



Council of the
European Union

Brussels, 23 April 2015
(OR. en)

8295/15

LIMITE

DATAPROTECT 58
JAI 250
MI 263
DIGIT 20
DAPIX 65
FREMP 84
COMIX 192
CODEC 593

Interinstitutional File:
2012/0011 (COD)

NOTE

From:	Polish delegation
To:	Working Group on Information Exchange and Data Protection (DAPIX)
No. prev. doc.:	7651/15 DATAPROTECT 41 JAI 203 MI 204 DIGIT 11 DAPIX 49 FREMP 66 COMIX 149 CODEC 443
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) - Chapter III

Delegations will find in Annex a contribution of PL delegation in relation to Chapter III of the above mentioned proposal.

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.

Article 14

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

1. Where personal data relating to a data subject are collected from the data subject, the controller shall (...), at the time when personal data are obtained, provide the data subject with the following information:
 - (a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller shall also include the contact details of the data protection officer, if any;
 - (b) the purposes of the processing for which the personal data are intended (...).
 - (c) the legal basis of the processing**

- 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:
- (a) ~~(...);~~ **the period for which the personal data will be stored, or if this is not possible, the criteria used to determine this period**
 - (b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
 - (c) the recipients or categories of recipients of the personal data;
 - (d) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation;
 - (e) the existence of the right to request from the controller access to and rectification or erasure of the personal data or restriction of processing of personal data concerning the data subject and to object to the processing of such personal data (...) as well as the right to data portability;
 - (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 at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - (f) the right to lodge a complaint to a supervisory authority (...);
 - (g) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the data and of the possible consequences of failure to provide such data;

(h) ~~the existence of automated decision making including profiling referred to in Article 20(1) and (3) where applicable, information about the existence of profiling referred to in Article 4 (12a) and/or about automated decision making 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.

2. (...)

3. (...)

4. (...)

5. Paragraphs 1, 1a and 1b shall not apply where and insofar as:

(a) the data subject already has the information; or

(b) the provision of such information (...) proves impossible or would involve a disproportionate effort; in such case the controller shall take appropriate measures to protect the data subject's rights and freedoms.

6. (...)

7. (...)

8. (...)

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 provide the data subject with the following information:
 - (a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller shall also include the contact details of the data protection officer, if any;
 - (b) the purposes of the processing for which the personal data are intended;
 - (c) **the legal basis of the processing;**
 - (d) **the origin of the personal data, unless the data originate from publicly accessible sources;**
2. In addition to the information referred to in paragraph 1, the controller shall 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 (...):
 - (a) the categories of personal data concerned;
 - (b) **~~(...)~~ the period for which the personal data will be stored, or if this is not possible, the criteria used to determine this period**
 - (c) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
 - (d) the recipients or categories of recipients of the personal data;
 - (da) **where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation;**

- (e) the existence of the right to request from the controller access to and rectification or erasure of the personal data or restriction of processing of concerning the data subject and to object to the processing of such personal data as well as the right to data portability (...);
 - (ea) where the processing is based on point (a) of Article 6(1) are point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - (f) the right to lodge a complaint to a supervisory authority (...);
 - (g) ~~the origin of the personal data, unless the data originate from publicly accessible sources;~~ [moved to par.1]
 - (h) ~~the existence of automated decision making including profiling referred to in Article 20(1) and (3)~~ where applicable, information about the existence of profiling referred to in Article 4 (12a) and/or about automated decision making 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.
3. The controller shall provide the information referred to in paragraphs 1 and 2:
- (a) within a reasonable period after obtaining the data, but at the latest within one month, having regard to the specific circumstances in which the data are processed, or
 - (b) if a disclosure to another recipient is envisaged, at the latest when the data are first disclosed.
- 3a Where the controller intends to **further** 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.

Right of access for the data subject

1. The data subject shall have the right to obtain from the controller 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 access to the data and the following information:
 - (a) the purposes of the processing;
 - (b) (...)
 - (c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular to recipients in third countries;
 - (d) where possible, the envisaged period for which the personal data will be stored;
 - (e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;
 - (f) the right to lodge a complaint to a supervisory authority (...);
 - (g) where the personal data are not collected from the data subject, any available information as to their source;
 - (h) ~~in the case of decisions based on automated processing including profiling referred to in Article 20(1) and (3),~~ where applicable, information about the existence of profiling referred to in Article 4 (12a) and/or automated decision making referred to in art. 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.

Right to erasure and “to be forgotten”

Par. 2a

OPTION 1

2a. Where the controller (...) has made the personal data public 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 **to which he intentionally disclosed the data** 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.

OPTION 2

2a. Where the controller (...) has made the personal data public 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.

Article 4

(5a) A known controller is a controller to whom the data was intentionally disclosed by the controller which made the data public

Par. 3.

3. Paragraphs 1 and 2a shall not apply to the extent that (...) processing of the personal data is necessary:
 - a. for exercising the right of freedom of expression and information referred to in Article 80;

- b. for compliance with a legal obligation which requires processing of personal data by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller **when expressly laid down by Union or Member State law;**

53a) Inasmuch as the removal of links from the list of internet search results could, depending on the information at issue, have effects upon the right to freedom of expression and information, Member States should, when reconciling the right to the protection of personal data with the right to freedom of expression and information, provide that a fair balance should be sought ~~in particular between that these~~ fundamental ~~right and the data subject's fundamental rights under Articles 7 and 8 of the Charter.~~ **rights which are both provided in Articles 7 and 8 and in Article 11 of the Charter.**

54aa) However the right “to be forgotten” should be balanced with other fundamental rights. Subject to the principle of proportionality, limitations may be made ~~only~~ **in particular** if they ~~are necessary and genuinely~~ meet objectives of general interest recognised by the Union or Member State or the need to protect the rights and freedoms of others. **As a result** ~~This may lead to the result that~~ the personal data has to be maintained for exercising the right of freedom of expression or (...) for archiving purposes in the public interest or for historical, statistical and scientific (...) purposes, or for reasons of public interest in the area of public health ~~or social protection~~, or for the establishment, exercise or defence of legal claims.

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.

1a (...)

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object (...) at any time to the processing of personal data concerning him or her for such marketing. **Prior to processing**, 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

1. The data subject shall have the right not to be subject to a decision (...) based ~~solely~~ **predominantly** on automated processing, including profiling, which produces legal effects concerning him or her or significantly affects him or her.
 - 1a. Paragraph 1 shall not apply if the decision: (...)
 - (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller (...); or
 - (b) is (...) authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
 - (c) is based on the data subject's explicit consent (...).
 - 1b. In cases referred to in paragraph 1a ~~(a) and (c)~~ the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision: