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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/41/EU, as regards its alignment with EU rules on the protection of personal data - Formal comments by the EDPS

Delegations will find attached formal comments by the European Data Protection Supervisor (EDPS) in respect of the above-mentioned proposal for a Directive.



EUROPEAN DATA PROTECTION SUPERVISOR

EDPS Formal comments on the Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/41/EU, as regards its alignment with EU 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 Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters³ 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 20 January 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.

2. Comments

Directive 2014/41/EU contains a specific provision (Article 20) relating to personal data and the EDPS agrees that this provision must be aligned with the current data protection regime. With the proposed deletion of this specific provision of Directive 2014/41/EU, it should be clear that any processing of personal data under Directive 2014/41/EU is subject to either the LED or Regulation (EU) 2016/679⁵ (General Data Protection Regulation – GDPR), depending on whether it takes place in the context of criminal or non-criminal proceedings. For these reasons, the EDPS does not have any specific suggestions or objections on the proposed amendment.

Brussels, 10 March 2021

Wojciech Rafał WIEWIÓROWSKI
[e-signed]

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 OJ L 130, 1.5.2014, p. 1.
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).

⁵ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).