



Council of the
European Union

Brussels, 27 October 2014
(OR. en)

14765/14

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

LIMITE

**DATAPROTECT 150
JAI 811
MI 811
DRS 138
DAPIX 153
FREMP 182
COMIX 573
CODEC 2103**

NOTE

From: Finnish delegation
To: Working Party on Information Exchange and Data Protection
Subject: General Data Protection Regulation
- Recital 38

The Finnish delegation would like to propose the following amendment to recital 38. We consider such amendment important because the concept of legitimate interest of the controller is quite wide as such. More legal certainty should be provided for the controllers. This is relevant in particular in relation to Articles 79 and 79(a) which impose high sanctions on processing personal data without appropriate legal base. Thus it is in the interest of the data protection authorities and controllers to have more certainty regarding how to assess what can be considered "legitimate" interest.

38) The legitimate interests of a controller including of a controller to which the data may be disclosed may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. **Legitimate interest could exist for example when there is a relevant and appropriate connection between the data subject and the controller, such as the data subject being a client or in the service of the controller. Furthermore, processing of clients' or employees' personal data in a group of undertaking or in another similar grouping can be considered to constitute controller's legitimate interest. In general the presence of a legitimate interest would** need careful assessment including whether a data subject can expect at the time and in the context of the collection of the data that processing for this purpose may take place. In particular such assessment must take into account whether the data subject is a child, given that children deserve specific protection. The data subject should have the right to object to the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for Union or national law to provide (...) the (...) basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the exercise of their public duties.
