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NOTE

From:	German Delegation
To:	Delegations
No. prev. doc.:	14481/15
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) - Principle of purpose / further processing of data

Courtesy translation from the German Delegation

The matter of the principle of purpose/further processing of data (Article 5 (1) (b), Article 6 (3a) and (4), Recitals 38 and 40) must be handled so that purpose has legal certainty and the fundamental rights of data subjects are appropriately balanced with legitimate economic interests. Overall, the applicable level of data protection must be maintained.

In order to achieve this goal, Germany believes that Recitals 38 and 40 must be revised, as a result of the Presidency having deleted Article 6 (4) and the addition of Article 6 (3a), which Germany welcomes, in Document 14481/15.

The following German proposal is based on the following considerations:

- making clear that the original legal basis can support further processing only if this legal basis also covers the purpose of the further processing. This clarification is systematically important;
- including foreseeable interests of data subjects, processors and third parties in the test of compatibility;
- preserving legitimate business models with reference to the aspect of legal certainty.

Specifically, Germany believes the following revisions are needed (the reference text is the consolidated text in Document 14481/15 presented by the Presidency; revisions are in bold print):

Document 14481/15 - recital 38	DEU-proposal
<p>The legitimate interests of a controller, including of a controller to which the data may be disclosed, or of a third party may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on the relationship with the controller. Legitimate interest could exist for example when there is a relevant and appropriate relationship between the data subject and the controller in situations such as the data subject being a client or in the service of the controller.</p> <p>At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the data that</p>	<p>The legitimate interests of a controller, including of a controller to which the data may be disclosed, or of a third party may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on the relationship with the controller. Legitimate interest could exist for example when there is a relevant and appropriate relationship between the data subject and the controller in situations such as the data subject being a client or in the service of the controller.</p> <p>At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the data that</p>

<p>processing for this purpose may take place.</p> <p>The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.</p> <p>The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned.</p> <p>The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.</p>	<p>processing for this purpose may take place.</p> <p>The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.</p> <p>The processing of personal data strictly necessary for the purposes of preventing fraud also constitute a legitimate interest of the data controller concerned.</p> <p>The processing of personal data for direct marketing purposes <u>or credit information</u>, may be regarded as carried out for a legitimate interest. <u>This also applies to the enforcement of legal claims against a data subject, such as debt collection.</u></p>
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Document 14481/15 - recital 40	DEU-proposal
The processing of personal data for other purposes than the purposes for which the data have been initially collected should be only allowed where the processing is compatible with those purposes for which the data have been initially collected.	The processing of personal data for other purposes than the purposes for which the data have been initially collected should be only allowed where the processing is compatible with those purposes for which the data have been initially collected.
In such case no separate legal basis is required other than the one which allowed the collection of the data.	In such case no separate legal basis is required other than the one which allowed the collection of the data <u>as long as the original legal basis covers as well the processing for the further purpose.</u>
If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union law or Member State law may determine and specify the tasks and purposes for which the further processing shall be regarded as lawful.	If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union law or Member State law may determine and specify the tasks and purposes for which the further processing shall be regarded as lawful.
[The further processing for archiving purposes in the public interest, or statistical, scientific or historical purposes should be considered as compatible lawful processing operations.]	[The further processing for archiving purposes in the public interest, or statistical, scientific or historical purposes should be considered as compatible lawful processing operations.]
The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing for other purposes if these purposes are in line with the assigned task and the controller is entitled legally to collect the data for these other purposes.	The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing for other purposes if these purposes are in line with the assigned task and the controller is entitled legally to collect the data for these other purposes.
In order to ascertain whether a purpose of	In order to ascertain whether a purpose of

<p>further processing is compatible with the purpose for which the data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account inter alia any link between those purposes and the purposes of the intended further processing, the context in which the data have been collected, in particular the reasonable expectations of data subjects based on his/her relationship with the controller as to their further use, the nature of the personal data, the consequences of the intended further processing for data subjects, and the existence of appropriate safeguards in both the original and intended further processing operations.</p>	<p>further processing is compatible with the purpose for which the data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account inter alia any link between those purposes and the purposes of the intended further processing, the context in which the data have been collected, including the reasonable expectations of the data subjects based on his/her relationship with the controller as to their further use, <u>foreseeable interests of the data subject, of the controller or of a third party</u>, the nature of the personal data, the consequences of the intended further processing for data subjects, and the existence of appropriate safeguards in both the original and intended further processing operations.</p>
	<p><u>Taking into account these criteria further processing for purposes such as credit information, debt collection or direct marketing may be considered compatible with the initial purpose.</u></p>
<p>Where the data subject has given consent or the processing is based on Union or Member State law the controller shall be allowed to further process the data irrespective of the compatibility of the purposes.</p> <p>In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object,</p>	<p>Where the data subject has given consent or the processing is based on Union or Member State law the controller shall be allowed to further process the data irrespective of the compatibility of the purposes.</p> <p>In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured.</p>

should be ensured.	
<p>Indicating possible criminal acts or threats to public security by the controller and transmitting these data to a competent authority should be regarded as being in the legitimate interest pursued by the controller.</p> <p>However such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.</p>	<p>Indicating possible criminal acts or threats to public security by the controller and transmitting these data to a competent authority should be regarded as being in the legitimate interest pursued by the controller.</p> <p>However such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.</p>
