate substantially the delegations comments presented in the last Dapix FoP meeting of March 21. PT wishes only to present a few remarks regarding the Presidency's suggestions on the general provisions.

Regarding the content of Chapter VIIIa, and as previously stated, PT is not yet in a position to take a definitive stance on this until we have had the chance to conduct an in-depth analysis of the changes proposed to the text of the Eurojust Regulation and the impact this might have to the agency's work. In this connection, we welcome the Presidency's intention of preparing a comparative table and reaffirm the usefulness of consulting the working group negotiating the Eurojust regulation.

II. Analysis of the Proposal

(i) Recitals

- Recital 8:

We welcome the deletion of the reference to "*only to the extent*…". However, in our opinion, the wording adopted at the end of the sentence ("*unless*…") is not the most adequate to convey the underlying idea as it seems too narrow. In this regard, we would prefer replicating the wording of the previous proposal of article 69a: "*without prejudice to the specific rules contained in the founding legal acts of those Union bodies, offices and agencies*". We welcome the Presidency's intention to consult the CLS in this regard.

We support the changes proposed to the second sentence.

- Recital 8a:

We fear that the proposed changes in recital 8a might actually increase confusion and uncertainty. In particular, in our opinion, the relation with the previous recital could be improved. We also have some reservations as to the degree of densification of Frontex's example. In this regard, we would favour a recital along the lines suggested by the French delegation.

(ii) General provisions

- Article 2, par. 1a:

We can accept the changes. We note, however, that the interpretation difficulties which arose from the previous proposal were related to the conjugation of "*only*" with "*unless*…". Accordingly, if the second part is deleted, the reference to "*only*" might, in our view, be maintained.

- Article 2, par. 2a, and Article 69a, par. 2:

We can accept moving of former par. 2a of article 2 to article 69a, par. 2.

- Article 69, par. 1:

As stated above regarding recital 8, we would prefer maintaining the wording of the previous proposal of article 69a: "*without prejudice to the specific rules contained in the founding legal acts of those Union bodies, offices and agencies*". We welcome the Presidency's intention to consult the CLS in this regard.

UNITED KINGDOM

- We welcome the changes made to recital 8a to reflect the fact that Europol is not within the scope of this Regulation. We also welcome the reassurance that the Presidency provided in the last meeting that this Regulation would not automatically apply to the processing of operational personal data by Europol following a review.
- The UK would like to reiterate the need for clarity on the data protection provisions that will remain within the Eurojust Regulation. It will be important to ensure that national members have authority over the personal data from their country. Any text that is agreed in this group will also need to be agreed by the COPEN Eurojust working group, where an updated version of the data protection chapter in the Eurojust Regulation should be presented and discussed.
- Recital 7a sets out the scope for the Regulation and so it is important to clarify up front that Regulation 45/2001 will apply to the processing of personal data by Union Institutions, bodies, offices and agencies, unless specific rules are provided for in their founding legal acts. This is set out clearly in the last sentence of the general approach text and should therefore be included in the Presidency text in order to achieve maximum certainty on which data protection provisions should apply.
- The wording in Article 2(1a) should also be clearer in setting out the scope of Article 3 and Chapter VIIIA. The UK does not support the deletion of "unless specific rules applicable to those Union bodies, offices or agencies provide otherwise" in the Presidency text. This sentence is needed to achieve clarity on which data protection rules should apply. Article 2(1a) should therefore read as follows:
    - "Article 3 and Chapter VIIIa shall apply to the processing of operational personal data by Union bodies, offices or agencies **when** carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU**, unless specific rules applicable to those Union bodies, offices or agencies provide otherwise**. The other provisions of this Regulation shall not apply to such processing."