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'I' ITEM NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	5708/21
No. prev. doc.:	13030/21
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 - Analysis of the final compromise text with a view to agreement

Introduction

On 20 January 2021, the Commission presented a proposal for a Directive to align Council Framework Decision 2002/465/JHA, on Joint Investigation Teams (JITs), with European Union rules on the protection of personal data (5708/21).

Following examination by the Working Party on Judicial Cooperation in Criminal Matters (COPEN), Coreper agreed, on 21 April 2021, to start negotiations with the European Parliament on the basis of the text set out in 8043/21.

In their work, the COPEN Working Party and Coreper took account of the opinion delivered by the European Data Protection Supervisor on 10 March 2021.

Work in the European Parliament and interinstitutional negotiations

In the European Parliament, this file was attributed to the LIBE Committee.

On 15 September 2021, the European Parliament decided not to propose any amendments to the Commission proposal, in accordance with a simplified procedure.

On 21 September and 13 October 2021, technical meetings were held between representatives of the European Parliament, the Commission and the Slovenian Presidency, the latter representing the Council. In the course of these meetings, and during subsequent communication, provisional agreement was reached on the draft amendments that the European Parliament would present in respect of the Commission proposal.

At its meeting on 29 October 2021, the COPEN Working Party discussed these draft amendments, on the basis of 13030/21. In a subsequent informal silence procedure that ended on 4 November 2021, all Member States indicated that they could agree to these draft amendments.

In the trilogue which took place on 11 November 2021, provisional agreement on the draft amendments, and thus on the final compromise text, was confirmed.

Lawyer-linguists have already started working on refining the text. Some technical modifications are included in the text set out in the Annex to this note; other refinements will be presented later on, in accordance with the usual procedure.

Follow-up

In the light of the foregoing, the Permanent Representatives Committee is invited to:

- analyse the final compromise text with a view to an agreement concerning the draft Directive, as set out in the Annex to this note;

- authorise the Presidency to send a letter to the Chair of the European Parliament's LIBE Committee confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, in the form set out in the compromise text contained in the Annex (subject to revision by the lawyer-linguists of both institutions), the Council would, in accordance with Article 294(4) TFEU, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.
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(draft)

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

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
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 procedure¹,

¹ Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)]
and decision of the Council of ...

Whereas:

- (1) Pursuant to Article 62(6) of Directive (EU) 2016/680 of the European Parliament and of the Council², 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/JHA³ as one of those other acts to be amended.
- (2) *The processing of personal data under Framework Decision 2002/465/JHA, and under national laws adopted to implement that Framework Decision, 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 carried out under Framework Decision 2002/465/JHA should respect the rules set out in Directive (EU) 2016/680. 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.*

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

³ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1)

- (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 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 of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁴ and delivered an opinion on 10 March 2021⁵.*
- (6) *Framework Decision 2002/465/JHA should therefore be amended accordingly,*

HAVE ADOPTED THIS DIRECTIVE:

⁴ *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 *[Letter of 10 March 2021 (6701/21)].*

Article 1

Amendments to Framework Decision 2002/465/JHA

In Article 1(10) of Framework Decision 2002/465/JHA 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 of the European Parliament and of the Council*, in particular Article 4(2), Article 9(1) and Article 9(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 ... [OJ please insert date: one year after the ***entry into force of this amending Directive***] at the latest. 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 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
The President

For the Council
The President
