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NOTE

From: Austrian delegation
To: Working Party on Information Exchange and Data Protection
Subject: General Data Protection Regulation
-Chapter II, Art 21 and Chapter IX

The Austrian delegation would like to propose the following amendments.

As to recital 11:

Before the last sentence of this recital the following should be inserted:

Restrictions, however, regarding the collection or further processing of personal data resulting from the due and proper application of the general principles as particularly set out in Art 5 of this Regulation are not to be considered as an unlawful obstacle to the free movement of personal data in the meaning of Art 1 para 3 of this Regulation.

Justification:

This wording clarifies that the compliance of the principles set out in Art 5 (such as e.g. the “necessity principle”) does by no means infringe the principle of the free circulation of personal data.

As to Art 1 para 2a and further amendments to recital 11:

Art. 1 para 2a should read as follows:

2a. (...) Member States may maintain or introduce national provisions to further specify the application of rules of this Regulation with regard to the processing of personal data for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or for other specific processing situations ~~as provided for in Article 6(1)(c) and (e)~~ by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

Justification:

Explicitly referring to Art 6(1)(c) and (e) as proposed by the Presidency would lead to the effect, that there wouldn't be left any room for Member States to maintain or to introduce legislation aiming at specifying the Regulation in order to meet the needs of protection of individuals which they also deserve within the context of particular procession operations carried out for private purposes. Without such a clarification Member States currently providing e.g. for the protection of individuals against disproportionate use of monitoring technologies adversely affecting their rights and freedoms would run the risk of infringing against Art 2a. The current Art 6 of the Regulation does not cover this particular case.

In addition the following sentence shall be included in recital 11:

Further to this the effective protection of the right to protection of personal data pursuant to this Regulation may require the adoption of specific rules for the procession of personal data by a controller in the private sector for non-public purposes such as e.g. private health insurance, private investigation or premise and property protection using video surveillance or other monitoring technology. In this case, Member States may maintain or introduce national provisions determining the specific conditions for the processing of personal data by such controllers whilst fully respecting the framework of this Regulation.

ALTERNATIVE PROPOSAL for a new Art xx in Chapter IX (Option 2):

On condition that the above proposal would not be accepted, an additional Article should be inserted in Chapter IX:

Art xx

Other data processing situations requiring specific protection of individuals

Within the limits of this regulation Member States may maintain or introduce national provisions determining the specific conditions for the processing of personal data by controllers of the private sector carried out for non-public purposes such as private health insurance, private investigation or premise and property protection using video surveillance or other monitoring technology.

The above mentioned amendment of recital 11 has to be included as well.

As to Art 2 para 2 point d – household exemption:

AT urges to reinsert the word “**purely**” before “personal or household activity”.

Furthermore as a second sentence the following should be added:

To the extent that such activity affects legitimate interests of a data subject and in view of Art 5, the rights of the latter to access, deletion, rectification or objection are not precluded.

In addition, recital 15 should read as follows:

*This Regulation should not apply to processing of personal data by a natural person in the course of a **purely** personal or household activity, and thus without a connection with a professional or commercial activity. **Given the limited or inexistent influence of users on the design of social networking services or other forms of cloud based services personal and household activities potentially adversely affecting legitimate rights of data subjects shall only be subject to the obligations resulting from Art 5, 6 para 1 point a, 7, 9, 16, 17, 19. ~~include social networking and on-line activity undertaken within the context of such personal and household activities.~~** However, this Regulation should (...) **fully** apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.*

As to Art 5 para 1 point c:

This should read as follows:

*(c) adequate, relevant and **limited to the minimum necessary** in relation to the purpose for which they are processed.*