



Council of the  
European Union

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**NOTE**

From:	Presidency
To:	Delegations
No. prev. doc.:	7256/21
No. Cion doc.:	5708/21
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 - Revised text

At its meeting on 29 March 2021, the COPEN Working Party examined the revised text of the above-mentioned draft Directive, on the basis of 7256/21.

A large majority of delegations expressed support for solution II as set out in 7256/21. It is recalled that under this solution, Article 1 of the draft Directive, concerning amendment of Framework Decision 2002/465/JHA, would read as follows:

*" In Article 1(10) of Framework Decision 2002/465/JHA the following subparagraph is inserted:*

*'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 Article 4(2), Article 9(1) and Article 9(3) of Directive (EU) 2016/680.' "*

Further, recital 2 of the draft Directive would be modified as follows:

- (2) 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. ***In particular, 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 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.***

Hence, under this solution letter d) of Article 1(10) of the Framework Decision would be untouched, and it would remain in the form of an open provision:

*'(d) for other purposes to the extent that this is agreed between Member States setting up the team.'*

The Commission expressed reservations about this solution, as it would not comply with the requirement that legislation must provide for a precise and proportionate use of the data.

Further to a suggestion made at the said meeting, the Presidency decided to consult the JITs Network, in order to obtain more information about the possible uses that could be made of data under letter d). The (provisional) findings of this consultation will be presented by the JITs Network Secretariat at the forthcoming meeting of the COPEN Working Party. However, the outcome of the consultation confirms that Member States prefer to keep letter d) as an open provision.

In order to find a compromise and in order to be able to start trilogue negotiations, the Presidency would like to reiterate the compromise suggestion that it has presented at the last meeting in a slightly revised form, and which is to reformulate point (d) as follows:

*'For other purposes to the extent that this is agreed between Member States setting up the team, **in particular for subsequent or relevant civil or administrative proceedings, or parliamentary scrutiny**.'*

Recital 2 would be amended accordingly.

Also, in order to avoid any unwanted a-contrario reasoning, the Presidency suggests slightly rewording the text of the subparagraph to be added to Article 1(10), as follows:

*'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 ~~Article 4(2), Article 9(1) and Article 9(3) of Directive (EU) 2016/680~~, **in particular Article 4(2), Article 9(1) and Article 9(3) thereof.**'*

The complete suggestion for Article 1 and the accompanying recital 2 is contained in the draft text of the Directive as set out in the Annex.

At the forthcoming COPEN meeting, Member States will be asked whether they can support this text of the draft Directive. Subsequently, the text will be submitted to Coreper, in order to agree to start trilogue negotiations with the Parliament on this basis.

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(draft)

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

**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  
Articles 16(2) and 82 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,

Whereas:

- (1) Pursuant to Article 62(6) of Directive (EU) 2016/680<sup>1</sup>, 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/JHA<sup>2</sup> as one of those other acts to be amended.
- (2) 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. ***In particular, 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.***
- (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 and to the Treaty on the Functioning of the European Union, Ireland is bound by Framework Decision 2002/465/JHA and is therefore taking part in the adoption of this Directive.

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<sup>1</sup> 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).

<sup>2</sup> Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, 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<sup>3</sup> and delivered an opinion on 10 March 2021<sup>4</sup>,
- (6) Framework Decision 2002/465/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>3</sup> 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).

<sup>4</sup> [Letter of 10 March 2021 (6701/21)]

## *Article 1*

### *Amendments to Framework Decision 2002/465/JHA*

In Framework Decision 2002/465/JHA, Article 1(10) is amended as follows:

- (a) point (d) is replaced by the following:

*'(d) For other purposes to the extent that this is agreed between Member States setting up the team, **in particular for subsequent or relevant civil or administrative proceedings, or parliamentary scrutiny.**'*

- (b) 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, in particular Article 4(2), Article 9(1) and Article 9(3) thereof.**'*

## *Article 2*

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within a period of one year from the date of its entry into force. 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 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*

*For the Council*

*The President*

*The President*

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