



Council of the  
European Union

Brussels, 14 April 2016  
(OR. en)

7920/16

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

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**VOTE 18  
INF 61  
PUBLIC 20  
CODEC 450**

#### **NOTE**

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- Subject:
- Voting result
  - Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
    - Adoption of the Council's position at first reading and of the statement of the Council's reasons
    - Outcome of the written procedure completed on 8 April 2016
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The outcome of voting on the above mentioned legislative act is attached to this note.

Reference document:

5419/16

approved by Coreper, Part 2, on 06.04.2016

The statements and/or explanations of vote are annexed to this note.

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## General Secretariat of the Council

Institution: Council of the European Union

Session:

Configuration:

Item: 2012/0011 (COD) (Document: 5419/16)

Voting Rule: qualified majority

Subject: Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Vote	Members	Population (%)
Yes	27	98,31%
No	1	1,69%
Abstain	0	0%
Not participating	0	
Total	28	

Sitting date: 08/04/2016

Final result



Member State	Weighting	Vote	Member State	Weighting	Vote
BELGIQUE/BELGIË	2,21		LIETUVA	0,57	
БЪЛГАРИЯ	1,42		LUXEMBOURG	0,11	
Ceská republika	2,05		MAGYARORSZÁG	1,94	
DANMARK	1,11		MALTA	0,08	
DEUTSCHLAND	15,93		NEDERLAND	3,37	
EESTI	0,26		ÖSTERREICH	1,69	
ÉIRE/IRELAND	0,91		POLSKA	7,47	
ΕΛΛΑΔΑ	2,13		PORTUGAL	2,04	
ESPAÑA	9,12		ROMÂNIA	3,90	
FRANCE	13,04		SLOVENIJA	0,41	
HRVATSKA	0,83		SLOVENSKO	1,06	
ITALIA	12,07		SUOMI/FINLAND	1,08	
ΚΥΠΡΟΣ	0,17		SVERIGE	1,92	
LATVIJA	0,39		UNITED KINGDOM	12,73	

\* When acting on a proposal from the Commission or the High Representative, qualified majority is reached if at least 55 % of members vote in favour (16 MS) accounting for at least 65% of the population

For information: <http://www.consilium.europa.eu/public-vote>

## STATEMENTS

**Statement by the Commission**

The Commission regrets the change to its initial proposal through the deletion of recitals 136, 137 and 138 related to the Schengen acquis. The Commission considers that in particular as visas, border control and return are concerned, the General Data Protection Regulation constitutes a development of the Schengen acquis for the four States associated with the implementation, application and development of said acquis.

**Statement by the Czech Republic**

The Czech Republic welcomes the adoption of the Council's position and finalization of the negotiations. The Czech Republic supported the negotiations in active and constructive manner and appreciates that many concerns have been solved, such as the relationship with existing international agreements or strengthening of mutual cooperation of supervisory authorities.

Nevertheless, the Czech Republic remains gravely concerned about several issues.

First, the Czech Republic is not convinced that the application of the Regulation with regard to controllers abroad will be sufficiently effective. This might lead to a false sense of security on the part of European citizens.

Second, the Czech Republic regrets that existing directive has been followed much too closely. As an example, the casuistic category of "sensitive personal data" could not be replaced by more systemic reliance on risk-based approach, even though the real sensitivity of personal data and resulting need for protection may differ according to processing.

Third, the Czech Republic is concerned about the upper limits of the administrative sanctions in combination with vaguely defined offences. Moreover, by referring both to the fixed amount and the amount based on economic strength, whichever is higher, the administrative fines affect even more the small and medium enterprises, which are frequently drivers of innovation.

Fourth, the Czech Republic regrets that the risk-based approach was not relied on more extensively and that certain requirements impose disproportionate administrative and other burdens on controllers and processors.

Finally, the Czech Republic considers the adaptation period to be unreasonably short, since many laws must be evaluated and amended where necessary.

### **Statement by the United Kingdom**

The UK supports the agreement of a new data protection regime to provide a harmonised framework across the EU. The UK will make use of the available discretion for Member States to implement the regulation domestically in an appropriate way.

The United Kingdom considers that the draft General Data Protection Regulation contains obligations within Article 48 relating to mutual recognition of judgments, which fall within the scope of Title V of Part III of the Treaty on the Functioning of the European Union. Therefore, in relation to the provisions setting rules on recognition and enforcement of judgments in Article 48, without prejudice to other provisions in the Treaties, in accordance with Articles 1 and 2 of Protocol 21, the UK did not exercise its right to opt-in and will not be bound by these provisions.

### **Statement by the Republic of Slovenia**

The Republic of Slovenia supports the agreement of a new EU data protection regime.

The Republic of Slovenia considers that data protection should primarily be treated as an individual human right.

Therefore, the Republic of Slovenia would like to reiterate its position that Member States still retain their powers to further develop protection of personal data in order to set higher standards in accordance with the Charter, the European Convention on Human Rights and national constitutions.

Moreover, we should reassess whether the stated legitimate interests of data controllers are human rights – as well as constitutionally compliant.

### **Statement by Austria**

Austria has always tried to contribute to a data protection regulation that respects fundamental rights and at the same time takes into account business interests. In the past it has been possible to find appropriate solutions to a number of issues. However, despite intensive and extensive efforts by the Presidencies and Austria, some important issues remain unresolved (see also our previous statements in 1384/15 and 5455/16 ADD 1 REV 1). Overall, Austria therefore regrets not being in a position to endorse the final compromise text as proposed.

The level of data protection under the General Data Protection Regulation in some respects falls short of that provided by the current Data Protection Directive 95/46/EC and its implementation in national data protection law. It is not possible to 'offset' these deficits in EU law through national law due to the fact that the planned form of the legal act is a regulation. This concerns above all the following points:

- Private activities on social media are not included in the scope of the protection afforded by the Regulation ('household exemption'; Recital 18 and Article 2(2)(c))

It has not been possible to resolve in a satisfactory manner the fundamental problem that the private use of data can also encroach on and violate the fundamental rights of others.

- The Regulation falls short of the current level of data protection in Austria in the private sector by removing the requirement to prove that the interests of the controller 'override' the data subject's confidentiality interests (Article 6(1)(f))

During negotiations Austria repeatedly stressed that it cannot accept the wording and interpretation of the legitimate interests of the data controller. In our view, the mere presence of legitimate interests of the data controller – without a requirement to weigh those interests against the data subject's confidentiality interests – cannot justify data processing.

However, the current intention to grant the interests equal value promotes such treatment in practice. It disadvantages the data subject in such a situation, because it places the burden of proving an overriding interest on the data subject and generally feeds legal uncertainty. The aim should therefore be to ensure that if an encroachment on fundamental rights is to be permissible, the controller's interest in the processing must clearly outweigh the data subject's confidentiality interests. The system now proposed, which continues to be geared only to the existence of a legitimate interest of the controller, which furthermore does not have to outweigh that of the data subject, will lead to a reduction in the level of protection, given the direct applicability of the General Data Protection Regulation, and is therefore unacceptable to Austria.

- Circumvention of the purpose limitation principle through unclear rules on the possibility of further data processing for so-called 'compatible' purposes (Articles 5 and 6)

In our view the basic problem with this provision is that recourse to the 'compatibility argument' is to be open not only to the controller who first collects the data ('same controller'), but to every other controller in a (potentially infinite) processing chain.

- Possibility of restriction of general principles of data protection law such as fairness, lawfulness or proportionality by the MS or EU

Article 23 sets out conditions under which the Union legislator or Member State law may restrict the application of certain rights and obligations under the General Data Protection Regulation. The present document makes a rather vague reference to Article 5 (general principles), which also allows exceptions to these principles. It is our understanding, however, that general data protection principles must apply in all cases covered by the General Data Protection Regulation, so that no exceptions should be possible. General principles include principles such as 'fairness', 'lawfulness' or 'proportionality'. Since we take the view that it should not be possible to restrict the basic principles themselves, we find this formulation unacceptable.

○ Possibility of transferring data abroad on the basis of the legitimate interest of the controller

The exemption in Article 49(1) allowing data transfer to a third country merely on the basis of an overriding legitimate interest of the controller is not acceptable to Austria either. De facto, this rule places the decision to transfer data to a third country largely at the controller's discretion, without any prior intervention by the supervisory authority. Accordingly, the fact that the controller may have an interest in transferring data abroad should not constitute an appropriate legal basis for transfer.

Although the scope of the exemption has been reduced by the recent additional restrictions placed on it (duty to inform the supervisory authorities, limitation to individual cases, concerning only a limited number of data subjects, etc.) it is still unclear.

○ Possibility of lodging a complaint with the supervisory authority while at the same time taking the case to law

On the one hand, it is to be possible to lodge a complaint with the supervisory authority (under administrative law) and at the same to bring legal proceedings in the same case. In our view this proposed twin-track approach gives rise to many problems – for example, in relation to res judicata. It is not yet possible to measure the full practical consequences of this provision.

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