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NOTE

from: Presidency
to: Working Group on Information Exchange and Data Protection (DAPIX)
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 IX : Articles 83a and 83c

Delegations will find attached the Presidency's proposals regarding Articles 83a and 83c.

125a) **The protection of personal data should take into account** 'the importance of archives for the understanding of the history and culture of Europe' and "that well-kept and accessible archives contribute to the democratic function of our societies', **as underlined** by Council Resolution of 6 May 2003 on archives in the Member States¹. **Where personal data are processed for archiving purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. To meet the specificities of processing personal data for archiving** is carried out by public (...) or private bodies in the public interest pursuant to Union or Member State law (...). **Member States should have the possibility to provide for specification of and/or derogations from certain rules of the Regulation. Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, and should have the possibility to determine that rectification may be exercised exclusively to the provision of a supplementary statement.** Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have as their main mission a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. **Where personal data are collected for other purposes, processing of personal data for archiving purposes in the public interest should not be considered incompatible with the purpose for which the data are initially collected and may be processed for longer than necessary for that initial purpose. Member States should also have the possibility to provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest, such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.**

¹ OJ C 113, 13.5.2003, p. 2.

The processing of personal data for archiving purposes in the public interest should be subject to appropriate measures to safeguard the rights and freedoms of the data subject, including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons. Codes of conduct may contribute to the proper application of this Regulation, taking into account the specific features of data processing for archiving purposes in the public interest. Such codes of conducts should in particular specify appropriate safeguards for the rights and freedoms of the data subject.

- 111) **Where personal data are processed for scientific purposes or historical purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing.** For the purposes of this Regulation , processing of personal data for scientific purposes should include fundamental research, applied research, and privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. Scientific purposes should also include studies conducted in the public interest in the area of public health. Historical purposes should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.

To meet the specificities of processing personal data for scientific purposes or historical purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific or historical purposes. Member States should have the possibility to provide for derogations from certain rules of the Regulation. Where personal data are collected for other purposes, processing of personal data for scientific purposes or historical purposes should not be considered incompatible with the purpose for which the data are initially collected and may be processed for a longer period than necessary for that initial purpose. Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, and should have the possibility to determine that rectification may be exercised exclusively to the provision of a supplementary statement. The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject. In particular the controller should ensure that the data are not used for taking measures or decisions **which might affect** particular individuals. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation **should** apply in view of that processing.

Article 83a

*Derogations for processing of personal data
for archiving purposes in the public interest*

1. Where personal data are processed for archiving purposes carried out in the public interest pursuant to Union or Member State law, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
 - a) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
 - b) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;
 - c) Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for the archiving purposes.

2. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for archiving purposes (...) carried out in the public interest shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary subject to appropriate safeguards for the rights and freedoms of the data subject, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual, and s subject to specifications on the conditions for access to the data.

3. (...).

4. (...).

5. (...).

Article 83c

Processing for scientific and historical purposes

1. In accordance with this Regulation and in particular with Article 6(1), personal data may be processed for scientific *and historical* purposes, including for scientific or historical research, provided that (...) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject **and according to the following conditions:**

 - (a) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner; and
 - (b) the **personal** data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions **which may affect** that individual; and
 - (c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.

2. Personal data processed for scientific **or historical** purposes may be published or otherwise publicly disclosed by the controller only if the publication of personal data is necessary to present scientific findings or to facilitate scientific **or historical** purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests and:
 - (a) the data subject has given explicit consent; or
 - (b) the data were made manifestly public by the data subject.
 - (c) (...)

3. Where personal data are processed for scientific or historical purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
- a) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
 - b) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;
 - c) Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for scientific or historical purposes.
4. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific or historical purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual and by pseudonymisation of personal data.
5. (...)
