Personal data protection: processing of data for the purposes of prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties, and free movement of data

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The Council was briefed by the Presidency on the **state of play** regarding the proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

This debate follows a long series of work carried out by several successive Presidencies up until the current Greek Presidency.

Need for and scope of the instrument: several delegations have reservations on the need to replace the Framework Decision with a new instrument covering not only cross-border data processing operations but also domestic processing operations. Some delegations also point to difficulties linked to the possible delineation between the proposed Regulation and Directive. This is connected in particular with requests that the scope of the Directive covers the processing of personal data for the purpose of **ensuring public order** which are currently covered by Directive 95/46/EC even if the activities of public order are not undertaken for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

The current compromise provides that it applies to the processing of personal data by competent public authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences and for these purposes, the maintenance of public order, or the execution of criminal penalties.

Further alignment with the General Data Protection Regulation: there is a large support for carrying over in the Directive some of the solutions found within the context of the General Data Protection Regulation as regards definitions of the Directive (Article 3), rights of the data subjects (Chapter III), obligations of controller and processor (Chapter IV for example Articles 28 and 29 on communication of data breach to supervisory authority and data subject), international transfers (Chapter V removal of negative adequacy) or independent supervisory authorities (Chapter VI).

Imposition of specific conditions: the proposed compromise provides that a Member State may impose specific processing conditions for the transfer of data has also been introduced following the approach of Article 12 of the Framework Decision. On this basis, where Union or Member State law applicable to the transmitting competent public authority provides for specific conditions to the processing of personal data, the transmitting public authority will inform the recipient about these conditions and the requirement to respect them.

Processing sensitive data: the Articles on lawfulness of processing and on processing for sensitive data (Articles 7 and 8) have been further clarified in the Presidency compromise. Some delegations further request the introduction of consent as ground for processing and to replace the rule of prohibition to process sensitive data (with listed exemptions) by an authorisation to process under specific conditions.

The provisions on the right of direct and indirect access of the individual t his/her personal data together with those on rights of the data subject in criminal investigations and proceedings reflect to a large extent the current Framework Decision. The discussion has shown that these provisions are still being questioned by several delegations.

Delegations have raised questions on other issues like the definition of "international organisations".

International transfers of data: Chapter V on International transfers has also been revised, for example as regards the introduction of a requirement that in case where personal data are transmitted or made available from another Member State, that Member State must give its prior authorisation to the transfer pursuant to its national law. The current compromise maintains the obligation imposing on Member States to eliminate the incompatibilities resulting from bilateral agreements not compatible with Union law (including by renegotiating incompatible agreements) but no longer foresees a fixed period of time upon Member States to amend the agreements.

The Greek Presidency will continue work on the text of the draft Directive.