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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) - Chapter I - Article 2(e) - scope of the General Data Protection Regulation and the Data Protection Directive

The delimitation of the scope has been intensively discussed since the submission of the two proposals of the data protection package. The JHA Counsellors met on 1 and 2 June to discuss this issue. Following these discussions the Presidency has modified the text to accommodate the concerns expressed by delegations. The purpose is to broaden the scope while providing examples of activities that should be covered so as to frame the broader scope.

Article 1

Subject matter and objectives

1. This Directive lays down the rules relating to the protection of individuals 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 or the safeguarding against and the prevention of threats to public security.**¹

Recital 11a

(11a) The activities carried out by the police or other law enforcement authorities, are mainly focused on the prevention, investigation, detection or prosecution of criminal offences including police activities without prior knowledge if an incident is a criminal offence or not. This also includes the exercise of authority by taking coercive measures, such as police activities at demonstrations and major sporting events and riots^{2, 3}.

Those activities performed by the above-mentioned authorities also include the maintaining of law and order as a task conferred on the police or other law enforcement authorities where necessary to safeguard against and prevent threats to public security, (...) or aimed at preventing human behaviour which may lead to threats to fundamental interests of the society (...)protected by law and which may lead to a criminal offence.

¹ UK proposal to add the article : “and other activities for the purposes of police cooperation and judicial cooperation in criminal matters”.

² Cion feared that activities normally carried out by administrative authorities such as in the area of food safety - where authorities controlled if food was poisonous, thereby constituting a criminal offence, - would then be covered by the Directive and not the Regulation - a situation unacceptable to the Cion.

³ DE proposed add to the text „Hereby 'criminal offence' covers all infringements of the rules of law which are punishable under national law, provided that the person concerned has the opportunity to have the case tried by a court having jurisdiction in particular in criminal matters”.

AT proposed to add to the recital: „Administrative tasks such as tasks with regard to the right of association and assembly, immigration and asylum or civil protection shall not be considered as activities falling under the prevention of threath of public security.

Administrative tasks of competent authorities in areas such as immigration and asylum should not be considered as activities falling under the scope of this Directive.

Member States may entrust competent authorities with other tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the **safeguarding against and** prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of the General Data Protection Regulation.

~~**With regard to the processing of personal data by the competent authorities for purposes falling within scope of the General Data Protection Regulation, Member States may maintain or introduce more specific provisions to adapt the application of the rules of the General Data Protection Regulation. Such provisions may determine more precisely specific requirements for processing of personal data by the competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State.**~~⁴

~~(...)~~⁵

~~(...)~~

⁴ DE proposed add the text: „If personal data collected for the purpose of prevention, investigation, detection or prosecution of criminal offences, the execution of criminal penalties or the prevention of threats to public security are processed for another purpose, Regulation XXX applies. However, if Union law or the national law applicable to the competent authority which collected such data provides specific conditions to the processing of such data, the transmitting public authority shall inform the recipient to whom such data are transmitted about such conditions and the requirement to respect them”. **Since further processing in Article 4 is still under discussion the Presidency decided not to add the text of this footnote at this stage.**

⁵ Moved to the recital 11b.

Recital (11b)

(11b) Since this Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, activities of agencies or units dealing **especially exclusively** with national security issues should not be considered as (...) ~~competent~~ authorities ~~within the meaning of~~ **activities falling under the scope of this Directive.**

Recital 12

(12) In order to ensure the same level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent (...) authorities, the Directive should provide harmonised rules for the protection and the free movement of personal data (...) processed for the purposes of prevention, investigation, detection or prosecution of criminal offences *or the execution of criminal penalties* **and or the safeguarding against and preventing of threats to public security.** The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union. Member States should not be precluded from providing higher safeguards than those established in this Directive for the protection of the rights and freedoms of the data subject with regard to the processing of personal data by competent (...) authorities.