Tuomioistuinlaitos Domstolsväsendet Finnish judiciary

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Subject: Opinion of the National Courts Administration (Finland)

Introduction

The National Courts Administration would like to thank the European Data Protection Board for the opportunity to comment the Guidelines 01/2023 on Article 37 Law Enforcement Directive. The National Courts Administration is responsible for the central administrative functions of all courts in Finland. The role of the National Courts Administration is to help the courts to act in a high quality and effective manner.

In Finland the courts are acting under the law enforcement directive (or more specific the <u>Act on the Processing of Personal Data in Criminal Matters and in Connection with Maintaining National Security</u> (1054/2018)) when processing of personal data is related to hearing a criminal case.

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A key challenge of the rules for transfers of personal data to third countries under Chapter V of the Law Enforcement Directive is that the provisions of the chapter do not identify the extent to which the use of processors is necessary in the context of criminal processing tasks throughout the criminal process, for example in connection with the information systems used, communications, translation and interpretation tasks. Such tasks, such as the use of different information systems in criminal proceedings, also involve issues related to the transfer of personal data to third countries and are part of daily co-operation between authorities, both at national and international level, related to judicial tasks, and specifically for the purpose indicated in Article 1 paragraph 1 of the Law Enforcement Directive.

A particularly problematic point is Article 35(1)(b) of the Law Enforcement Directive, which determines the recipient of the transfer and limits the transfers to "the competent authorities referred to in Article 1(1)". This requirement must be taken into account also when article 37 of the Law Enforcement Directive is applied.

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However, in many cases, the acquisition of information systems or communication between public authorities also require co-operation with companies operating in the private sector. It would therefore appear that transfers of personal data to private processors, or any other organisation than "the competent authorities", would be possible only under Article 39 of the Law Enforcement Directive and the national provision implemented on that basis, even though that transfer criterion is, according to its wording, limited to "individual and specific cases". Issues related to transfers of personal data to third countries can easily be raised, for example, in the use of different data platforms and cloud computing services.

There is a need for regular transfers, for example in connection with the electronic supervision of prisoners. If an appropriate system vendor cannot be found within the EEA, the transfer of personal data to third countries in connection with the acquisition of the system will have to be used in order for the statutory task of the authority to be carried out at all.

It would be desirable that personal data could be transferred under Articles 35 to 38 of the Law Enforcement Directive for purposes under Article 1(1) of the Law Enforcement Directive, when the recipient is a processor supporting a judicial function, even though processor would not be "a competent authority". The use of Article 39 of the Law Enforcement Directive as a basis for transfers of personal data, for example for different information systems, is questionable in the current framework, but sometimes compulsory for carrying out statutory tasks as described above.

National Courts Administration would also like to draw attention to the fact that the opinion focuses on the processing needs of personal data in police activities (see, for example, Section 4.2.2., where all practical examples concern police activities), even though Article 1(1) of the Law Enforcement Directive mentions other authorities involved in criminal procedures. It would be good if the examples would also examine challenges connected to third country transfers from the perspective and tasks of other authorities involved in criminal procedures.

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