



Council of the
European Union

Brussels, 25 March 2021
(OR. en)

7256/21

LIMITE

JAI 306
DATAPROTECT 76
COPEN 142
FREMP 64
EUROJUST 41
EJN 25
CODEC 435

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	6825/21
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 19 March 2021, the COPEN Working Party examined the revised text of the above-mentioned draft Directive, on the basis of 6825/21.

All Member States that took the floor indicated that they could agree with the text submitted by the Presidency.

The Commission, however, felt that the Presidency proposal for Article 1(10) should be modified, in order to limit the exchange of data for the purpose of ensuring the proportionality of the instrument and in line with the opinion of the EDPS. The Commission indicated that it was open to inserting additional purposes for the use of the data as long as they were specific and targeted, rather than general and open-ended.

In the light of these comments by the Commission, the Presidency proposes two solutions:

Solution I:

Article 1, concerning amendment of Framework Decision 2002/465/JHA, is modified as follows:

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

As a result, Article 1(10) of Framework Decision 2002/465/JHA would become to read as follows:

'10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:

(a) for the purposes for which the team has been set up;

(b) subject to the prior consent of the Member State where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;

(c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;

(d) for subsequent civil or administrative proceedings, or parliamentary scrutiny.

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 2016/680.'

Solution II:

Article 1, concerning amendment of Framework Decision 2002/465/JHA, is modified as follows:

Article 1

Amendment to Framework Decision 2002/465/JHA

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 2016/680.'

Under both solutions, I and II, recital 2 of the 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 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.***

At the forthcoming meeting of the COPEN Working Party, scheduled for 29 March 2021, the delegations will be invited to indicate which of these two solutions (or any other) would be preferable to them.

(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) 2016/680¹, 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/JHA² 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.
- (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.

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 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) 2018/1725³ and delivered an opinion on 10 March 2021⁴,
- (6) Framework Decision 2002/465/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

³ 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).

⁴ [Letter of 10 March 2021 (6701/21)]

Article 1

Amendment to Framework Decision 2002/465/JHA

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) of Directive 2016/680.'

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
