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**NOTE**

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From:	Presidency
To:	JHA Counsellors DAPIX
No. prev. doc.:	7740/15
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 and on the free movement of such data (General Data Protection Regulation) - Chapter I - Article 2(e) - scope of the General Data Protection Regulation and the Data Protection Directive

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At the DAPIX meeting on 20 April 2015 a number of delegations supported text proposed by the Presidency. However, a number of delegations expressed concern about the use of the term “maintain law and order” and the broadening of the scope of the Directive. Following the comments made at the JHA Counsellors meeting the Presidency maintains the scope in Article 1 (1) of the Directive but has modified the recitals.

Article 1

**Subject matter and objectives**

1. This Directive lays down the rules relating to the protection of individuals 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 the prevention of threats to public security.<sup>1</sup>

Recital 11a

(11a) The activities carried out by the police or other law enforcement authorities, **are mainly** focused on the prevention, investigation, detection or prosecution of criminal offences **for example including** police activities without prior knowledge if an ~~accident~~ **incident** is a criminal offence or not. **This includes** and thus allowing them to **the** exercise **of** authority and take **by taking** coercive measures in the context of such activities, **for example such as police activities at demonstrations and major sporting events**.<sup>2, 3</sup> Those activities performed by the above-mentioned authorities also include **the maintaining of law and order as a task conferred on the police or other law enforcement authorities where necessary to prevent threats to public security, (...) aimed at preventing human behaviour which may lead to threats to fundamental interests of the society protected by the law, is contrary to social values and customary norms of society** and which may lead to a criminal offence.

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<sup>1</sup> **UK proposal to add the article : “and other activities for the purposes of police cooperation and judicial cooperation in criminal matters”.**

<sup>2</sup> Cion feared that activities normally carried out by administrative authorities such as in the area of food safety - where authorities controlled if food was poisonous, thereby constituting a criminal offence, - would then be covered by the Directive and not the Regulation - a situation unacceptable to the Cion.

<sup>3</sup> **DE proposed add to the text „Hereby 'criminal offence' covers all infringements of the rules of law which are punishable under national law, provided that the person concerned has the opportunity to have the case tried by a court having jurisdiction in particular in criminal matters”.**

**AT proposed to add to the recital: „Administrative tasks such as tasks with regard to the right of association and assembly, immigration and asylum or civil protection shall not be considered as activities falling under the prevention of threat of public security.**

Member States may entrust competent authorities with other tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or for the prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of the General Data Protection Regulation.

With regard to the processing of personal data by the competent authorities for purposes falling within scope of the General Data Protection Regulation, Member States may maintain or introduce more specific provisions to adapt the application of the rules of the General Data Protection Regulation. Such provisions may determine more precisely specific requirements for processing of personal data by the competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State.<sup>4</sup>

(...)<sup>5</sup>

(...)

#### Recital (11b)

(11b) Since this Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, activities of agencies or units dealing especially **exclusively** with national security issues should not be considered as (...) competent authorities within the meaning of this Directive.

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<sup>4</sup> **DE proposed add the text: „If personal data collected for the purpose of prevention, investigation, detection or prosecution of criminal offences, the execution of criminal penalties or the prevention of threats to public security are processed for another purpose, Regulation XXX applies. However, if Union law or the national law applicable to the competent authority which collected such data provides specific conditions to the processing of such data, the transmitting public authority shall inform the recipient to whom such data are transmitted about such conditions and the requirement to respect them”.**

<sup>5</sup> **Moved to the recital 11b.**

Recital 12

(12) In order to ensure the same level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent (...) authorities, the Directive should provide harmonised rules for the protection and the free movement of personal data (...) processed for the purposes of prevention, investigation, detection or prosecution of criminal offences *or the execution of criminal penalties* and for the purposes of preventing threats to public security. The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union. Member States should not be precluded from providing higher safeguards than those established in this Directive for the protection of the rights and freedoms of the data subject with regard to the processing of personal data by competent (...) authorities.

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