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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 Decision 2005/671/JHA, as regards its alignment with Union rules on the protection of personal data - Outcome of the European Parliament's first reading (Strasbourg, 10 to 13 July 2023)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure[1], 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 Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 9) to the abovementioned proposal for a Directive, for which Patryk JAKI (ECR, PL) had prepared a draft report. 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 12 July 2023, the plenary adopted the compromise amendment (amendment number 9) 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 hereto[2].

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.

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[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.

ANNEX
(12.7.2023)

P9_TA(2023)0276

Exchange of information and cooperation concerning terrorist offences: alignment with Union rules on the protection of personal data

European Parliament legislative resolution of 12 July 2023 on the proposal for a directive of the European Parliament and of the Council amending Council Decision 2005/671/JHA, as regards its alignment with Union rules on the protection of personal data (COM(2021)0767 – C9-0441/2021 – 2021/0399(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2021)0767),

– 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 (C9-0441/2021),

– 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 31 May 2023 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 (A9-0041/2023),

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.

P9_TC1-COD(2021)0399

Position of the European Parliament adopted at first reading on 12 July 2023 with a view to the adoption of Directive (EU) 2023/… of the European Parliament and of the Council amending Council Decision 2005/671/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 procedure[1],

[1] Position of the European Parliament of 12 July 2023.

Whereas:

(1) Directive (EU) 2016/680 ▌ of the European Parliament and of the Council[2] provides for harmonised rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties, including the safeguarding against, and the prevention of threats to public security. ***In accordance with that Directive, Member States should process personal data in a manner that ensures the appropriate security of the personal data.*** That Directive ***also*** requires the Commission to review ▌ other ***relevant*** legal acts adopted by the Union in order to assess the need to align them with that Directive and to make, where appropriate, ▌ the necessary proposals to amend those acts to ensure a consistent approach to the protection of personal data within the scope of that Directive.

(2) Council Decision 2005/671/JHA[3] lays down specific rules on the exchange of information and cooperation concerning terrorist offences. In order to ensure a consistent approach to the protection of personal data in the Union, that Decision should be amended ***in order*** to align it with Directive (EU) 2016/680. In particular, that Decision should specify, in a manner that is consistent with Directive (EU) 2016/680, the purpose of the processing of personal data and indicate the categories of personal data that can be exchanged, in accordance with the requirements of Article 8(2) of Directive (EU) 2016/680, taking due account of the operational needs of the authorities concerned.

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2 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).

3 Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

(3) In the interest of clarity, the references contained in Decision 2005/671/JHA to the legal instruments governing the operation of the European Union Agency for Law Enforcement Cooperation (Europol) should be updated.

(4) The application of Decision 2005/671/JHA, which involves the processing, including the exchange and subsequent use, of information concerning terrorist offences, involves the processing of personal data. In the interests of consistency and of the effective protection of such personal data, it is important that the processing of personal data carried out under Decision 2005/671/JHA comply with Union law, including with the rules set out in Directive (EU) 2016/680, and be in accordance with the security requirements, safeguards and data protection guarantees set out in other instruments of Union law that contain provisions on data protection, including Regulations (EU) 2016/794[4] and (EU) 2018/1725[5] of the European Parliament and of the Council, as well as national law.

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4 ***Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).***

5 ***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).***

(5) 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, ***as*** annexed to the Treaty on European Union ***(TEU)*** and the Treaty on the Functioning of the European Union ***(TFEU)***, Ireland is ***not*** bound by ***the rules laid down in this Directive which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU where Ireland is not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16 TFEU***.

(6) In accordance with Articles ***2*** and ***2a*** of Protocol No 22 on the Position of Denmark***, as*** annexed to the ***TEU and to the TFEU, Denmark is not bound by, or subject to the application of, the rules laid down in this Directive which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU***.

(7) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 ▌ and delivered an opinion on ***25 January 2022***,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Decision 2005/671/JHA is amended as follows:

(1) ▌ Article ***1 is amended as follows:***

(a) point (b) is deleted;

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

'(d) "group or entity": terrorist group as defined in Article 2, point (3), of Directive (EU) 2017/541 and the groups and entities listed in the Annex to Council Common Position 2001/931/CFSP*.

**** Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ L 344, 28.12.2001, p. 93).';***

(2) Article 2 is amended as follows:

(a) the heading is replaced by the following:

"Provision of information concerning terrorist offences to Europol and the Member States";

(***b***) ▌ the following ***paragraph*** is added:

"***3a.*** Each Member State shall ensure that personal data ***are*** processed pursuant to ***paragraph 3 of this Article*** only for the ***purposes*** of the prevention, investigation, detection or prosecution of terrorist offences ***and other criminal offences for which Europol is competent, as listed in Annex I of Regulation (EU) 2016/794. Such processing shall be without prejudice to the limitations applicable to the processing of data under Regulation (EU) 2016/794***.";

(***c***) in paragraph 4, the following subparagraph is added:

"The categories of personal data to be transmitted to Europol for the purposes referred to in paragraph 3a shall remain limited to those referred to in Section B, point 2, of Annex II to Regulation (EU) 2016/794.";

(***d***) in paragraph 6, the following subparagraph is added:

"The categories of personal data that may be exchanged between Member States for the purposes referred to in the first subparagraph shall remain limited to those referred to in Section B, point 2, of Annex II to Regulation (EU) 2016/794.".

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***...*** [***two years*** after entry into force ***of this 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 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 measures of national law which they adopt in the field covered by this Directive.

Article 3

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

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

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*