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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)  
- Comments on Chapter IX - X

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Delegations will find below comments on Chapters IX - X, received at 16 January 2014.

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## CZECH REPUBLIC

### **CZ proposals regarding draft General Regulation on Data Protection – Articles 80 to 85**

*The comments are made in relation to document (17831/13).*

#### **In general**

CZ wishes to point out that comments given below are without prejudice to horizontal questions and issues, such as delegated and implementing acts or legal form of the proposal. Given the fact that these horizontal issues are being discussed separately, CZ did not specifically comment e.g. on provisions establishing implementing or delegated powers.

#### **Article 80b**

The text should read:

~~**Within the limits of this Regulation.**~~ Member States may determine the conditions for the processing of a national identification number or any other identifier of general application. **The national identification number or any other identifier of general application shall be used only under specific and suitable measures to safeguard the rights and freedoms of the data subject.** ~~**Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.**~~

*The initial phrase has unclear content and does not provide for the same level of flexibility as the current directive, which may be necessary for unique official identifiers.*

*The second sentence is reworded in a more precise way that conforms to the nature of regulation better.*

## Article 81

- Paragraph 1(b) should be amended to read:

“reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety **of health care and services and of medicinal products or medical devices**, ~~inter alia of medicinal products or medical devices; or~~”

*The text should be more specific and health-oriented as regards the safety purpose.*

## Article 82

Paragraph 2 is probably not necessary and should be deleted.

## Article 83a

In the text of paragraph (1), the words “within the limits of this Regulation” should be deleted.

*The initial phrase has unclear content and has potential to confuse the recipients as to whether and what exceptions are provided.*

Paragraph 4 should be reverted to their previous wording (12384/13):

4. Articles 15, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of processing for historical purposes, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individual.

*The regulation should not require additional tests for such exceptions, as the extent of exception becomes unclear, the administrative burden increases unreasonably and it is not even clear whether the test should be a general one or if it should be reconsidered with regard to each specific data subject.*

#### **Article 83b**

In the text of paragraph (1), the words “within the limits of this Regulation” should be deleted.

*The initial phrase has unclear content and has potential to confuse the recipients as to whether and what exceptions are provided.*

The paragraph 1 (b) should be deleted.

*Given the nature of processing and conditions in (c), this requirement appears to introduce unnecessary administrative burden.*

Paragraph 3 should be reverted to their previous wording (12384/13):

3. Articles 15, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*The regulation should not require additional tests for such exceptions, as the extent of exception becomes unclear, the administrative burden increases unreasonably and it is not even clear whether the test should be a general one or if it should be reconsidered with regard to each specific data subject.*

#### **Article 83b**

In the text of paragraph (1), the words “within the limits of this Regulation” should be deleted.

*The initial phrase has unclear content and has potential to confuse the recipients as to whether and what exceptions are provided.*

In the text of paragraph (1), words “, such processing” should be inserted instead of first “and” to make the sentence structure better understandable.

The paragraph 1 (b) should be deleted.

*Given the nature of processing and contidions in (c), this requirement appears to introduce unnecessary administrative burden.*

The paragraph 1 (c) should take into account Article 81(2) and explicitly allow taking medical measures with respect to data subject in relation to new findings about his/her health status that may be uncovered through scientific research. The data subject should not be required to undergo the same medical examination twice just so the whole research does not lose the exceptions provided for in the Article 83b.

Paragraph 3 should be reverted to their previous wording (12384/13):

3. Articles 15, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*The regulation should not require additional tests for such exceptions, as the extent of exception becomes unclear, the administrative burden increases unreasonably and it is not even clear whether the test should be a general one or if it should be reconsidered with regard to each specific data subject.*

## Article 84

The text of paragraph (1) should be amended as follows:

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. **Member States shall adopt abovementioned rules also to ensure professional secrecy as required by EU legislation.** These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

*There are important pieces of EU legislation that require specific secrecy rules and acceptable breaches of such secrecy (mainly for criminal proceedings and financial supervision), such as banking directive, or directive 2006/48 Articles 44-52, directive 2004/39 Article 54, directive 2007/64 Article 22, directive 92/49 Article 16 and directive 2002/83 Article 16. As the legal interpretation may vary (lex posterior, lex specialis), it is necessary to explicitly acknowledge such EU-mandated secrecy rules as well. Alternatively, such an explanation could be given in recital 127.*

Paragraph 2 is probably not necessary and should be deleted.

## GERMANY

### **Comments of the Federal Government on Chapters IX to XI of the Commission proposal for a General Data Protection Regulation (COM(2012) 11 final)**

Germany hereby submits its proposed amendments and additions for Chapters IX to XI of the Commission proposal for a General Data Protection Regulation, based on the version of the draft Regulation of 16 December 2013 (17831/13).

#### A. Preliminary remarks

Germany wishes to thank the Presidency for this opportunity to submit comments. Given the state of play in the discussions, Germany reserves the right to submit further comments, including with regard to fundamental issues that go beyond individual articles. Germany will comment on the recitals separately. General scrutiny reservations and reservations on individual provisions, as declared in DAPIX, remain in place unless explicitly withdrawn. We need to conduct further discussions and a more detailed examination of Chapters IX to XI. Germany requests that its scrutiny reservation be included in the Presidency's current text (17831/13).

#### B. Comments concerning Articles 80 to 91



Preliminary comments concerning Chapter IX:

The provisions of Chapter IX are to be seen particularly in the context of the German call for more flexibility in the public sector and with regard to national law concerning specific sectors. It must be ensured that the Member States retain the possibility not only of establishing the precise details and form of the rules, but also of making derogations by issuing stricter rules or rules concerning specific sectors. The primary objective should however be to seek solutions when re-examining and further refining the overall approach of the instrument that will guarantee the preservation of existing national data protection law, as well as the potential for its further development, in all sectors where citizens' data is processed within the scope of Union law by State bodies or for the purpose of exercising public authority.

It may be necessary to include further provisions in Chapter IX, as in other Chapters, depending on which solutions are chosen.

*Article 80*

*Processing of personal data and freedom of expression*

*Article 80*

*Processing of personal data and freedom of expression*

*Comment: Article 80 is of great importance for Germany.*

*As Advocate -General Jääskinen of the Court of Justice stated in his conclusions of 25 June 2013 in Case C-131/12 (paragraph 128), Germany also considers that a person's right to protection of his private life must be balanced with other fundamental rights — including those enshrined in national law — especially with freedom of expression and freedom of information. The relationship of the Regulation to freedom of expression and to the right of public access to official documents should be put in clearer terms. It should be clearly stated which articles may be derogated from (in this regard we would ask the Presidency and/or the Legal Service to set out the reasons for the deletion). Germany is, however, of the opinion — as already stated in respect of Article 2(2)(d) — that private communication should be completely excluded from the scope of the Regulation. If necessary, the Regulation itself should provide for exceptions to protect freedom of expression.*

<p>1. Member State <u>law</u> shall (...) reconcile the right to the protection of personal data pursuant to this Regulation with the <u>right to freedom of expression, including the processing of personal data for journalistic purposes and the purposes of artistic or literary expression.</u></p>	<p><i>Moreover, where exceptions or restrictions are permitted, this should be stated clearly. Any analogous application to new forms of journalism should be provided for in a separate sentence. There is also a need for detailed discussion of how to deal with circumstances which come within both the scope of protection of the right to determine the use of one's data and that of freedom of expression. Given the unresolved issues, Germany needs to conduct a further examination.</i></p> <p><u>In the application and interpretation of this Regulation, the principle of freedom of expression, including the processing of personal data for journalistic purposes and the purposes of artistic or literary expression, shall be taken into account in accordance with the law of the respective Member State. Member States shall provide for derogations from or exceptions to Chapter II (general principles), Chapter III (rights of the data subject), Chapter IV (provisions on controller and processor), Chapter V (provisions on the transfer of personal data to third countries and international organisations), Chapter VI (independent supervisory authorities), Chapter VII (co-operation and consistency) and from Articles 73, 74, 76 and 79 to 79b of Chapter VIII (remedies, liability and sanctions) for the processing of personal data carried out for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.</u></p>
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2. (...)	(...)
<p style="text-align: center;"><i>Article 80a</i></p> <p><b><i>Processing of personal data and public access to official documents</i></b></p> <p>Personal data in official documents held by a public authority <u>or a public body</u> may be disclosed by the authority <u>or body</u> in accordance with Union law or Member State law to which the public authority <u>or body</u> is subject in order to reconcile public access to such official documents with the right to the protection of personal data pursuant to this Regulation.</p>	<p style="text-align: center;"><i>Article 80a</i></p> <p><b><i>Processing of personal data and public access to official documents</i></b></p> <p>Personal data in official documents held by a public authority or a public body may be disclosed by the authority or body in accordance with Union law or Member State law to which the public authority or body is subject in order to reconcile public access to such official documents with the right to the protection of personal data pursuant to this Regulation.</p>

<p style="text-align: center;"><u>Article 80b</u></p> <p style="text-align: center;"><b><u>Processing of national identification number</u></b></p> <p><b><u>Within the limits of this Regulation,</u></b> Member States may determine the conditions for the processing of a national identification number or any other identifier of general application. <b><u>Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></b></p>	<p style="text-align: center;"><u>Article 80b</u></p> <p style="text-align: center;"><b><u>Processing of national identification number</u></b></p> <p><i>Comment: The concept of a "national identification number" does not exist under German national law. Therefore, Germany sees no need for this rule. Germany would be able to support such a rule if other Member States consider there to be a need for it.</i></p>
	<p style="text-align: center;"><u>Article 80c</u></p> <p style="text-align: center;"><b><u>Processing of personal data in public registers</u></b></p> <p><u>In respect of the processing of personal data in public registers, Member States may provide for stricter or more specific rules concerning the rights of the data subject under Chapter III and the provisions on controller and processor under Chapter IV, in order to take account of the specific requirements of public registers and to ensure that they function effectively. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p>

*Article 81*

***Processing of personal data for health-related purposes***

1. Within the limits of this Regulation and in accordance with points **(g) and** (h) of Article 9(2), (...) personal data **referred to in Article 9(1) may be processed** on the basis of Union law or Member State law which (...) provides for suitable and specific measures to safeguard the data subject's legitimate interests **when** necessary for:

Article 81

**Processing of personal data concerning health**

***Comment: Germany needs to further scrutinise Article 81 in its entirety.***

1. (...) In accordance with point (h) of Article 9(2), the processing of personal data concerning health must be carried out on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests; it is permissible for:

***Comment: It is not possible to evaluate whether extending the reference to include point (g) of Article 9(2) is appropriate until there has been thorough clarification of the relationship between Article 81 and the justifications listed in Article 9(2). Only then will it be possible to safely assess whether the reference to point (g) of Article 9(2) potentially weakens or undermines the requirements of point (h).***

- (a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy **under Union or Member State law or rules established by national competent bodies to the obligation of professional secrecy or by** another person also subject to an equivalent obligation of **secrecy**; under Member State law or rules established by national competent bodies; or
- (b) reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety, inter alia **of** medicinal products or medical devices; or

- a) the purposes of preventive (...) medicine, medical diagnosis, the provision of care or treatment, vocational rehabilitation or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by a member of a health profession requiring qualification or another person also subject to an equivalent obligation of confidentiality under the law of the Member State or rules established by national competent bodies; or
- b) reasons of public interest in the area of public health, such as the prevention or control of communicable diseases and other threats to health or ensuring high standards of quality and safety, inter alia for medicinal products or medical devices; or

*Comment: The wording "protecting against serious cross-border threats to health" seems inappropriate for exemplifying what is, by necessity, a broad sphere of action by the EU Member States in the field of protection and control of communicable diseases (and the prevention and control of dangerous diseases). It has clearly been adapted from the second subparagraph of Article 168(1) TFEU and thus does not describe Member States' tasks but merely one part of the Union's sphere of competence to provide supportive activities (which is in any case limited). Member States must however still be in a position in future to take public health measures in far less serious circumstances.*

(c) (...)

c) other reasons of public interest in areas such as social protection in order to ensure that Member States can perform tasks in these areas as provided for in their respective national law.



*Comment: To avoid ambiguity in interpretation and thus prevent any areas that should in fact be covered by this rule not being subsumed thereunder, it should not contain any examples; instead, general wording should be used.*

d) the purposes of insurance and reinsurance, in particular the conclusion and performance of insurance contracts, the processing of statutory claims, the evaluation of risks, the establishment of tariffs, compliance with legal obligations and the combating of insurance fraud.

*Comment: This new point (d) is by necessity linked to the follow-up amendment to Article 9(2)(h), since it is a punishable offence in Germany under Section 18 of the German Act on Genetic Testing in Humans to request, take or use genetic data in connection with the conclusion of an insurance contract:*

*"processing of data concerning health, provided the data are not genetic data, is carried out in accordance with legislative provisions adopted on the basis of Article 81(1) and Article 82a"*

	<p><i>The processing of data concerning health may however also be necessary within the framework of insurance contracts (in particular for the conclusion and performance of insurance contracts, the processing of statutory claims, the evaluation of risks, the establishment of tariffs, compliance with legal obligations and the combating of insurance fraud). A rule should therefore be included which permits processing for insurance and reinsurance purposes.</i></p>
	<p><u>2. Processing of personal data concerning health in the area of social protection shall be carried out in accordance with Article 82a.</u></p> <p><i>Comment: It is essential that this new paragraph 2 be accompanied by a follow-up amendment to point (h) of Article 9(2):</i></p> <p><i>"the processing relates to data concerning health, provided they are not genetic data, and is carried out in accordance with legislative provisions adopted on the basis of the first paragraph of Article 81 and Article 82a"</i></p>

<p>2. Processing of personal data concerning health which is necessary for historical, statistical or scientific (...) purposes, such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is subject to the conditions and safeguards referred to in <u>Articles 83a to 83c</u>.</p>	<p>3. Processing of personal data concerning health which is necessary for historical, statistical or scientific purposes (...) shall be subject to the conditions and safeguards referred to in Articles 83a to 83c.</p> <p><i>Comment: The examples of scientific research should be deleted, as they narrow down the reference unnecessarily and are of little use in legal terms. One alternative might be to transfer them to the recitals.</i></p>
<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.</p>	<p>4. (...)</p> <p><i>Comment: The delegation of powers allowing the Commission to adopt delegated legal acts should be deleted here.</i></p>

*Article 81a*

***Processing of genetic data***

Member States may adopt more stringent or more specific rules on the processing of genetic data for genetic testing for medical purposes, in order to establish parentage, or in the area of insurance and worker protection, in accordance with point (k) of Article 9(2); this shall also apply to genetic data which are processed for genetic analyses carried out as part of genetic testing. Processing for scientific purposes shall be subject to the conditions and safeguards referred to in Article 83c.

Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.

*Article 81a is by necessity linked to the following amendments to Article 9(2) (amendment to point (h) and a new point (k)):*

***Article 9(2)(h)***

***"the processing relates to data concerning health, provided they are not genetic data, and is carried out in accordance with legislative provisions adopted on the basis of Article 81(1) and Article 82a"***

*A new point (k) on genetic data should be inserted in Article 9(2):*

*Article 9(2)(k)*

*"the processing relates to genetic data and is carried out on the basis of Member State law which provides adequate safeguards to protect the data subject's legitimate interests. Point (i) shall apply to scientific research."*

*Article 82*  
*Processing in the employment context*

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*Comment:*

*As regards rules on data processing in an employment context, Germany's aim is to preserve our national level of employee data protection (even for cross-border data processing) and make it possible to have standards which are above the European level.*

*We feel that the whole of Article 82 still needs extensive review.*

*To begin with, its content and scope, particularly its legal nature, are not clear. The aim seems to be a saving clause, but "within the limits of this Regulation" leaves Member States little room for manoeuvre. The saving clause must allow Member States the necessary flexibility as regards the processing of employee data in an employment context (maintaining existing national levels of protection, flexibility as to a higher level of protection, no departure from the protection in the*

*Data Protection Regulation that would operate against data subjects' interests). It is also unclear how it relates to Article 6 (paragraph 1(f) and paragraph 3).*

*As regards employee data protection, there are a number of issues to be considered which are not adequately addressed in the current version of the Regulation, in particular:*

- *problems of consent to data processing*
- *instruments laid down by collective agreement as a legal basis for data processing; Member States should be able to permit the processing of employees' personal data under collective agreements, without lowering the level of protection*
- *surveillance (video or acoustic) at the workplace*
- *processing of contract data*
- *processing of corporate data*
- *processing of health and social data*

1. Within the limits of this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.



<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.</p>	
<p style="text-align: center;"><i><u>Article 82a</u></i></p> <p style="text-align: center;"><b><u>Processing for purposes of social protection</u></b></p> <p><b><u>Within the limits of this Regulation, Member States may adopt specific rules for the processing of personal data in the public interest for the purpose of social protection, carried out by public authorities or by bodies or associations. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></b></p>	<p style="text-align: center;"><i>Article 82a</i></p> <p style="text-align: center;"><b><u>Data processing in the area of social protection</u></b></p> <p><u>Member States may adopt more stringent or more specific provisions establishing the conditions and procedures for and the rights of data subjects in respect of the processing, in the public interest, of personal data in the area of social protection, including data concerning health. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p> <p><i>Comment: Article 82a takes account of the special characteristics of social protection. This is a field dealt with and supervised predominantly by public-law bodies.</i></p> <p><i>Their structures, which are mainly laid down by law, are tailored to</i></p>

*the needs of mass administration. National regulations, including derogations, must therefore continue to be possible in this area.*

*To clarify that this saving clause covers the processing of health data at service providers' establishments in the context of care provision, the following should be included in a recital:*

*"The processing of data concerning health in the context of medical care in the social protection system is in the public interest."*

*If there is consensus on Article 82a, we may wish to submit follow-up amendments to Article 81 to clarify how it relates to Article 82a.*

	<p style="text-align: center;"><i>Article 82b</i></p> <p style="text-align: center;"><b><u>Processing in the context of taxation</u></b></p> <p><u>Member States may adopt more stringent or more specific provisions establishing the conditions and procedures for the processing, in the public interest, of personal data in the context of taxation, and the rights of data subjects in respect thereof. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p>
	<p style="text-align: center;"><i>Article 82c</i></p> <p style="text-align: center;"><b><u>Data processing in the context of public order and safety</u></b></p> <p><u>Member States may adopt more stringent or more specific provisions governing the processing of personal data for the purpose of maintaining and restoring public order and safety. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p>

	<p><i>Comment: Where it is not possible to shift the boundary between the General Data Protection Regulation and the Police and Criminal Justice Data Protection Directive in such a way as to cover the entire area of police emergency management or "administrative police", the Regulation should provide for a corresponding saving clause.</i></p>
	<p style="text-align: center;"><u>Article 82d</u></p> <p style="text-align: center;"><b><u>Processing for the purpose of law enforcement</u></b></p> <p><u>The processing of personal data by the courts, the bodies acting on their behalf and enforcement agents shall be subject to Member States' procedural law insofar as there are no prior-ranking procedural rules at European Union level. Consequently, in terms of law enforcement, an appropriate balance shall be struck between, in particular, the requirement for respect for the rights of the defence, personal data protection and the obligation to ensure effective legal protection.</u></p> <p><i>Comment: A provision should be added to cover processing by courts and bailiffs. Specifically, the respective rules of procedure, which are</i></p>

	<p><i>likewise harmonised in part by Union law, contain more detailed provisions concerning data protection matters, such as those relating to the requirements for granting access to files. Those provisions take account of the conflict which exists in the field of law enforcement between personal data protection, the requirement for respect for the rights of the defence and the obligation to ensure effective legal protection. They should therefore be maintained as prior-ranking special provisions.</i></p>
	<p style="text-align: center;"><u>Article 82e</u></p> <p style="text-align: center;"><b><u>Processing of personal data in the context of schools</u></b></p> <p><i>Comment: Further peculiarities (i.e. aspects which are not covered by the possibilities for exemptions already requested) exist in respect of schools, which are characterised by both public and private boards; consequently, the special provisions laid down in the Regulation for processing in the public sector do not apply on a universal basis to all schools, although the special relationship between school and pupils calls for modifications irrespective of the legal form of the</i></p>

	<p><i>school board.</i></p> <p><i>In the event that no provision is made for a corresponding categorical exemption, special arrangements/exemptions for schools ought to be laid down in individual provisions of the Regulation (and in particular in Articles 6 to 9).</i></p> <p><u>1. Member States may adopt more stringent or more specific provisions governing the processing of personal data in the context of schools with reference to the general principles laid down in Chapter II, the rights of the data subject enshrined in Chapter III and the provisions concerning the controller and processor contained in Chapter IV. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p>
	<p><u>2. Each Member State shall notify the Commission at the latest by the date specified in Article 91(2) of the legislative provisions within the meaning of paragraph 1 above, and shall inform it immediately of any further amending legislation or amendments concerning these provisions.</u></p>

*General comments concerning the group of provisions on "Processing for historical, statistical or scientific purposes" (Articles 83a to 83c):*

*Germany still needs to review the entire group of provisions concerning "Processing for historical, statistical or scientific purposes" (Articles 83a to 83c).*

*The rules set out in Articles 83a to 83c are closely connected to those contained in the preceding chapters of the draft Regulation. In any case, it is essential that Articles 83a to 83c be properly coordinated with the provisions of the preceding articles which are of relevance to statistics and research. Germany therefore reserves the right to carry out an in-depth examination of the various provisions in the preceding chapters of the Presidency draft which are both specific and relevant to research. Moreover, reference is made to Germany's previous comments. The rules set out in Chapter IX also need to be coordinated with one another.*

*The question also arises as to why, unlike the current Directive's treatment of scientific and historical uses, which consists exclusively of special privileges for those purposes, Articles 83a to 83c impose limits on data processing which would restrict scientific freedom in particular. This relates in particular to the introductory words "within the limits of this Regulation".*

*In addition, Germany still needs to examine in detail whether these provisions are compatible with freedom of opinion and scientific freedom.*

*It remains unclear what effects the strict separation of the rules on data processing for historical, statistical or scientific purposes may have. For example, processing of data for scientific purposes often includes some statistical processing.*

*In view of the outstanding issues, inter alia as regards practical repercussions, Germany hereby enters a scrutiny reservation in respect of Articles 83a to 83c.*

<p style="text-align: center;"><i>Article 83a</i></p> <p style="text-align: center;"><i>Processing of personal data for historical purposes</i></p> <p>1. <u>Within the limits of this Regulation, processing of personal data for historical purposes in archives carried out by public authorities or public bodies pursuant to Union or Member State law shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose which does not exceed the period necessary for the sole purpose of processing for historical purposes, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual, and specifications on the conditions for access to the data.</u></p>	<p style="text-align: center;"><i>Article 83a</i></p> <p style="text-align: center;"><i>Processing of personal data for historical purposes</i></p> <p><i>Comment:</i></p> <p><i>The fundamental question arises as to whether the term "historical purposes" can really cover all use of archives. Public archives are not given a legal mandate solely for historical purposes; their task is broader. Since Article 83a explicitly prohibits use in archives for "any other purposes", a comprehensive definition of the term "historical purposes" is required here.</i></p>
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*The phrase "... which does not exceed the period necessary for the sole purpose of processing for historical purposes ..." should be deleted. Such wording fails to take account of archiving practices. It is precisely the purpose of archives to safeguard documents and make them available on a permanent basis, rather than for a specified period only. With regard to historical research in particular, it is impossible to predict whether information will become important, and if so, at what point and for how long.*

*Archives are fundamentally important for the process of addressing past injustices, such as the regime of terror under the Nazis or communist dictatorships. We must ensure that archives can continue to perform the tasks involved in meeting that need. In particular, Article 83a is not well suited to the purpose of addressing the past. The proposed exemptions ("within the limits of this Regulation") do not go far enough. In addition to "historical purposes", the concept of addressing the past extends to historical and political education and rights of access for media and public authorities. Autonomous categorical exemptions are necessary if archives are to continue to perform their legal mandate of addressing past injustices. In that connection, reference is made to Germany's comments of 31 October 2013 concerning Articles 83a to 83c.*

	<p><i>Proposed wording for an exemption for the archives responsible for addressing past injustices under the communist dictatorships:</i></p> <p><i>"Establishments which are legally responsible for the documents of the secret police services of the former communist dictatorships may keep, process, publish and provide access to personal data insofar as the interests or fundamental rights and freedoms of the data subject do not outweigh the interests of processing, publishing and disclosing such documents."</i></p>
<p><b><u>2. By derogation from paragraph 1 and without prejudice to Article 80a, the controller shall take appropriate measures to ensure that personal data which are processed for the purposes referred to in paragraph 1 may be made accessible to recipients only for reasons of public interest 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 to which the controller is subject.</u></b></p>	

<p>3. Article 14a shall not apply where and insofar as, <b><u>the data are processed only</u></b> for historical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or <b><u>obtaining</u></b> or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate <b><u>measures to safeguard the rights and freedoms of the data subject</u></b></p>	
<p>4. Articles 15, 17, 17a, and 18 shall not apply <b><u>insofar as such restriction is necessary for the fulfilment for the purposes referred to in paragraphs 1 and 2,</u></b> provided that the controller provides appropriate <b><u>measures to,</u></b> taking into account the risks for <b><u>the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individual.</u></b></p>	<p><i>Alongside the restriction relating to Articles 14a, 15, 17, 17a and 18, the application of Article 16 also should at least be limited. Any possibility of the original content of a document being distorted or even destroyed must be ruled out. Article 16 ("right to rectification") should also be included in the list at the end of recital 125.</i></p> <p><i>Article 19 ("right to object") should be included in this list too. As a rule, the right to object encompasses or presupposes the right of access, so the previous exceptions, in particular Article 15, would be cast in a new light.</i></p>

*The latter half of Article 83a(4) GDPR, “in particular to ensure that the data are not used for taking measures or decisions regarding particular individual”, should be deleted. Otherwise, many uses of archives currently explicitly permitted by law and intended to address past injustices would no longer be permissible. These include examining, pursuant to the Stasi Records Act, whether members of parliament, civil service employees and other groups of people collaborated with the State Security Service, security checks and criminal investigations.*

*Furthermore, it would not be possible to substantiate grounds for exclusion from particular social benefits because of Stasi collaboration or violation of the principles of the rule of law and humanity. Access for researchers and journalists to files concerning the activities of unofficial Stasi collaborators or to records on figures from contemporary history, office holders and officials might no longer be permissible because of the fear of incriminatory effects.*

Article 83b

Processing of personal data for statistical purposes

1. Within the limits of this Regulation, personal data may be processed for statistical purposes carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that:
  - (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;
  - (b) 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;
  - (c) the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and

Article 83b

Processing of personal data for statistical purposes

*Comment:*

*We request clarification from the Presidency regarding the limitation to official statistics.*

*The relationship to Regulation 223/2009 is unclear.*

*In paragraph 1 of Article 83b, the words "within the limits of this Regulation" should be deleted. This wording does not clarify the relationship to other legal acts concerning statistics either. Nor does it follow from recital 124b.*

*It is not clear what period is referred to in paragraph 1 ("for a period that does not exceed the period necessary for the sole purpose of compiling statistics"). If the verification phase is meant, the meaning of this provision is not evident.*

(d) that the controller provides appropriate safeguards for the rights and freedoms of the data subject individual

2. Article 14a shall not apply where and insofar as, the data are processed for statistical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if obtaining or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate measures to safeguard the rights and freedoms of the data subject.

2a. Articles 15 and 16 shall not apply where and insofar as, for processing for statistical purposes, it proves impossible or would involve a disproportionate effort for the controller to grant access to, or rectification of, the personal data.

3. Articles 17, 17a, and 18 shall not apply when and insofar as such restriction is necessary for the fulfilment of statistical purposes and personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate measures to safeguard the rights and freedoms of the data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*It is not clear why the choice has been made to use wording in Article 83b paragraph 2 ("...the data are processed for statistical purposes...") that differs from that in Article 83b paragraph 2a ("...for processing for statistical purposes..."), even though they refer to the same thing, namely the scope.*

*Paragraphs 2, 2a and 3 should be combined and in each case the duplication of paragraph 1 (in particular of points (c) and (d)) should be removed.*

*We support the derogation from Article 14a which in general excludes statistics provided for by law from this requirement (paragraph 4).*

*Such a provision is necessary, because sometimes many millions of administrative data sets are analysed for official statistics (e.g. censuses, income tax statistics) and it would not be practicable to inform the data subjects individually.*

*Article 15 should - as intended - apply only when implementation is actually possible and no disproportionate effort is caused. To avoid unnecessary administrative costs the information mentioned should have to be provided only on request, however. This should be clarified by the addition of "on request" in the first sentence of Article 15 (e.g. after "obtain").*

*A right to rectification generally makes no sense in the context of statistics. The aim of statistical analyses is to record mass phenomena. Individuals' raw data and any inaccuracies are rendered anonymous when they are combined to produce statistics. Insofar as the data are used only for statistical purposes, the data subject therefore has no interest from the protection viewpoint in "his or her" data being corrected. Article 16 should therefore not be applicable in the context of statistics in general.*

*Statistics are already excluded from the scope of Article 17 by the provision in paragraph 3(d). This is to be welcomed. A corresponding reference should also be inserted in the other articles that are not applicable to statistics or applicable only subject to certain restrictions.*

*The restriction on processing pursuant to Article 17a - and correspondingly on Article 17b - makes no sense for processing for statistical purposes, at least not for statistics provided for by law.*

*As in Article 16, the data subject has no recognisable interest warranting protection here either. Along the lines of paragraph 4(c) of Article 14a, processing for statistical purposes required by by European or national law should be exempted at least .*

*In addition, we find the wording of Article 83b paragraph 3 ("restriction") unfortunate. This "restriction" refers to the non-application of the provisions mentioned, and Article 17a regulates the right to restriction. This could be misinterpreted as meaning that the word "restriction" in Article 83b(3) relates only to Article 17a. This would not make any sense, however. We would suggest replacing "such restrictions" in Article 83b(3) by "it".*

*With regard to Article 18, it is unclear what provision is intended here and to what extent official statistics are concerned.*

*It is also questionable whether the publication of personal data in the form of individual statistics if the data subject gives consent is possible under Article 83c(2) or not at all.*



Article 83c

Processing for scientific purposes

1. Within the limits of this Regulation, personal data may be processed for scientific purposes and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) 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;

(c) the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and

Article 83c

Processing for scientific purposes

*Comment:*

*The phrase "within the limits of this Regulation" should be deleted. It is not a question of the limits of the Regulation, but rather of the interplay between Article 83c and the provisions of the draft Regulation that are specific or relevant to research and explicitly refer to that article.*

*The introductory text of paragraph 1 seems excessive. Some cross-cutting aspects are mentioned several times in that paragraph and in the paragraphs that follow, making inter alia the relationship between the paragraphs unclear. For example, the substance of paragraph 3 is already covered in paragraph 1 and aspects of paragraphs 4 and 5 are already mentioned in paragraph 1. The same applies to paragraph 2(c) and the enumeration which precedes it in the opening to paragraph 2. The substance of paragraph 1(c) is also unclear and our initial assessment is that it should be deleted.*

**(d) In these cases, the controller shall provide for appropriate measures to safeguard the rights and freedoms of the data subject.**

2. Personal data processed for scientific 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 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; or

**(c) the publication or other public disclosure is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests.**

3. Processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.

*The Regulation also needs to make provision for the requisite authorisation to allow Member States to have more specific or deviating rules. Except for the special case of the obligations to provide information pursuant to Article 14, this is not provided for by the proposal. This is necessary however, as follows from Germany's previous comments. It should be borne in mind that research, for example biomedical research, is constantly evolving, and the legislator must be able to respond to this appropriately where required.*

4. Article 14a shall not apply where and insofar as, **the data are processed only** for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort or if **obtaining** or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate **measures to safeguard the rights and freedoms of the data subject.**
5. Articles 17, 17a, and 18 shall not apply when **and insofar as such restriction is necessary for the fulfilment of statistical purposes and** personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate **measures to** safeguard the rights and freedoms of **the data** subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

**Article 84**  
**Obligations of secrecy**

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

**Article 84**  
Obligations of secrecy

***Comment: The scope of this provision is unclear. For this reason Germany must enter a scrutiny reservation.***  
***The provision should in any case not only be limited to investigative powers.***

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the (...) powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

<p>2. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them<sup>1</sup>.</p>	<p>2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.</p>
<p style="text-align: center;"><i>.Article 85</i></p> <p><b><i>Existing data protection rules of churches and religious associations</i></b></p>	<p style="text-align: center;">Article 85</p> <p style="text-align: center;"><b>Existing data protection rules of churches and religious associations or communities</b></p> <p><b><i>Comment: The preservation and protection of religious self-determination must be guaranteed - Article 140 of the Basic Law in conjunction with Article 136 of the WRV (Weimar Republic Constitution); Article 17 TFEU ('The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.').</i></b></p>

<sup>1</sup> This might need to be moved to Chapter XI on final provision.

<p>1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.</p>	<p>1. <u>Member States may make provision, on the basis of the right to self-determination guaranteed in Member State law, for churches or religious associations or communities to adopt and apply independent and comprehensive rules which guarantee a level of data protection equivalent to that set by this Regulation for the protection of natural persons during the processing of personal data.</u></p>
<p>2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation.</p>	<p>2. Churches and religious associations or communities, which apply comprehensive data protection rules in accordance with paragraph 1, shall establish an independent supervisory authority (...), <u>unless they are subject to the supervision of a supervisory authority under Chapter VI of this Regulation.</u></p>

<p style="text-align: center;"><i>Article 86</i> <b><i>Exercise of the delegation</i></b></p> <p>1.</p>	<p style="text-align: center;"><i>Article 86</i> <b><i>Exercise of the delegation</i></b></p> <p><b><i>Comment: With reference to the position of the German Bundestag of December 2012, Germany is entering an explicit reservation. Article 86 needs to be adapted after it has been clarified in future discussions which powers to adopt delegated acts are being maintained.</i></b></p>
<p>2. The delegation of power referred to in (...) Article 8(3), Article 9, (...), Article <u>39a(7)</u>, [Article 43(3)], (...), Article <u>79a(4)</u>, Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.</p>	

<p>3. The delegation of power referred to in (...) Article 8(3), (...) Article <u>39a(7)</u>, [Article 43(3)], (...) Article <u>79a(4)</u>, Article 81(3) <b>and</b> Article 82(3) (...) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	
<p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p>	
<p>5. A delegated act adopted pursuant to (...) Article 8(3), Article 9(3), (...) Article <u>39a(7)</u>, [Article 43(3)], (...), Article <u>79a(4)</u>, Article 81(3) <b>and</b> Article 82(3) (...) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.</p>	



<p style="text-align: center;"><i>Article 87</i></p> <p style="text-align: center;"><b><i>Committee procedure</i></b></p> <p>1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</p>	<p style="text-align: center;"><i>Article 87</i></p> <p style="text-align: center;"><b><i>Committee procedure</i></b></p> <p>1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</p>
<p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p>	<p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p>
<p>3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.</p>	<p>3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.</p>

<p style="text-align: center;"><i>Article 88</i></p> <p style="text-align: center;"><b><i>Repeal of Directive 95/46/EC</i></b></p> <p>1. Directive 95/46/EC is repealed.</p>	<p style="text-align: center;"><i>Article 88 Repeal of Directive 95/46/EC</i></p> <p><b><i>Comment: Article 88 cannot be definitively assessed until the Regulation's scope is fixed. In particular, questions regarding the references to Directive 95/46/EC in the Regulation (e.g. Article 41(3)(a) in relation to 'Safe Harbour') require clarification. Germany must therefore maintain a scrutiny reservation.</i></b></p> <p>1. Directive 95/46/EC is repealed.</p>
<p>2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.</p>	<p>2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.</p>

<p style="text-align: center;"><i>Article 89</i></p> <p style="text-align: center;"><b><i>Relationship to and amendment of Directive 2002/58/EC</i></b></p> <p>1. This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.</p>	<p style="text-align: center;"><i>Article 89</i></p> <p style="text-align: center;"><b><i>Relationship to and amendment of Directive 2002/58/EC</i></b></p> <p><b><i>Comment: Since there is still a considerable need to discuss the relationship with other provisions of EU law such as Directive 2002/58/EC, Germany is entering a scrutiny reservation.</i></b></p>
<p>2 Article 1(2) of Directive 2002/58/EC shall be deleted.</p>	

*Article 89a*

***Relationship to previously concluded Agreements***

*International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to the entry into force of this Regulation, and which are in compliance with Directive 95/46/EC, shall remain in force until amended, replaced or revoked<sup>1</sup>.*

*Article 89a*

***Relationship to previously concluded Agreements***

Since the newly added provision raises many questions, in particular those set out below, German is entering a scrutiny reservation:

- in the hierarchy of rules, EU regulations prevail over national agreements. Such a clause would call into question the precedence of EU law and lead to a confusing and bureaucratic patchwork of rules.
- What will the aim of this Regulation be and which specific Member State agreements will be covered (for reasons of transparency and legal clarity, agreements ought to be explicitly mentioned, at least in the annex; e.g. similar lists are included in Article 69 of Regulation (EC) No 44/2001 - "Brussels I Regulation")?
- What is meant by "international agreements"? Does it include only multilateral agreements or also bilateral agreements between Member States and third countries ?
- Should Article 89a also cover the Commission's Safe Harbour Decision?

<sup>1</sup> COM reservation based on strong legal doubts on the legality of such proposal. COM refers to recital 79. DK, IT, RO and UK scrutiny reservation.

- What do parallel regulations in other fields look like? (transitional periods; renegotiation requirement etc.)?
- Following the Regulation's entry into force, the incompatibility of bilateral arrangements with the Regulation might result in a requirement to terminate bilateral agreements. That is not expressed in this text which suggests rather the opposite.

*Article 90*  
***Evaluation***

The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Regulation. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, in particular taking account of developments in information technology and in the light of the state of progress in the information society. The reports shall be made public.

*Article 90*  
***Evaluation***

The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Regulation. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, in particular taking account of developments in information technology and in the light of the state of progress in the information society. The reports shall be made public.

<p style="text-align: center;"><i>Article 91</i> <b>Entry into force and application</b></p> <p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	<p style="text-align: center;"><i>Article 91</i> <b>Entry into force and application</b></p> <p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>
<p>2. It shall apply from [<i>two years from the date referred to in paragraph 1</i>].</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States</p>	<p>2. It shall apply from [<i>two years from the date referred to in paragraph 1</i>].</p> <p><b><i>Germany cannot assess the suitability of the final provisions until the whole consultation process has been completed. Without amendments to the Commission proposal, it would, for instance, be scarcely feasible in a transitional period of only two years to undertake a complete revision of all sector-specific data protection law in Germany and downgrade it to purely national implementing rules. Similarly, only at the end of the consultations will it be possible to clarify whether specific transitional arrangements are required for private data processors in order to maintain legally protected positions of trust.</i></b></p>

## **IRELAND**

### **Article 80 (Freedom of expression)**

Replace the words "Member State law shall ..." with "The national law of the Member State shall ...".

Firstly, this amendment will bring the text of article 80 into line with the wording of article 6.3(b); secondly, it recognises more clearly the role of case law as well as Member State legislation.

Article 80a (Access to official documents) In order to accommodate UK concerns that access should also be available to documents held by private bodies carrying out public functions, the text of recital 18 (which should probably be relocated to recital 121a) could be amended by inserting the follow before the last sentence: "This may also apply to official documents held by a private body."

### **Article 81 (Health-related data)**

- Delete the reference to point (g) in the introduction to paragraph 1;
- In subparagraph (a), replace "professional secrecy" with "professional confidentiality";
- In subparagraph (a), replace "management of health-care services" with "management of health-care systems and services";
- In subparagraph (a), delete final words "under Member State law ... or";
- In paragraph (b), delete "cross-border";
- Delete paragraph 3.

### **Article 82 (Employment context)**

In paragraph 1, after "organisation of work" insert "equality and diversity in the workplace,".

### **Article 83a (Historical purposes)**

- We favour a separate article to cover archives, as suggested by several delegations;
- In paragraph 1, delete "for a longer period than necessary for that initial purpose which does not exceed the period necessary for the sole purpose of processing for historical purposes";
- In paragraph 2, clarify the scope of the derogation from paragraph 1;
- In paragraph 4, insert 16 and 19.



### **Article 83b (Statistical purposes)**

- In paragraph 1, delete "and may be processed for those purposes for a longer period than necessary for that initial purpose";
- In paragraph 1, delete subparagraph 1(c);
- In paragraph 1, delete "individual" at the end of subparagraph (d);
- In paragraph 3, insert reference to article 19 and delete the words "and personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics".

### **Article 83c (Scientific purposes)**

- In paragraph 1, delete subparagraph (c).

### **Article 84 (Secrecy obligations)**

We would prefer to refer to "professional confidentiality" rather than "professional secrecy".

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## FRANCE

### **Article 81 (processing of personal data concerning health)**

Following discussions at the meeting of the DAPIX Working Party on 8, 9 and 10 January 2014, the French authorities wish to formalise the items which we set out orally and to submit to the Presidency alternative wording for Article 81 of the proposal for a Regulation with regard to the processing of personal data concerning health. As already indicated, we are on the whole able to support this provision, subject to the following amendments:

- In the first paragraph, the words "*Within the limits of this Regulation*" should be **deleted**;
- In point (b) of paragraph 1, we wish to **add** a reference to "*health security, monitoring and alert*" and to **delete** the **reference to "cross-border" cases**, insofar as serious cases which are purely national must also be able to benefit from the same derogations;
- In paragraph 2, we request the **deletion of the reference to registries** and the **addition** of a reference to "*studies conducted in the public interest in the area of public health*". On this last point, we wish to highlight the importance in quantitative terms of studies in the public interest in the area of health, which are neither official statistics nor conventional scientific studies (production of indicators, in particular of activity or quality, carrying-out of simulations, evaluations, etc.), and the implications thereof when reviewing Article 81 and also Article 83c (on this point, we refer to our written comments submitted in September 2013, which are included in particular in ST 14210/4/13 REV 4). On this subject, the French authorities have taken note of the amendment made to recital 126 and have noted the addition of a reference to "*studies conducted in the public interest in the area of public health*".

However, although this addition is a step in the right direction, it does not address the problems we have raised . For this reason we uphold our request that these words be added to Article 81.

- In paragraph 3, we would like square brackets to be added in order to indicate that this provision is subject to a reservation pending a horizontal discussion on the delegated acts and the implementing acts.

**→The French authorities therefore propose the following amendments to the wording of Article 81 (amendments in bold, in italics and underlined):**

*Article 81*

*Processing of personal data for health -related purposes*

1. ~~***Within the limits of this Regulation and***~~ In accordance with points (g) and (h) of Article 9(2), (...) personal data referred to in Article 9(1) may be processed on the basis of Union law or Member State law which (...) provides for suitable and specific measures to safeguard the data subject's legitimate interests when necessary for:
  - (a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy; under Member State law or rules established by national competent bodies; or
  - (b) reasons of public interest in the area of public health, such as ***processing data for health security, monitoring and alert purposes***, protecting against ~~***serious cross-border***~~ threats to health or ensuring high standards of quality and safety, inter alia of medicinal products or medical devices; or ***producing quality and activity indicators, or assessing public policies***.
  - (c) (...)

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific (...) purposes or for studies conducted in the public interest in the area of public health, such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is subject to the conditions and safeguards referred to in Articles 83a to 83c.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1].

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## LATVIA

Latvia would like to include the following changes in wording of Article 83b Paragraph 2a and Article 83b Paragraph 3 to explicitly state that the derogations that are included in the aforementioned paragraphs are applicable to data processing for statistical purposes.

The changes in wording would be as written in bold underlined text:

1) in Article 83b Paragraph 2a:

*„Articles 15 and 16 shall not apply where and insofar as, ~~for processing~~ **the data are processed** for statistical purposes, it proves impossible or would involve a disproportionate effort for the controller to grant access to, or rectification of, the personal data.”*

2) in Article 83b Paragraph 3:

*„Articles 17, 17a, and 18 shall not apply when and insofar as ~~such restriction is necessary for the fulfilment of statistical purposes~~ **the data are processed for statistical purposes** and personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate measures to safeguard the rights and freedoms of the data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.”*

But still we would like to inform you on our scrutiny process in capital thus we will inform you in the nearest future on the results of possibility to recall our scrutiny reservations.

## **POLAND**

Proposed changes are marked in bold and underlined. These are purely changes of wording and should be read together with our interventions during the DAPIX meeting of 8-10.01.2014. The changes constitute an addition to our previous written comments (included in document 14210/2/13), which should be considered still valid where applicable.

### **Art. 80 par. 1, first sentence:**

We prefer the previous wording of this sentence, i.e. „Member States shall provide for exemptions or derogations from the (...)”, instead of “Member State law shall (...) reconcile”

The previous wording was similar to the one that we currently have in Directive 95/46.

### **Art. 81 par. 1 letter a, fourth line:**

“(...) subject to the **legal** obligation of professional secrecy (...)”

### **Art. 81 par. 2:**

Processing of personal data concerning health which is necessary for historical, ~~statistical~~**official statistics** or scientific (...) purposes, such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is subject to the conditions and safeguards referred to in Articles 83a to 83c.

### **Art. 82 par. 0 (new paragraph):**

**Consent to processing in the employment context shall be considered as freely-given if the worker has a genuine free choice and is subsequently able to withdraw the consent without detriment.**

**General remark: for articles 83a-83c please see also our comments included in document 14210/2/13**

**Art. 83a par. 4:**

Articles 15, **16**, 17, 17a, and 18 shall not apply insofar as such restriction is necessary for the fulfilment for the purposes referred to in paragraphs 1 and 2, provided that the controller provides appropriate measures to, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individual. **When data are being processed for historical or archival purposes, the data subject shall have the right to obtain completion of incomplete or out of date personal data by means of providing a supplementary statement.**

**Art. 83b (we ask for equivalent wording changes to be made in recitals):**

*Article 83b*

*Processing of personal data for ~~statistical~~ **official statistics** purposes*

4. Within the limits of this Regulation, personal data may be processed for ~~statistical~~ **official statistics** purposes carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that:
- (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;
  - (b) 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;
  - (c) the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and

- (d) that the controller provides appropriate safeguards for the rights and freedoms of the data subject individual
5. Article 14a shall not apply where and insofar as, the data are processed for ~~statistical~~ **official statistics** purposes, the provision of such information proves impossible or would involve a disproportionate effort or if obtaining or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate measures to safeguard the rights and freedoms of the data subject.
- 2a. Articles 15 and 16 shall not apply where and insofar as, for processing for ~~statistical~~ **official statistics** purposes, it proves impossible or would involve a disproportionate effort for the controller to grant access to, or rectification of, the personal data.
6. Articles 17, 17a, and 18 shall not apply when and insofar as such restriction is necessary for the fulfilment of ~~statistical~~ **official statistics** purposes and personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate measures to safeguard the rights and freedoms of the data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

**Recital 124a:**

The processing of personal data for statistical purposes should not be considered incompatible with the purposes for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, where the processing, subject to appropriate safeguards, is carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law, including for health purposes. Such public authorities or public bodies should be services, which pursuant to Union or Member State law, have as their task to develop, produce and disseminate of official statistics.



The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union, while national statistics should also comply with national statistical law. Union law or national law should, within the limits of this Regulation, determine ~~statistical content, control of access,~~ specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for guaranteeing statistical confidentiality.

Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities provides further specifications on statistical confidentiality for European statistics.

**Art. 83c par. 2:**

Personal data processed for scientific 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 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; or
- (c) the publication or other public disclosure is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests.

**Art. 20 par. 1 letter a:**

is ~~carried out in the course of~~ **necessary for** the entering into, or performance of, a contract between the data subject and a data controller and suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the rights of the data subject to obtain human intervention on the part of the controller, to express his or her point of view, and to contest the decision; or

**art. 20 par. 5:**

**Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject shall not be based solely or predominantly on automated processing and shall include human assessment, including an explanation of the decision reached after such an assessment. The suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 1 shall include the right to obtain human assessment and an explanation of the decision reached after such assessment.**

**art. 20 par. 5a:**

**The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with Article 66 paragraph 1(b) and (ba) for further specifying the criteria and conditions for profiling pursuant to paragraph 2.**

## PORTUGAL

A proposal for the wording of Article 83b/1:

### Article 83b

#### Processing of personal data for statistical purposes

- 1.
2. **Within the limits of this Regulation, personal data may be processed for statistical purposes carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject, and according to the following conditions:**
  - ~~(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;~~
  - (b) 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;**
  - (c) the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and**
  - (d) that the controller provides appropriate safeguards for the rights and freedoms of the data subject individual**

## ROMANIA

RO agrees with the formulation of **art. 80, 80a and 80b.**

### **Art. 81 – Processing of personal data for health -related purposes**

1. Within the limits of this Regulation and in accordance with points **(g) and (h)** of Article 9(2), (...) personal data **referred to in Article 9(1) may be processed** on the basis of Union law or Member State law which (...) provides for suitable and specific measures to safeguard the data subject's legitimate interests **when** necessary for:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy **under Union or Member State law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy; under Member State law or rules established by national competent bodies;**

For legal and linguistic clarity we propose to reformulate the text of the paragraph 1, point (a) as follows:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies ~~to the obligation in the field~~ of professional secrecy, or by another person also subject to an equivalent obligation of secrecy under **professional secrecy rules stated in Union or Member State law or ~~rules~~** established by national competent bodies.

## **Art. 82 - Processing in the employment context**

### **Paragraph (2)**

2. *Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them*

RO would like to draw the attention about the fact that there are many other articles in the text of the regulation similar to art 82 (2) on which it hasn't been established an obligation to notify COM on the provisions that the MS adopt.

In this sense, we indicate the provisions of Art.53, Art.44 par.5, Art.17 par.3, b, Art.6 par.3, point.b), Art.79b par (3). We consider that for this provisions a uniform approach should be established.

The same observations could be made also for art. 84 par (2).

## **Art. 83a - Processing of personal data for historical purposes**

### **Paragraph 1**

RO proposes to redraft Article 83a paragraph 1 as follows:

- (1) Within the limits of this Regulation, processing of personal data for historical purposes in archives carried out by public authorities or public bodies pursuant to Union or Member State law, ***including the processing carried out by public institutions managing the files issued or elaborated by the totalitarian regimes***, and shall not be considered incompatible with the purpose for which the data are initially collected ...etc”.

In this context, we want to highlight the issue regarding the revealing of the former secret services.

The right of citizens to consult the documents created by the former secret police agencies, for exercising the right of access to information regarding their own person, as well as for revealing and sanctioning the abuses and violation of human rights committed in totalitarian regimes<sup>1</sup> is regulated by the national legislation of the Member States, which ensures the use of such data for the benefit of victims and the public interest.

To avoid iteration of traumatic episodes or public debates with long term implications, after 1990, the authorities in Central and Eastern Europe decided that victims of totalitarian regimes, as well as their inheritors, such as citizens who have suffered from a moral or material point of view and their, should be able to document about their memory and breach of their fundamental rights, by ensuring direct access to the former secret service archives.

In this respect, all the archives were transferred to public institutions, under the authority of the national parliaments. These institutions are providing to stakeholders (including researchers and historians) all the documentation created by the former political police, in order to publicize abuses of totalitarian regimes that have produced serious violations of fundamental human rights and freedoms. At the same time, this activity is carried out based on national legislation and respecting the current European legal framework, regarding the processing of personal data.

## **Art. 83a - Processing of personal data for historical purposes**

### **Paragraph 1**

*1. Within the limits of this Regulation, processing of personal data for historical purposes in archives carried out by public authorities or public bodies pursuant to Union or Member State law (...)*

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<sup>1</sup> We use the wording „*totalitarian regimes*” in order to comprise not only the communism but also the Communist and Nazi regimes.

RO would like to point out that the text refers only to processing by *public authorities or public bodies*, contrary to the provision of 95/46/EC Directive (art. 6(1)) which applies to all categories of controllers.

RO proposes that the art 83a be applied to **all controllers, not only public authorities and bodies.**

**Art. 83c alin.(2) lit.c)**

2. Personal data processed for scientific 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 purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests and:

(...)

**(c) the publication or other public disclosure is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests.**

RO considers the texts of paragraph 2 and letter c) of the same paragraph are very similar in formulation. In this respect, we propose deletion of letter c) or reevaluation of the text.

**Art. 84 alin.(2) - Obligations of secrecy**

**Same observations as art 82**

## **SLOVAKIA**

### **Article 80**

The Slovak Republic is leaning towards the opinion of the Czech Republic which states that the issue of balance between the rights of the data protection and the freedom of speech cannot be objectively resolved by integrating it into the text of the regulation and conflict resolution of these two rights should be left to each particular national court. The Slovak Republic believes that the addressing the relationship between these two rights in the text of the Regulation is potentially harming and could lead to application of one rights at the expense of the other. We also support opinion of the Portugal which states that the balancing of two basic rights which are in conflict takes place on the daily basis in the everyday life and the specific adjustment of this matter in the Regulation is not needed.

### **Article 80a**

The Slovak Republic does not have any substantial comment towards this article.

### **Article 80b**

This article is acceptable for the Slovak Republic in its current form.

### **Articles 81, 82, 82a**

The Slovak Republic applies scrutiny reservation towards these articles.

### **Article 83a**

The Slovak Republic joins those member states which expressed a request towards elaboration of an independent article which will address the processing of personal data for historical purposes. Addressing the processing of personal data for historical purposes and scientific purposes separately has its justification based on the fact that not every processing on historical purposes is processing on scientific purposes. It is important to judge these two areas separately in a manner which will not obstruct historical and scientific research. We also join those member states which request incorporation of the private archives into this article due to the existence of great number of such archives established for private purposes and which would not be bound by this Regulation.

### **Article 83b**

We also request elaboration of individual article regulating the processing of personal data for statistical purposes by private subjects and we join Finland, Germany, Netherlands, Great Britain and Spain in this request. We also support the proposal of Austria for precision of the request which would oblige controllers to use anonymous data, pseudonymous data and only in those cases where it is not objectively possible concrete personal data of the data subject for statistical purposes.



## **Articles 83c, 84 and 85**

The Slovak Republic has no substantial comments.

### **General comment regarding the Chapter IX**

The Slovak Republic joins those member states which expressed their reservation towards the use of the term “within the limits of this Regulation” in the whole text of this chapter. We believe this particular term is redundant and has no additional value therefore we request its deletion from the whole Chapter IX.

### **Towards the pseudonymous data**

The Slovak republic joins the proposal of Estonia and also supports a compromise which does not exclude including of the definition of the term pseudo anonymous data at the same time as the definition of the process of pseudonymisation of the personal data. We believe that including of these two definitions does not exclude each other, on the contrary it would contribute to a better legal certainty in interpretation of the term pseudonymous data and at the same time it is necessary to set the process of pseudonymisation as an instrument towards the security of personal data.

### **Towards the profiling**

Slovak Republic supports current compromise of the regulation of the profiling (alternative A), we consider it the most elaborated and the most able to attribute to personal data protection in the context of profiling. Alternative B – recommendation of the Council of Europe which includes specific definition of the profile and the profiling is also acceptable. The ideal solution for us is the incorporation of the definition of the profile into the current compromise text. The Slovak Republic does not support alternative C – current modification of the profiling by the Directive 95/46/EC which according to our opinion does not guarantee requested protection of data subject in the content of profiling.

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## **SWEDEN**

### **Comments regarding articles 83a, 83b and 83c**

#### *General remarks*

Sweden wishes to thank the Presidency for inviting delegations to submit written comments.

Sweden's opinion is that the paper produced by Ireland (9181/13) is a well-founded base for these discussions on the processing of personal data for historical, statistical and scientific purposes.

Sweden would welcome a possibility to deal with archives in the same manner as freedom of speech and public access to documents, i.e. in an article which would state that personal data in archives may be processed in accordance with Union law or Member State law which reconciles such processing with the right to personal data pursuant to the Regulation.

Sweden can in principle also support the French proposal (8667/13). It is of utmost importance that national legislation on the processing by national archives can continue to be applied. It is also important to bear the principle of public access in mind when regulating the processing of data for historical purposes.

Sweden maintains a general scrutiny reservation and reserve the right to provide additional comments and suggestions.

#### *Specific comments regarding the Presidency's proposals*

Firstly, Sweden opposes the deletion of article 9.2(i). Secondly, it is not evidently clear what purpose the proposed division of article 83 into three separate articles serves. Sweden would like to underline the potential risk of such a division, namely that it could often be difficult or impossible to decide which of the three categories covers certain processing.

Sweden proposes the following amendments to articles 83a, 83b and 83c.

## Article 83a

### *Processing of personal data for historical purposes*

1. Processing of personal data for historical purposes ~~in archives carried out by public authorities or public bodies pursuant to Union or Member State law~~, shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, ~~in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual, and specifications on the conditions for access to the data.~~

*Comment: Processing for historical purposes is not only carried out by archive services. The latter part of this provision should be deleted since it is overly prescriptive and unrealistic.*

2. ~~The controller shall ensure that personal data which are processed for the purposes referred to in paragraph 1 may be made accessible only to recipients after having demonstrated that the data will be used only for historical purposes.~~

*Comment: This provision is overly prescriptive and we question how it is to be applied in practice.*

3. Article 14a shall not apply where and insofar as, for processing for historical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.

4. Articles 15, **16**, 17, 17a, 18 **and 19** shall not apply when personal data are kept for a period ~~which does not exceed the period necessary for the sole purpose of processing for historical purposes~~, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, ~~in particular to ensure that the data are not used for taking measures or decisions regarding particular individual.~~

*Comment: Articles 16 and 19 should be included. There is no need to include provisions regarding the time period since this is regulated in article 5. The latter part of this provision is overly prescriptive.*

*Article 83b*

*Processing of personal data for statistical purposes*

7. Processing of personal data for statistical purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, **such as in particular to ensuring** that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data).

*Comment: It should be made clear that the latter part of this provision is examples of what could be appropriate safeguards in a particular case.*

8. Article 14a shall not apply where and insofar as, for processing for statistical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.

9. Articles 15, **16**, 17, 17a, 18 **and 19** shall not apply when personal data are kept for ~~a period which does not exceed the period necessary for the sole purpose of compiling statistics,~~ provided that that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects **such as in particular to ensuring** that the data are not used for taking measures or decisions regarding particular individuals.

*Comment: Articles 16 and 19 should be included. There is no need to include provisions regarding the time period since this is regulated in article 5.*

*Article 83c*

*Processing for scientific purposes*

1. Within the limits of this Regulation, personal data may be processed for scientific purposes only if:
  - (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject;
  - (b) 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.

*Comment: The meaning of 'kept separately' needs to be clarified. Examination of scientific research should also be considered as processing for scientific purposes. This could be clarified in a recital.*

2. ~~Personal data processed for scientific 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 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 public by the data subject.~~

*Comment: Sweden is not convinced of the need to harmonize the rules governing publication of data for scientific purposes to this extent. The need to publish data will vary immensely depending on i.e. the context of the processing. Only in rare cases will publication of scientific findings contain personal data, instead they will contain the result of processing on pseudonymous data.*

10. Processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, ~~in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.~~

*Comment: This provision should be moved to the first paragraph. The latter part of this provision is overly prescriptive.*

11. Article 14a shall not apply where and insofar as, for processing for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards.

~~12. Articles 15, **16**, 17, 17a, 18 **and 19** shall not apply when personal data are kept for a period which does not exceed the period necessary for solely for scientific purposes, provided that that the controller implements appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, ~~in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.~~~~

*Comments: Articles 16 and 19 should also be included. There is no need to include provisions regarding the time period since this is regulated in article 5. The latter part of this provision is overly prescriptive.*

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