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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)
- Chapters I and III

Delegations will find in Annex contributions of DE and AT in relation to Chapters I and III of the
above mentioned proposal.

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Recitals 46 - 59 and Articles 11 - 21 of the General Data Protection Regulation

Recital 46

The principle of transparency requires that any information addressed to the public or to the data subject should be easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation are is used. ~~This information could be provided also in electronic form, for example, when addressed to the public, through a website.~~ This is in particular relevant where in situations, such as online advertising, the proliferation of actors and the technological complexity of practice makes it difficult for the data subject to know and understand if personal data relating to them are being collected, by whom and for what purpose. ~~This information could be provided also in electronic form, for example, when addressed to the public, through a website. In other circumstances such as public video surveillance the information can be adequately provided by clearly recognisable signs.~~ Given that children deserve specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.

Recital 47

Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to request, in particular access to data, rectification, erasure and to exercise the right to object. Thus the controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests of the data subject without undue delay and at the latest within a fixed deadline of one month and give reasons where the controller does not intend to comply with the data subject's request.

However, if requests are manifestly unfounded such as when the data subject unreasonably and repetitiously requests information or where the data subject abuses its right to receive information for example by providing false or misleading information when making the request, the controller could refuse to act on the request.

Recital 48 new

Among other things, Article 21 provides for restrictions by way of legislative measures to the right of access and other rights, for example in the interest of public security or the protection of judicial independence. In formulating these specific exceptions pursuant to Article 21 as needed, the Member States may, in their national law, repeat the wording of the various rights and provisions under the General Data Protection Regulation if the national legislators find this to be necessary in the interest of legal practitioners.

Recital 53

A natural person should have the right to have personal data concerning them rectified and a 'right to be forgotten' where the retention of such data is not in compliance with this Regulation or with Union or Member State law to which the controller is subject. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is in particular relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet.

However, the further retention of the data should be allowed lawful where it is necessary for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, for reasons of public interest in the area of public health, for archiving purposes in the public interest, for historical, statistical and scientific purposes or for the establishment, exercise or defence of legal claims.

Recital 54

To strengthen the 'right to be forgotten' in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the known controllers which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. ~~A known controller is a controller whose identity was known to the controller that made the personal data public at the time it was made public. It should also only extend to controllers which fall into that category who were deliberately and intentionally provided with the data by the controller which made the data public.~~

To ensure the above mentioned this information, the controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, in relation to data for the publication of which the controller is responsible.

Recital 55

To further strengthen the control over their own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to withdraw and receive the personal data concerning him or her and any other related information, which he or she has provided to a controller, in a structured and commonly used and machine-readable format and transmit it to another controller.

This right should apply where the data subject provided the personal data based on his or her consent or in the performance of a contract. It should not apply where processing is based on another legal ground other than consent or contract. By its very nature this right should not be exercised against controllers processing data in the exercise of their public duties. It should therefore in particular not apply where processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official duty vested in the controller.

Where, in a certain set of personal data, more than one data subject is concerned, the right to transmit the data should be without prejudice to the requirements on the lawfulness of the processing of personal data related to another data subject in accordance with this Regulation. This right should also not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should in particular not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract, to the extent and as long as the data are necessary for the performance of that contract.

Recital 59

Restrictions on specific principles and on the rights of information, access, rectification and erasure or on the right to data portability, the right to object, measures based on profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of **public** registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection and public health. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 12

Transparent information, communication and modalities for exercising the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Articles 14 and 14a and any communication under Articles 15 to 19 and 32 relating to the processing of personal data to the data subject in an intelligible and easily accessible form, using clear and plain language. The information shall be provided in writing, or where appropriate, electronically or by other means. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject. When requested by the data subject, the information may be given orally provided that the identity of the data subjects is proven, **if this does not involve a disproportionate effort**.

[...]

4. Information provided under Articles 14 and 14a and any communication under Articles 16 to 19 and 32 shall be provided free of charge. Where requests from a data subject are **manifestly unfounded or excessive abusive**, in particular because of their repetitive character, the controller (...) may refuse to act on the request. In that case, the controller shall bear the burden of demonstrating the **manifestly unfounded or excessive abusive** character of the request.

[...]

Article 14

Information to be provided where the data are collected from the data subject

[...]

- 1a. In addition to the information referred to in paragraph 1, the controller shall, **at the time when personal data are obtained**, provide the data subject with such further information necessary to ensure fair and transparent processing, having regard to the specific circumstances and context in which the personal data are processed:

[...]

(ea) where the processing is based on point (a) of Article 6(1) ~~or point (a) of Article 9(2)~~, the existence of the right to withdraw consent pursuant to Article 7(4) at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

[...]

(h) the existence of automated decision making including profiling referred to in Article 20(1) and (3) and information concerning the logic involved in any automated data processing, as well as the significance and the envisaged consequences of such processing for the data subject.

1b. Where the controller intends to further process the data for a purpose other than the one for which the data were collected the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 1a, unless the provision of such information proves impossible or would involve a disproportionate effort or is likely to render impossible or to seriously impair the achievement of the purposes of the processing or unless the further processing of personal data shall not be considered incompatible with the initial purpose in accordance with Article 5 Paragraph 1b; in such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests.

2. In addition to the information provided pursuant to paragraphs 1 and 1a, the controller shall, where appropriate, present to the data subject key aspects of that information by using standardized texts, symbols and tabular formats, if the data are processed in the context of an information society service. The European Data Protection Board shall issue guidelines for the purpose of developing standard formats for the presentation of this information.

[...]

5. Paragraphs 1, 1a and 1b shall not apply

(a) where and insofar as the data subject already has the information,

(b) where and insofar obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests.

6. **Paragraphs 1a and 1b shall not apply where the data are processed by a micro enterprise which processes personal data only as an ancillary activity.**

Article 14 a

Information to be provided where the data have not been obtained from the data subject

1. Where personal data have not been obtained from the data subject, the controller shall, **at the time when the personal data are processed for the first time**, provide the data subject with the following information:

[...]

2. In addition to the information referred to in paragraph 1, the controller shall, **at the time when the personal data are processed for the first time**, provide the data subject with such further information necessary to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context in which the personal data are processed:

[...]

(g) **from which source the origin of** the personal data **originate**, unless the data originate from publicly accessible sources;

(h) the existence of automated decision making including profiling referred to in Article 20(1) and (3) and information concerning the logic involved **in any automated data processing**, as well as the significance and the envisaged consequences of such processing for the data subject.

[...]

- 3a. Where the controller intends to process the data for a purpose other than the one for which the data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2, **unless the further processing of personal data shall not be considered incompatible with the initial purpose in accordance with Article 5 Paragraph 1b. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests.**
4. Paragraphs 1 to 3a shall not apply where and insofar as:
- [...]
- (d) **where the data originate from publicly available sources; or**
- [...]
- (f) **where the data are processed by a micro enterprise which processes personal data only as an ancillary activity.**

Article 15

Right of access for the data subject

1. The data subject shall have the right to obtain from the controller, **on request**, at reasonable intervals and free of charge confirmation as to whether or not personal data concerning him or her are being processed and where such personal data are being processed **the data subject shall have the right to obtain from the controller** access to the data and **the controller shall provide** the following information:
- [...]
- (h) in the case of decisions based on automated processing including profiling referred to in Article 20(1) and (3), **knowledge of and information concerning** the logic involved ~~in~~ **any automated data processing** as well as the significance and envisaged consequences of such processing; **the right to obtain this information shall not apply, in particular where trade secrets of the controller would be disclosed.**

[...]

- 2a. The right to obtain **information or** a copy referred to in **this Article paragraph 1b** shall not apply **insofar as where** such **information copy** cannot be provided without disclosing personal data of other data subjects.
3. **There shall be no right of access in accordance with paragraphs 1 and 1b when data are processed by, or are entrusted to become known to, a person who is subject to an obligation of professional secrecy regulated by Union or Member State law or to a statutory obligation of secrecy, except if the data subject is empowered to lift the secrecy in question and acts accordingly.**

Article 17

Right to erasure and “to be forgotten”

1. The (...) controller shall have the obligation to erase personal data without undue delay, especially in relation to personal data which are collected when the data subject was a child, and the data subject shall have the right to obtain **from the controller** the erasure of personal data concerning him or her without undue delay where one of the following grounds applies:

[...]

- 2a. Where the controller has made the personal data public **or has transmitted them to a recipient** and is obliged pursuant to paragraph 1 to erase the data, the controller, taking account of available technology and the cost of implementation, shall at the request of the data subject take reasonable steps, including technical measures, to inform known controllers which are processing the data, that the data subject has specifically requested the erasure by such controllers of any links to, or copy or replication of that personal data.
3. Paragraphs 1 and 2a shall not apply to the extent that processing of the personal data is necessary:

[...]

- (a) for archiving purposes in the public interest or for scientific, statistical and historical purposes for archiving purposes in the public interest or for historical, statistical and scientific purposes *in accordance with Article 83 where the erasure would involve a disproportionate effort or processing is essential for these purposes;*

[...]

4. *Where the erasure is carried out, the controller shall not otherwise process such data.*

Article 17b

Notification obligation regarding rectification, erasure or restriction

The controller shall communicate any rectification, erasure or restriction of processing carried out in accordance with Articles 16, 17(1) and 17a to each *known* recipient to whom the data have been disclosed. *The controller shall inform the data subject about those recipients if the data subject requests this.*

Article 17c

Dispute Settlements

1. *If a data subject asks a controller operating an Internet search engine (Internet search engine operator) to remove links to web pages from the list of results displayed following a search made on the basis of a data subject's name, published by third parties and containing information relating to that data subject, claiming that the information published violates his privacy, the Internet search engine operator must carefully investigate, whether the requirements of the data subject's right pursuant to Articles 17 or 19 are fulfilled and must hereby respect the rights and interests of any third party affected.*
2. *The Internet search engine operator must provide a third party seriously affected an opportunity to submit an opinion on the data subject's request.*
3. *The Internet search engine operator must inform the enquiring data subject and the third party seriously affected about the decision and, especially in respect of Article 17 (3), all substantial aspects which were taken into account in the decision-making process.*

- 4. The Internet search engine operators should set up dispute settlement units in the Member States. The autonomy, independence and plurality of the dispute settlement units and the expertise of their staff must be guaranteed. The dispute settlement units decide about complaints against the Internet search engine operator's decisions pursuant to paragraph 3; these decisions are binding only for the Internet search engine operator. Other remedies of the enquiring data subject and the affected third party, especially the web page operator, in particular according to Chapter VIII, remain unaffected.**

Article 18

Right to data portability

[...]

2. The data subject shall have the right to withdraw the personal data concerning him or her **and any other related information** which he or she has provided to a controller and receive it in a structured and commonly used and machine-readable format without hindrance from the controller to which the data have been provided to, where

[...]

3. The **European Data Protection Board Commission** may specify the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2.

Article 19

Right to object

1. The data subject shall have the right to object, on compelling legitimate grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her which is based on points ~~(e) or~~ (f) of Article 6(1). The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or compelling legitimate grounds for the establishment, exercise or defence of legal claims.

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object **free of charge** at any time to the processing of personal data concerning him or her for such marketing. ~~Prior to processing~~ **When approaching the data subject**, this right shall be explicitly brought to the attention of the data subject (...) and shall be presented clearly and separately from any other information.

[...]

Article 20

Automated individual decision making

[...]

4. **Decisions referred to in paragraph 1 that have the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, genetic or health status, sexual orientation or that result in measures which have such effects, shall be prohibited. The controller shall implement effective protection against possible discrimination resulting from such decisions.**
5. **The data subject shall have the right to obtain information in a plausible and generally understandable form concerning**
- (a) the structure and process of the profiling and**
- (b) the calculation and significance of the probability values including the types of data used with reference to the individual case.**

The right to obtain information shall not apply where the request is in conflict with overriding legitimate interests, in particular where trade secrets of the controller would be disclosed.

6. The controller shall

- (a) if necessary to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context in which the personal data are processed, use adequate-mathematical or statistical procedures for the profiling,
- (b) implement technical and organisational measures appropriate to ensure that factors which result in data inaccuracies are corrected and the risk of errors is minimized,
- (c) secure personal data in a way which takes account of the potential threats involved for the interests and rights of the data subject.

AUSTRIA

Austrian Proposals for amendments regarding Chapters I and III on the basis of Council document no 7651/15 of 10 April 2015

The Austrian delegation, following on from its proposals and arguments presented in recent DAPIX meetings and notably in JHA Counselors meeting of 17 April 2015 and maintaining its respective proposals recorded in Council document no 7586/1/15 REV 1 unless modified below would like to make the drafting proposals as set down in the Annex.

On recital 47:

Austria requests the deletion of the last sentence.

Justification:

1. Just repetitiously requesting information from the controller as such must not be considered as a manifestly unfounded request. The reason for such repetitious requests may e.g. also lie in an incomplete answer or a "bit-by-bit" disclosure of information to the data subject concerned.

In the case that the said text should be kept, a more restrictive wording would be needed.

Alternative proposal:

“However, if requests are manifestly unfounded such as when the data subject repetitiously requests information ***despite complete and correct information or despite properly substantiated denial of information or well-founded restriction of information by the controller*** ~~or where the data subject abuses its right to receive information for example by providing false or misleading information when making the request,~~ the controller could refuse to act on the request.”

2. As for the second part or the last sentence: Within this particular context, referring to the abuse of the right to receive information does not make any sense in terms of logic of language: the lack of foundation is not the same as the abuse of a right. Moreover the regulatory text of Article 12 para 4 does not contain any reference to the abuse of the right.

On recital 48:

Austria proposes the following amendment:

“The principles of fair and transparent processing require that the data subject ~~should~~ **shall be** informed (...) of the existence of the processing operation and its purposes (...). The controller ~~should~~ **shall** provide the data subject with any further information necessary to guarantee fair and transparent processing. Furthermore the data subject ~~should~~ **shall be** informed about the existence of [...]“

Justification:

It should be quite clear that this is a binding obligation of the controller.

On recital 49:

In the third sentence of recital 49 Austria proposes the following amendment:

“Where the controller intends to process the data for a purpose other than the one for which the data were collected the controller ~~should~~ **shall** provide the data subject prior to that further processing with information on that other purpose and other necessary information.”

Justification:

Like in the case of recital 48 it should be underlined that this is a binding obligation of the controller.

On recital 54:

Austria rejects the definition of a known controller as proposed by the Presidency.

Justification:

The said definition of a known controller is just too narrow; one has to bear in mind the specific technical nature and the intrinsic dynamism of the internet and of search engines in particular; we have to think here e.g. of linking to a website taking place some time after an information has been made accessible on the respective website; moreover, search engines enable a controller to detect websites linking its own website.

On the issue of “profiling” – concerning recitals 48, 51, 58 and Article 4 para 12a, Articles 14, 14a, 15 and 20:

Past discussions in DAPIX have shown, that there is still no broad common understanding among Member States as regards the meaning of the term “profiling”. Actually, the definition currently set out in Article 4 para 12a obviously is much too restrictive given the variety of meanings of this term in the real world ranging from “forensic profiling” aiming at detecting personal aspects of an unknown offender to “program profiling” or “software profiling” which are used for understanding program behavior.

In order to avoid any unintended loophole in the proposed regulation Austria urges to drop the term profiling and, instead, to stick to the generic term of “automated processing of personal data” in combination with “decision making” or “taking of measures” based thereon. Thus recitals 48, 51, 58, Article 4 para 12a, Article 14 para 1a point h, Article 14a para 2 point h, Article 15 para 1 point h and 20 should be amended accordingly (see modified text below).

Apart from this Austria objects the insertion of “as long as it produces legal effects concerning him or her or significantly affects him or her” in recital 58; firstly it seems overlapping with the last part of the first sentence of recital 58 and secondly it runs the risk of unnecessarily narrowing down the meaning of “automated processing” within the context of the regulation.

48) [...] Furthermore the data subject ~~should~~ **shall be** informed about the existence of **decision making based on automated personal data processing profiling**, and the consequences **thereof of such profiling**. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.

51) [...] Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, where possible for what period, which recipients receive the data, what is the logic involved in any automatic data processing and what might be, ~~at least when based on profiling~~, the consequences of such processing. [...]

58) The data subject should have the right not to be subject to a decision evaluating personal aspects relating to him or her (...) which is based solely on automated processing, which produces legal effects concerning him or her or significantly affects him or her, like automatic refusal of an on-line credit application or e-recruiting practices without any human intervention. Such processing includes ~~also 'profiling' consisting in~~ any form of automated processing of personal data evaluating personal aspects relating to a natural person, in particular to analyse or predict aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements ~~as long as it produces legal effects concerning him or her or significantly affects him or her~~; in particular to analyse or predict aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements; However, decision making based on such processing, ~~including profiling~~, should be allowed when authorised by Union or Member State law to which the controller is subject, including for fraud and tax evasion monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or

when the data subject has given his or her explicit consent. In any case, such processing **shall** ~~should~~ be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention, to express his or her point of view, to get an explanation of the decision reached after such assessment and the right to contest the decision. In order to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context in which the personal data are processed, the controller shall use adequate mathematical or statistical procedures ~~for the profiling,~~ implement technical and organisational measures appropriate to ensure that factors which result in data inaccuracies are corrected and the risk of errors is minimized, secure personal data in a way which takes account of the potential threats involved for the interests and rights of the data subject. Automated decision making **and profiling** based on special categories of personal data should only be allowed under specific conditions.

Article 4

Definitions

~~(12a) ‘Profiling’ means any form of automated processing of personal data consisting of using those data to evaluate personal aspects to a natural person, in particular to analyse and predict aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements;~~

Article 14

1a. [...]

(h) the existence of ~~automated~~ decision making **based on automated personal data processing** including **such profiling** referred to in Article 20(1) and (3) and information concerning (...) the logic involved in any automated data processing, as well as the significance and the envisaged consequences of such processing for the data subject.

Article 14a

2. [...]

(h) the existence of **automated** decision making **based on automated personal data processing** including **such profiling** referred to in Article 20(1) and (3) and information concerning (...) the processing, as well as the significance and the envisaged consequences of such processing for the data subject.

Article 15

1. [...]

(h) in the case of decisions **making** based on automated **personal data** processing including **such profiling** referred to in Article 20(1) and (3), knowledge of the logic involved in any automated data processing as well as the significance and envisaged consequences of such processing.

SECTION 4

RIGHT TO OBJECT AND **PROFILING** **DECISION MAKING BASED ON AUTOMATED**
PERSONAL DATA PROCESSING

Article 20

~~**Automated individual decision making**~~ **Decision making based on automated personal data**
processing

1. The data subject shall have the right not to be subject to a decision (...) based solely on automated processing, including **profiling, such** which produces legal effects concerning him or her or significantly affects him or her.]

On Article 12 para 1:

Austria thanks the Presidency for the inclusion of the last sentence.

Apart from this Austria again urges to reformulate the second sentence according to its text proposal in Council doc 7586/1/15 REV 1.

Justification:

The current wording is wrong in terms of logic and technology: “electronically” is neither the opposite of nor an alternative to the formulation “in writing”; “electronically” is rather a type of information transmission, which could include written information (Mail, subtitles on TV screen) or oral information (digital phone call, radio signal).

On Article 12 para 1a:

Austria can support the underlying idea of the newly inserted text (scrutiny reservation with a view to the exact wording). At the same time Austria points to the connection with Article 12 para 4a; within this context Austria expressly refers to its request of an additional recital covering Art. 12 para 4a (identification of the data subject) (see Council 7586/1/15 REV 1).

On Article 12 para 4:

Austria requests the deletion of the wording “in particular because of their repetitive character” in the second sentence.

Justification:

See justification above to the Austrian request for the deletion of the last sentence in recital 47.

Article 12 para 4 should therefore read as follows:

4. Information provided under Articles 14 and 14a (...) and any communication under Articles 16 to 19 and 32 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, ~~in particular because of their repetitive character~~, the controller (...) may refuse to act on the request. In that case, the controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

On Article 14 para 1a point h, Article 14a para 2 point h in conjunction with Article 15 para 1 point h:

Apart from what was generally said before on the issue of “profiling” and the Austrian request for avoiding this term it is to be highlighted that the wording of the Presidency’s proposal shows some inconsistency regarding the use of “automated decision making”. While the latter wording appears in Article 14 para 1a point h and Article 14a para 2 point h, the corresponding Article 15 para 1 point h refers to “decisions based on automated processing [...]”. Austria recommends to use a coherent wording such as **“decision making based on automated personal data processing”**.

On Article 17:

See Austria proposal for separating the issue of “right to erasure” from that of the “right to be forgotten” (Council doc 7586/1/15 REV 1).

On Article 18:

Austria points to the fact that the approach in Article 18 **is wrong** in legal and logical terms **insofar** as an undifferentiated reference is made to the term **“controller”**. In fact, where e.g. a data subject uploads his/her personal pictures onto a platform of a photo sharing site he/she makes use of a service of an internet provider, who is first and foremost a service provider and **not a controller in the meaning of Article 4 para 5 of the regulation**. Thus, within the context of Article 18 the term controller is inappropriate.

In order to avoid any confusion resulting from an incoherent use of the term “controller” Austria proposes to reformulate Article 18 para 2 accordingly.

Article 18 - Right to data portability

1. (...)
2. The data subjects **who have provided their data to a service provider in the context of using a platform operated by this provider** shall, **in case of leaving the platform and changing the provider,** have the right to withdraw **this data** ~~the personal data concerning him or her and which he or she has provided to and,~~ to receive it in a structured and commonly used and machine-readable format, **to have erased this data in the files of the provider thereafter and to transmit the data to another provider without hindrance from the provider from whom the data are withdrawn without hindrance from the controller to which the data have been provided to, where** [...]

Austria can agree to the insertion in Article 18 par 2a (exemption for public bodies).

On Article 19:

Austria appreciates the reinsertion of the reference to point e of Article 6 para 1.

At the same time Austria totally rejects the insertion of the text “compelling legitimate” in the first line of Article 19 para 1. This would reverse the original meaning of this provision and in addition be in contradiction with the second sentence.

Furthermore, Austria urges to **delete** the expression **“relating to his or her particular situation”**. In fact, from a fundamental rights perspective, the exercise of the right to object must not depend on how many individuals are adversely affected by a data processing operation but only should require sufficient plausible reference to the fundamental right to data protection. One only needs to think here of the examples of Google street view or of data applications established in a public interest such as the improvement of the management of health care services.

In addition, the last part of the second sentence should be deleted as it deems overlapping with the first part of the second sentence (twofold reference to “compelling legitimate grounds”).

Article 19 para 1 should therefore read as follows:

Article 19 - Right to object

1. The data subject shall have the right to object, on **compelling legitimate reasoned grounds relating to his or her particular situation**, at any time to the processing of personal data concerning him or her which is based on points (...) (e)130 or (f) of Article 6(1). The controller shall no longer process the personal data (...) unless the controller demonstrates **to the satisfaction of the data subject** compelling legitimate grounds for the processing which override the interests, (...) rights and freedoms of the data subject **or compelling legitimate grounds for the establishment, exercise or defence of legal claims.**

Supplementary proposal for a para 1a:

1a. If the data subject is not satisfied by the reasons given by the controller for overriding legitimate interests the data subject may appeal to the data protection supervisory authority. During the time of the complaint procedure the data shall no longer be processed except for the establishment, exercise or defence of legal claims of the controller:

On Article 20:

Preliminary, Austria much appreciates the deletion of the title “profiling”; in order to be coherent throughout the entire text, it, however, deems more appropriate to refer to “**decision making based on automated personal data processing**” instead of talking about “automated individual decision making”.

In pursuance of the Austria proposal to avoid the ambiguous term of profiling we here again urge for the deletion of the respective reference in Article 20 para 1.

Article 20 para 1 should therefore read as follows:

Article 20 - ~~Automated individual decision making~~ **Decision making based on automated personal data processing**

1. The data subject shall have the right not to be subject to a decision (...) based solely on automated processing, including **profiling, such**, which produces legal effects concerning him or her or significantly affects him or her.

On Article 21 para 1:

Recalling the Note from Austria, Slovenia and Hungary to the 3354th COUNCIL Austria points again to the issue of including Article 5 when referring to restrictions of particular obligations and rights provided by this Regulation permitted under Article 21 para. 1. Given the requirement of a proportionality test in the chapeaux of Article 21 para 1 this would lead to the effect that the “proportionality principle” required under Article 5 would no longer be applicable with regard to any restrictions adopted on the basis of Article 21.
