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**NOTE**

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5804/22
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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 - Compilation of comments by Member States

At the COPEN meeting on 30 January 2023, Member States had a first exchange of views on the above-mentioned proposal.

The Presidency invited Member States to submit any comments in writing before 10 February 2023, cob. The comments so received are set out in the Annex.

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## CZECH REPUBLIC

### A) Amendment of Article 2 paragraph 3 of Council Decision and purpose limitation

The Commission proposed to introduce special purpose limitation in Art. 2(3) second subparagraph:

“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.”

We have following questions for clarification:

- a. Does this purpose limitation apply to Member State only when providing the information to Europol?
- b. Does this purpose limitation create a duty for the Member State providing the information to Europol to restrict the usage of information pursuant to Article 19(2) of Europol Regulation?
- c. Does this purpose limitation apply to processing within the Europol even without restriction pursuant to Art. 19(2) of Europol Regulation?
- d. Does this purpose limitation apply to Member State receiving the information from Europol?

*CZ could certainly accept such a specification of purposes limited to informing Europol by providing MS, but struggles to understand the aim of the legislative proposal.*

On the contrary, EDPS invites the legislator to consider extending purpose limitation to the whole amended Article 2, by virtue of creating new last paragraph of Article 2.

***CZ strongly disagrees with this EPDS proposal for several reasons:***

- i) this is not a necessary consequence of LED (including recital 27). The Court of Justice ruled recently that while detection, investigation and prosecution are different purposes under LED, personal data collected for detection of one criminal offence may well be used in investigation of another criminal offence (C-180/21, para 55).*
- ii) terrorist crimes are not uniquely serious. A murder or a rape would be much more serious than receiving terrorist training or disseminating terrorist propaganda.*
- iii) this would cause practical problems in cases where the legal qualification of an offence is changed. The purpose limitation could enable the defence to argue that such information should not be shared and is not admissible for investigation or prosecution. (For example, the court could consider the case to be a crime of illegal service in foreign army instead of crime of terrorism. Or the specific terrorist aim pursuant to Art. 3(2) of Directive 2017/541 is not proven and the case would be tried as other serious crime.)*

**B) Transposition period under Article 2 paragraph 1 of the proposed Directive**

Transposition period of ONE year is completely unrealistic. While the body of law is small, the procedural requirements related to changes of law are the same irrespective of how many articles are transposed. CZ believes that at least TWO years are necessary for practical reasons.

## GERMANY

- We would like to thank the Commission for her recommendation during the meeting to accept the proposal of the EDPS to relocate the purpose limitation in Article 2 by adding a new last paragraph. In our view, this proposal should be considered.
- Moreover, Germany is aware that the amendments under the proposed directive in Article 1 para. 2a only concern the exchange of information on terrorist offences and do not affect the exchange of information due to the Europol Regulation in general. Nevertheless, Germany would be interested in a closer analysis on how the purpose limitation could possibly affect Europol's objectives laid down in article 3 para. 2 of the Europol Regulation, which is, in addition to preventing and combating terrorism affecting two or more Member States, to cover related criminal offences.
- According to Article 1 para. 2a of the Commission's proposal, Member States could then be obliged to restrict the processing of the transmitted data in accordance with the Council Decision 2005/671/JHA and in line with article 19 para. 2 of the Europol Regulation to the purpose of the prevention, investigation, detection and prosecution of terrorist offences.
- Consequently, Europol could no longer be allowed to process the data received under the Council Decision 2005/671/JHA for the purposes defined in article 18 para 2 of the Europol Regulation, including the ability to analyse and crosscheck with criminal offences, suspects and / or cases that go beyond terrorist offences, i.e. other serious crimes, in order to identify connections. Germany would appreciate a closer view on these possible side effects of the proposal.