



31.5.2023

# **PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS**

**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 (COM(2021)0767 – C9-0441/2021 – 2021/0399(COD))**

The interinstitutional negotiations on the aforementioned proposal for a directive have led to a compromise. In accordance with Rule 74(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Civil Liberties, Justice and Home Affairs for decision by way of a single vote.

ANNEX

*(text as confirmed by COREPER on 31 May 2023)*

**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<sup>1</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. **According to that Directive Member States should process personal data in a manner that ensures appropriate security of the personal data.** The Directive **also** requires the Commission to review **other** relevant acts of Union law in order to assess the need to align them with that Directive and to make, where necessary, 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>2</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 align 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.

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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 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).

- (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.

- (3a) Council Decision 2005/671/JHA, which involves the processing, including the exchange and subsequent use, of information concerning terrorist offences, implies the processing of personal data. In the interests of consistency and the effective protection of such personal data, the processing of personal data carried out under Council Decision 2005/671/JHA should comply with Union law, including the rules set out in Directive (EU) 2016/680, and be in accordance with the security requirements, safeguards and data protection guarantees set out in other instruments of Union law that contain provisions on data protection, including Regulation (EU) 2016/794<sup>3</sup> and Regulation (EU) 2018/1725<sup>4</sup>, as well as Member State law.
- (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 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.

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<sup>3</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)

<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).

- (5) In accordance with Articles 2 and 2a of Protocol No 22 on the position of Denmark, as annexed to the TEU and to the TFEU, Denmark is not **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 and delivered an opinion on **25 January 2022,**

HAVE ADOPTED THIS DIRECTIVE:

## *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) the following paragraph is added:

**‘3a. Each Member State shall ensure that personal data are processed pursuant to paragraph 3 of this Article 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. Such processing shall be without prejudice to the limitations applicable to the processing of data under Regulation (EU) 2016/794’;**

(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 ... [ **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*

*For the Council*

*The President*

*The President*

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