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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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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) [first reading] - Preparation for trilogue

INTRODUCTION

1. The Commission proposed on 25 January 2012 a comprehensive data protection package comprising of:
 - abovementioned proposal for a General Data Protection Regulation, which is intended to replace the 1995 Data Protection Directive (former first pillar);
 - a 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, which is intended to replace the 2008 Data Protection Framework Decision (former third pillar).

2. The aim of the General Data Protection Regulation is to reinforce data protection rights of individuals, facilitate the free flow of personal data in the digital single market and reduce administrative burden.
3. The European Parliament adopted its first reading on the proposed General Data Protection Regulation and Directive on 12th March 2014.
4. The Council agreed on a General Approach (9565/15) on the General Data Protection Regulation on 15th June 2015, thereby giving to the Presidency a negotiating mandate to enter into trilogues with the European Parliament. The Presidency considers the works on the General Data Protection Regulation as one of its main priorities. In line with the objective of the European Council, the Presidency intends to secure agreement with the European Parliament on the data protection package by the end of 2015.
5. With the aim to find an early second reading agreement, the Presidency submits the consolidated text of the draft General Data Protection Regulation to the Permanent Representatives Committee. Taking into account the overall balance of this compromise text and recalling that nothing is agreed until everything is agreed, the Presidency invites the Permanent Representatives Committee to confirm the text proposed as basis for negotiation, including aligned recitals, in view of the final trilogues with the European Parliament.
6. All Chapters of the Regulation have been examined intensively by experts and JHA Counsellors when preparing the eight trilogues with the European Parliament that have taken place since June 2015. The Presidency sought the views of delegations on possible compromise solutions both before and after each trilogue. Delegations have also been debriefed on all the Chapters of the Regulation discussed in trilogue. Furthermore, outstanding issues relating to the whole General Data Protection Regulation have been analysed by the Permanent Representatives Committee on 19th and 26th of November 2015 and 2nd December 2015.

7. Delegations will find in document 14902/15 a comprehensive version of the compromises tentatively agreed at the previous trilogues and the compromise suggestions by the Presidency. Text marked in brackets is considered to be still under final discussion, on which delegations may comment. This is in particular the case with provisions relating to the scope of the 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, as well as with provisions relating to processing of personal data for archiving purposes in the public interest, and for scientific, statistical and historical purposes. The Presidency will prepare new compromise suggestions in relation to these provisions, in particular on Article 6(2), Article 9 and Article 83 which will be submitted to the Committee of Permanent Representatives separately.

PRESIDENCY OVERALL COMPROMISE TEXT

8. From the consolidated text in 14902/15, the Permanent Representatives Committee will note that an acceptable balance can be found as regards the overall compromise text.

Some of the key outstanding issues expected to be discussed at the next trilogues relate to the way in which consent is to be given by data subjects to the processing of personal data, to the provisions on liability of controllers and processors, and to the mandatory appointment of a data protection officer in strictly limited cases. On the latter, the Presidency proposes to further nuance the position of the data protection officer as an internal person of trust assisting with compliance and accountability, and to indicate that associations of companies may appoint a common data protection officer.

Concerning personal data breaches to be notified to the supervisory authority and concerning further processing of personal data, the Presidency considers that the necessary elements have been identified for a balanced result to be achieved.

Finally, the Presidency considers that an appropriate solution can be found with the European Parliament on the provisions relating to the fines and to the processing of personal data for archiving purposes in the public interest, and scientific, statistical and historical purposes.

OTHER ISSUES

9. On the following issues, and in addition to those indicated in document 14605/15 , the Presidency proposals relate either to minor modifications in order to align with tentatively agreed provisions elsewhere in the Regulation or that are based on a previously obtained negotiation mandate:

Recitals (4), (15), (23c), (24), (24c) new, (29), (30), (35a), (36), (39), (41), (42), (75), (81), (95)

Article 9(1), (5)

Article 12(1a)

Article 14a(1)

Article 18(2a) new

Article 31(1), (4)

Article 35(1), (4), (5)

Article 36(3)

Article 37(1(g))

Article 38(1a(e))

Article 39(5)

Article 40

Article 41(2(a))

Article 42(1)

Article 48(4)

Article 53(1c(b))

Article 58(1(d))

Article 77(4)

CONCLUSIONS

10. In view of the final trilogues, and taking into account the overall balance of the compromise proposals, the Presidency invites the Permanent Representatives Committee to confirm the text set out in document 14902/15 as a basis for finding agreement between the Council and the European Parliament.
