



Council of the
European Union

Brussels, 13 November 2015
(OR. en)

14071/15

LIMITE

DATAPROTECT 199
JAI 851
MI 721
DIGIT 90
DAPIX 207
FREMP 259
COMIX 580
CODEC 1511

**Interinstitutional File:
2012/0011 (COD)**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	10680/15
No. Cion doc.:	5853/15
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 V

On 11th November 2015, the representatives of the Council, the European Parliament and the Commission held a trilogue on the General Data Protection Regulation where the European Parliament requested to rediscuss a certain number of elements relating to Chapter V on transfer of personal data to third countries or international organisations. The Presidency's interventions were based on the Council's General Approach and the debriefing of the trilogue on Chapter V in JHA Counsellors of 7th September 2015.

The European Parliament wishes to complete some of the articles previously tentatively agreed in order to reflect elements the European Court of Justice held in its judgment on case C-362/14. ("Schrems case") of 6th October 2015.

The Presidency takes the view that the draft Regulation already foresees sufficient guarantees and anticipated a number of elements contained in the judgment, and that therefore adaptations of Chapter V are not indispensable.

Amongst others, the European Parliament wants to include

1. A delegated act for adopting adequacy decisions;
2. A sunset clause for existing and new adequacy decisions;
3. A general clause in Article 40 about the need to ensure a high level of protection when data are transferred to a third country or international organisations;
4. A clarification, in Article 41(1), that “adequate” means “essentially equivalent”;
5. A reintroduction, in Article 41(2(a)), of the terms “*including concerning public security, defence, national security and criminal law*”;
6. A strengthening of the references in Article 41(5) by obliging the Commission to repeal, amend or suspend an adequacy decision in particular in cases where the relevant legislation does not limit access of public authorities to personal data to what is strictly necessary and proportionate;
7. A reference to enforceable data subject rights and effective legal remedies for data subjects in Article 42(1).

The Presidency considers some of these elements could be included in the text without changing fundamentally the substance of the provisions tentatively agreed in Chapter V.

Such elements could be:

- A clarification, in recital (81), that “adequate” means “essentially equivalent”;
- The reintroduction, in Article 41(2(a)), of the terms “*including concerning public security, defence, national security and criminal law*” given that this reference is already included in recital (81) of the Council’s General Approach;
- A general clause in Article 40 about the need to ensure a high level of protection when data are transferred to a third country or international organisations;

- A reconfirmation of enforceable data subject rights and effective legal remedies for data subjects in Article 42(1), which is already included in recital (83) of the Council's General Approach.

The Presidency invites delegations to indicate their views on these elements in preparation of the Coreper discussion on 19th November 2015.
