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From: European Data Protection Supervisor
date of receipt: 25 January 2022
To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council
of the European Union

Subject: Formal Comments of the European Data Protection Supervisor 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

Delegations will find attached the above-mentioned document.

E-MAIL



EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

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Brussels, 25 January 2022
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Subject: Formal Comments¹ of the European Data Protection Supervisor 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

Your Excellency,
Mr Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed Formal Comments 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.

¹Article 20(1) of the EDPS Rules of Procedure provide that “In response to requests from the Commission pursuant to Article 42(1) of the Regulation, the EDPS shall issue opinions or formal comments.”

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We have sent a copy of these Formal Comments to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

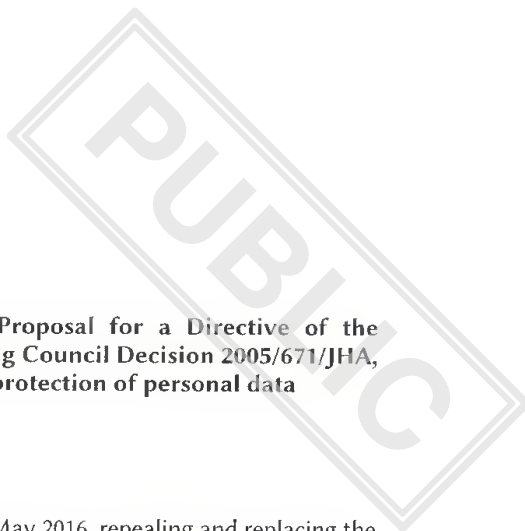
(e-signed)

Wojciech Rafał WIEWIÓROWSKI

Encl.: Formal Comments

Cc: Mr Serge DE BIOLLEY, Director for Justice, General Secretariat of the Council

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EDPS Formal comments on the Commission 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

1. Introduction and background

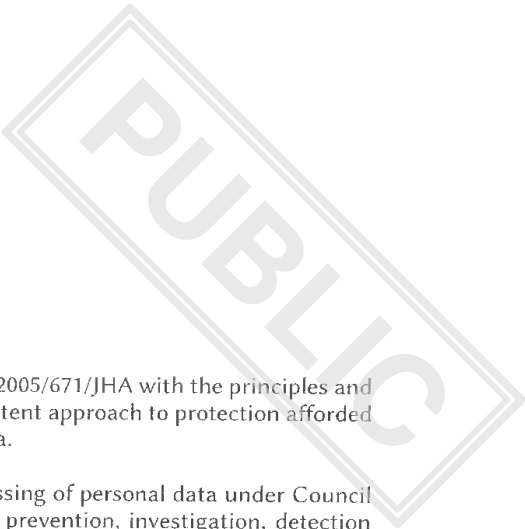
Directive (EU) 2016/680¹ (LED) entered into force on 6 May 2016, repealing and replacing the Council Framework Decision 2008/977/JHA².

Pursuant to Article 62(6) of the LED, the Commission is to review other acts of Union law which regulate 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 these acts 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 Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences³ as one of those other acts to be amended.

The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 1 December 2021, pursuant to Article 42(1) of Regulation 2018/1725⁴. In this regard, the EDPS welcomes the reference to this consultation in Recital 6 of the Proposal. Furthermore, the EDPS stresses that these formal comments do not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available and are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.

- ¹ 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).
- ² Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).
- 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).
- 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, 21.11.2018, L.295, p.39 (Regulation 2018/1725).





2. Comments

2.1. Purpose limitation

The Proposal aims at aligning the Council Decision 2005/671/JHA with the principles and rules laid down in the LED, in order to ensure consistent approach to protection afforded to persons regarding the processing of personal data.

In that regard the Proposal specifies that the processing of personal data under Council Decision 2005/671/JHA can only take place for the prevention, investigation, detection and prosecution of terrorist offences, in line with the purpose limitation principle. To achieve this, the Commission proposes to amend Article 2 of the Council Decision 2005/671/JHA by adding the following subparagraph into paragraph 3 of Article 2:

“Each Member State shall ensure that personal data is processed pursuant to the first subparagraph only for the purpose of the prevention, investigation, detection or prosecution of terrorist offences.”

The EDPS welcomes the introduction of a specific provision on purpose limitation. At the same time, he invites the legislator to consider the option of adding the purpose limitation provision as a new, last paragraph of Article 2. Thus, the purpose limitation principle would apply to all data processing under Article 2.

2.2. Reference to the Europol legal act

The Commission proposes to delete Article 1, point (b) of the Council Decision 2005/671/JHA with the explanation that it refers to the Europol Convention and that the relevant provisions of the Council Decision, as amended, instead refer to the Europol Regulation. However, the EDPS notes that Article 2 (3)(a) of the Council Decision 2005/671/JHA still refers to the Europol Convention and therefore recommends that it is amended accordingly. Alternatively, instead of deleting the reference to the Europol Convention in Article 1(b), it could be replaced by a reference to the Europol Regulation.

Brussels, 25 January 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI