

EDPS Formal comments on the Commission Proposal for a 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

1. Introduction and background

Directive (EU) 2016/680¹ (LED) entered into force on 6 May 2016, repealing and replacing the Council Framework Decision 2008/977/JHA².

Pursuant to Article 62(6) of the LED, the Commission is to review other acts of Union law which regulate 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 these acts 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/JHA³ as one of those other acts to be amended.

The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 20 January 2021, pursuant to Article 42(1) of Regulation 2018/1725⁴. In this regard, the EDPS welcomes the reference to this consultation in Recital 6 of the Proposal.

2. Comments

Council Framework Decision 2002/465/JHA contains a specific provision (Article 1(10)) relating to processing of information that may contain personal data obtained by a member or seconded member of a joint investigation team, stipulating that such information may also be used for purposes other than for which the team has been set up and the EDPS agrees that this provision must be aligned with the LED.

Pursuant to recital 2 of the Proposal, in the interest 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 the LED. This is further nuanced in Article

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 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

³ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

⁴ 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, 21.11.2018, L.295, p.39 (Regulation 2018/1725).

1(1) of the Proposal, which states that the obtained data could only be used for other purposes in accordance with Article 4(2) of LED. Thus, it is the understanding of the EDPS that any further processing of the obtained data under Framework Decision 2002/465/JHA is to remain within the scope of LED, i.e. there would be no processing of the obtained data outside of the criminal proceedings context (no processing under Regulation (EU) 2016/679⁵), which would correspond to the principle of purpose limitation. For these reasons, the EDPS does not have any specific suggestions or objections to the proposed amendment.

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(*e-signed*)

⁵ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).