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European Union

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#### NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	6648/23
No. Cion doc.:	14706/21
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 <ul style="list-style-type: none"><li>- Revised text by the Presidency</li><li>- Informal silence procedure until Wednesday 5 April 2023, 18:00</li></ul>

**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (20.04.2023)**

#### Introduction

At the meeting of the COPEN Working Party on 3 March 2023, the Presidency presented a revised text of the draft Directive. While many Member States entered a scrutiny reservation, some Member States presented comments. Following a call by the Presidency, various Member States also presented written comments (7685/23).

In the light of the comments presented at the meeting and in writing, and taking into account observations presented by the linguistic quality advisor, the Presidency has made further refinements to the text of the draft Directive, see Annex I. Changes compared to the Commission proposal have been marked by **bold** (for additions) and by ~~strike-through~~ (for deletions). Changes compared to the text in 6648/23 have also been underlined.

For ease of reference, a document with a consolidated text of Council Decision 2005/671/JHA, with the changes provided for in the Commission's original proposal, together with the changes provided for in the CTR-proposal, as well as the Presidency suggestions, is set out in Annex II.

### **Brief presentation of the proposed changes**

The main changes inserted in the text compared to the text as set out in 6648/23 are as follows:

- a) Recital 4, concerning the position of Ireland, has been modified following a suggestion by the IE delegation (see 7685/23, p. 6-10). The revised text, which corresponds to recital 99 of Directive 2016/680 (Law Enforcement Directive), keeps closer to the text of Article 6a of Protocol 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union.
- b) For reasons of consistency and parallelism, and in agreement with the DK delegation, the text of recital 5, concerning the position of Denmark, has also been revised. The text corresponds to the first sentence of recital 100 of Directive 2016/680.
- c) In Article 1 (2) (b), concerning Article 2 (3) on the 'purpose limitation', the word 'only' has been reinstated. Upon reflection and taking into account the comment by the DE delegation, the Presidency considers that the limitative element of the purpose limitation needs the insertion of the word 'only'.

### **Final remarks**

The Presidency suggests finalising this text by written procedure:

**Unless any delegation informs the Presidency (~~DELETED~~) and the Council General Secretariat (~~DELETED~~) by Wednesday 5 April, 18:00, it will be assumed that the text is agreeable to all delegations at technical level.**

Subsequently, the file will be submitted to Coreper for confirmation and for reaching a general approach on the text, which will constitute the basis for negotiations with the European Parliament<sup>1</sup>.

Finally, the Presidency considers that it is advisable that after the adoption, signature and publication of the Directive in the Official Journal, a consolidated version of the Council Decision be published in order to help practitioners understand the text.

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<sup>1</sup> The European Parliament has adopted its position on 15 March 2023 (7755/23).

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**

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 Article 16(2) 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) Directive (EU) 2016/680 of the European Parliament and of the Council<sup>2</sup> provides for harmonised rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties, including the safeguarding against, and the prevention of threats to public security. The Directive requires the Commission to review other relevant ~~other~~ acts of Union law in order to assess the need to align them with that Directive and to make, where necessary, ~~the~~ proposals to amend those acts to ensure a consistent approach to the protection of personal data falling within the scope of that Directive.
- (2) Council Decision 2005/671/JHA<sup>3</sup> lays down specific rules on the exchange of information and cooperation concerning terrorist offences. In order to ensure a consistent approach to the protection of personal data in the Union, that Decision should be amended in order to ~~get~~ aligned it with Directive (EU) 2016/680. In particular, that Decision should specify, in a manner that is consistent with Directive (EU) 2016/680, the purpose of the processing of personal data and indicate the categories of personal data that can be exchanged, in accordance with the requirements of Article 8(2) of Directive (EU) 2016/680, taking due account of the operational needs of the authorities concerned.
- (3) In the interest of clarity, the references contained in Decision 2005/671/JHA to the legal instruments governing the operation of the European Union Agency for Law Enforcement Cooperation (Europol) should be updated.

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<sup>2</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>3</sup> 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) 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, as annexed to the **Treaty on European Union ('TEU')** and the **Treaty on the Functioning of the European Union ('TFEU')**, Ireland is **not** bound by ~~Decision 2005/671/JHA and is therefore taking part in the adoption of this Directive~~ **the rules laid down in this Directive which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU where Ireland is not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16 TFEU.**
- (5) In accordance with Articles ~~1~~ 2 and 2a of Protocol No 22 on the position of Denmark, as annexed to the TEU and to the TFEU, Denmark is not ~~taking part in the adoption of this Directive and is not bound by it or subject to its application.~~ **bound by the rules laid down in this Directive or subject to their application which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.**
- (6) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>4</sup> and delivered an opinion on **25 January 2022**,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>4</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).

*Article 1*

Decision 2005/671/JHA is amended as follows:

(1) Article 1 is amended as follows:

(a) point (b) is deleted;

(b) **former point (d) is replaced by the following:**

‘**(b)** “group or entity”: “terrorist groups” within the meaning of Article **2(3) of Directive (EU) 2017/541** and the groups and entities listed in the Annex to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism\*’.

\*OJ L 344, 28.12.2001, p. 93.

(2) Article 2 is amended as follows:

(a) **the heading is replaced by the following:**

**‘Provision of information concerning terrorist offences to Europol and the Member States’;**

(b) in paragraph 3, the following subparagraph is added:

‘Each Member State shall ensure that personal data is processed pursuant to the first subparagraph **only** for the purposes of the prevention, investigation, detection or prosecution of terrorist offences **and other criminal offences in respect of which Europol is competent, as listed in Annex I of Regulation (EU) 2016/794 of the European Parliament and of the Council\***.’;

**\*Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135 24.5.2016, p. 53)**

(c) in paragraph 4, the following subparagraph is added:

‘The categories of personal data to be transmitted to Europol for the purposes referred to in paragraph 3 shall remain limited to those referred to in Section B, point 2, of Annex II to Regulation (EU) 2016/794.’;

(d) in paragraph 6, the following subparagraph is added:

‘The categories of personal data that may be exchanged between Member States for the purposes referred to in the first subparagraph shall remain limited to those specified in Section B, point 2, of Annex II to Regulation (EU) 2016/794.’.

## *Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [~~one year~~ **two years** after adoption **of this Directive**] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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*

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*

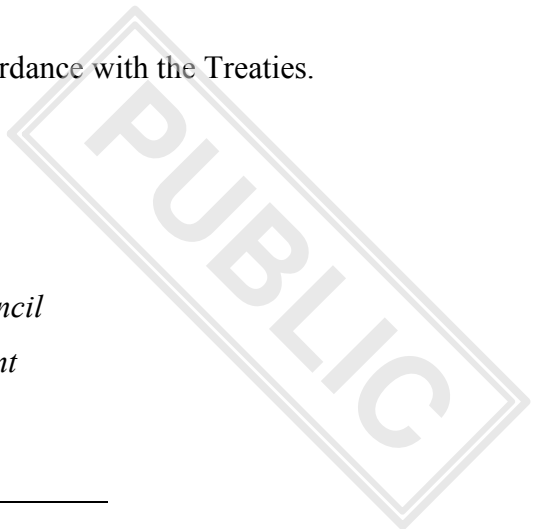
This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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**Consolidated version**

**COUNCIL DECISION 2005/671/JHA**

on the exchange of information and cooperation concerning terrorist offences

*As amended by*

- Directive (EU) 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA,
- the forthcoming [CTR] Regulation amending Regulation (EU) 2018/1727 and Council Decision 2005/671/JHA, as regards digital information exchange in terrorism cases (= changes marked by **bold**, ~~strike through~~ and by **CTR**);
- the proposal for a [LED alignment] Directive of the Commission (14706/21) (= changes marked by **bold**, ~~strike through~~ and by **LED**);
- the changes proposed by the Presidency (see Annex I and the cover-page) (= changes marked by **bold**, ~~strike through~~ and underlining and by **PRES**).

*Article 1*

**Definitions**

For the purposes of this Decision, the following definitions shall apply:

- (a) ‘terrorist offences’: the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council<sup>5</sup>;
- ~~(b) ‘Europol Convention’: the Convention of 26 July 1995 on the establishment of a European Police Office<sup>6</sup>; (LED)~~

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<sup>5</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

<sup>6</sup> OJ C 316, 27.11.1995, p. 2. Convention as last amended by the Protocol of 27.11.2003 (OJ C 2, 6.1.2004, p. 3).

- (c) ~~‘Eurojust Decision’: Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>7</sup>; (CTR)~~
- (b) “Group or entity”: “terrorist groups” within the meaning of Article **2(3) of Directive (EU) 2017/541** ~~‘group or entity’: ‘terrorist groups’ within the meaning of Article 2 of Council Framework Decision 2002/475/JHA and the groups and entities listed in the Annex to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism<sup>8</sup>. (PRES)~~

## Article 2

### Provision of information concerning terrorist offences to Eurojust, (PRES) Europol and the Member States

1. Each Member State shall designate a specialised service within its police services or other law enforcement authorities, which, in accordance with national law, will have access to and collect all relevant information concerning and resulting from criminal investigations conducted by its law enforcement authorities with respect to terrorist offences and send it to Europol in accordance with paragraphs 3 and 4.
- ~~2. Each Member State shall designate one, or where its legal system so provides more than one authority, as Eurojust national correspondent for terrorism matters or an appropriate judicial or other competent authority which, in accordance with national law, shall have access to and can collect all relevant information concerning prosecutions and convictions for terrorist offences and send it to Eurojust in accordance with paragraph 5. (CTR)~~

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<sup>7</sup> OJ L 63, 6.3.2002, p. 1. Decision as amended by Council Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44).

<sup>8</sup> OJ L 344, 28.12.2001, p. 93. Common Position as last amended by Common Position 2005/220/CFSP (OJ L 69, 16.3.2005, p. 59).

3. ~~Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations and the information referred to in paragraph 5 concerning prosecutions and convictions for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to:~~
- ~~(a) — Europol, in accordance with national law and with the provisions of the Europol Convention, for processing; and~~
  - ~~(b) — Eurojust, in accordance with national law and where the provisions of the Eurojust Decision so allow. (CTR)~~

**Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to Europol, in accordance with national law and with Regulation (EU) 2016/794 of the European Parliament and of the Council.<sup>9</sup> (CTR)**

**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. (LED)**

**(version of this paragraph as modified by PRES:)**

**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 and other criminal offences in respect of which Europol is competent, as listed in Annex I of Regulation (EU) 2016/794 of the European Parliament and of the Council. (PRES)**

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<sup>9</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114).

4. The information to be transmitted in accordance with paragraph 3 to Europol shall be the following:

- (a) data which identify the person, group or entity;
- (b) acts under investigation and their specific circumstances;
- (c) the offence concerned;
- (d) links with other relevant cases;
- (e) the use of communication technologies;
- (f) the threat posed by the possession of weapons of mass destruction.

**The categories of personal data to be transmitted to Europol for the purposes referred to in paragraph 3 shall remain limited to those referred to in Section B, point 2, of Annex II to Regulation (EU) 2016/794. (LED)**

~~5. The information to be transmitted in accordance with paragraph 3 to Eurojust shall be the following:~~

- ~~(a) data which identify the person, group or entity that is the object of a criminal investigation or prosecution;~~
- ~~(b) the offence concerned and its specific circumstances;~~
- ~~(c) information about final convictions for terrorist offences and the specific circumstances surrounding those offences;~~
- ~~(d) links with other relevant cases;~~
- ~~(e) requests for judicial assistance, including letters rogatory, addressed to or by another Member State and the response. (CTR)~~

6. Each Member State shall take the necessary measures to ensure that relevant information gathered by its competent authorities in the framework of criminal proceedings in connection with terrorist offences is made accessible as soon as possible to the competent authorities of another Member State where the information could be used in the prevention, detection, investigation or prosecution of terrorist offences as referred to in Directive (EU) 2017/541, in that Member State, either upon request or spontaneously, and in accordance with national law and relevant international legal instruments.

**The categories of personal data that may be exchanged between Member States for the purposes referred to in the first subparagraph shall remain limited to those specified in Section B, point 2, of Annex II to Regulation (EU) 2016/794. (LED)**

7. Paragraph 6 is not applicable where the sharing of information would jeopardise current investigations or the safety of an individual, nor when it would be contrary to essential interests of the security of the Member State concerned.
8. Member States shall take the necessary measures to ensure that their competent authorities take, upon receiving the information referred to in paragraph 6, timely measures in accordance with national law, as appropriate.

### *Article 3*

#### **Joint investigation teams**

In appropriate cases Member States shall take the necessary measures to set up joint investigation teams to conduct criminal investigations into terrorist offences.

#### *Article 4*

### **Requests for judicial assistance and enforcement of judgments**

Each Member State shall take the necessary measures to ensure that requests from other Member States for mutual legal assistance and recognition and enforcement of judgments in connection with terrorist offences are dealt with as a matter of urgency and are given priority

#### *Article 5*

### **Repeal of existing provisions**

Decision 2003/48/JHA is hereby repealed.

#### *Article 6*

### **Implementation**

Member States shall take the necessary measures to comply with the provisions of this Decision at the latest by 30 June 2006.

#### *Article 7*

### **Territorial Application**

This Decision shall apply to Gibraltar.

#### *Article 8*

### **Entry into force**

This Decision shall take effect on the day following its publication in the *Official Journal of the European Union*.

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