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THE EUROPEAN UNION**

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FREMP 72
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NOTE

from: Slovak Republic
to: Working Group on Information Exchange and Data Protection (DAPIX)

No. Cion prop.: 5853/12 DATAPROTECT 9 JAI 44 MI 58 DRS 9 DAPIX 12 FREMP 7
COMIX 61 CODEC 219

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)

Delegations find attached additional comments from the Slovak Republic on Chapters I and II of the draft General Data Protection Regulation.

Article 2

Referring to the possible interpretation problems of the revised PRES wording on the activities which do not fall under *acquis* (Art. 2.2a) SK finds as important to strike a better balance in distinguishing the particular areas which may not be under the material scope. We do also demand compliance with the current directive 95/46/EC, namely with the explicit exemptions for the personal data processing for the purposes of safeguarding the public order, national security and defence. This could appropriately be incorporated into the law enforcement exemption expressed in Article 2(2) (e). We also stick to actual wording of household exemption in Article 2 (2) (d).

Article 3

In general we support ambitious approach of the proposal to get data controllers from the third countries under the binding rules of the EU data protection. We are of the opinion that the key of success here lies in an appropriate wording for the territorial scope associated with an obligation to designate a legal representative in the Union according to Article 25(1) reinforced with effective sanction mechanism. The goal of such a mechanism would not merely be to impose fines, but mainly to preclude provisioning of services, selling of goods or client behaviour monitoring on whole EU territory. Having this sanction applied it would be possible to raise awareness in the third countries, thus creating the pressure to respect the EU legislation in the field of the personal data protection. Of course, the issue on controller's representative would deserve further discussion in the working group however this is the way how to make the provision more enforceable.

Article 4 generally

We appreciate the work of PRES, COM and all Member States. Most of our remarks have been incorporated or taken into account and therefore we have no any crucial comments to this Article.

We appreciate redaction of the Paragraph 3a to which we at the same time express our support. We still insist on extension of the demonstrative enumeration of biometric data processing operations at the end of the provisions of Article 4 (11), e.g. DNA analyses, scan of iris, signature tablets etc.)

Referring to the issue on definition of consent in Article 4 (8) (document of PRES 8004/13) from the general point of view SK can be supportive to the PRES' suggestion to replace the word "explicit" by "unambiguous" and also by the word "provable". The notion "explicit" should be however appropriate in Article 9 as for processing of special personal data categories. As regards Article 4 (8) we would welcome more clarity on whether the consent is given for the whole life cycle of data processing or just for individual operations. We do not have a difficulty with the current amendment of Article 8 concerning the child's data processing consent.

Relating to the changes in Article 4 in document of PRES 8004/2/13 we receive positively amendment of definition of third party what we consider as needed. We need more specified definition of paragraph 7 (recipient), paragraph 10 (genetic data) and paragraph 11 (biometric data). In relation to paragraph 9 we still insist on position that we consider as appropriate to extend the meaning of personal data breach to scope that it is also any violation of provisions on security of personal data processing (Articles 30 – 34). In connection to paragraph 14 we would like to cancel our reservation stated in note no. 34.

Article 5

We propose to consider in (d) an amendment possibility of retention of labelled outdated personal data where necessary and justified storage. We welcome amendment of wording "pursuant to Article 83" in (e) and we also support refilling of wording of (ee).

We would welcome to add another principle in Article 5, which would establish that the personal data may not be obtained under the guise of another purpose of processing or other activities; and the personal data obtained separately for different purposes should not be grouped. We would also welcome to add the provision, which state that in general personal data may be processed only in accordance with morality and in a manner not contrary to this regulation or other binding act of Union law or MS law. Of course the breach of this "general clause" could be linked with imposition of sanction.

Article 6 (1)

The provision in question allows in current wording concurrence of several legal bases mentioned in (a) to (f). Acceptance of such a formulation would provide a possibility for uncontrolled processing. Example of this concurrence is data processing based on the law (e.g. in public sector) and performance of legal obligations of a controller which would, in absence of legal regulations for performance of processing operation, obtain upon his own consideration consent of data subjects and process their personal data in the overlapping of the two legal bases. We believe that the legal bases for data processing should not be combined and only one, the most suitable, legal base should be put to use. We would welcome clarification of the term “vital interests of the data subject” in (d) by specifying recital no. 37 in order to be clear that mentioned expression is relating just the statuses of immediate threat for life, property or health of data subject. In the same way, we would also appreciate enhance legal certainty for the term „purposes for the legitimate interests“ in point (f) and we would like to that the legal basis of the processing of personal data may only apply to the controller. We would like to express our support to Hungarian proposal in point 4 for to supplement this provision (footnote no. 133) of document PRES 8004/13.

Article 7

In this provision we would welcome the strengthening of the concept of consent’s demonstrability, which is also related to the proposed clarification of definition “unambiguous and provable” in Article 4 (8) in document of PRES 8004/13. Our concern is mainly to provide that evidence on consent has to contain at least indication of data subject who provided consent, to whom this consent was given, for what purpose, list or scope of personal data, validity period of the consent and the conditions of its appeal. We would like to express support to point 25 of the Preamble but we would appreciate more concrete indication of demonstrative examples when relationship of subordination exists between the controller and data subject (e.g. relationship of employee and employer) as well as to complement that the controller cannot neither enforce nor underline the consent of data subject under treat of rejecting the contract, service, goods or obligation imposed to controller or processor by law. We also consider it necessary to draw attention to the absence of provision which would deal with the issue of time limit as well as with the scope of granted consent. Validity time of the consent should be limited and adequate to data processing purpose. The controller should consider and estimate period (necessity) of actual personal data processing (during the time for which the controller will need the personal data.

Article 8

The age limit is still disputable. The Slovak Republic has a concept on optimal age to distinguish a child from a citizen with limited legal capacity which is at the age of fifteen. We are opened to compromise in this issue taking into account a big difference of opinions between MS; even in the concept of the definition of child. We agree with opinion of Luxembourg in the footnote no. 151 in document of PRES 8004/13. We take positively the changes carried out in this provision in document of PRES 8004/2/2013, we consider them purposeful and we would like to express our support to them.

Article 9 (1)

We support the opinion of MS stated in the footnote no. 152 PRES 8004/13. We insist on our remark related to necessity of incorporation of biometrics to Article 9 (1). It relates to sensible personal data based on which the data subject is unmistakable disclosed and so a need for their special provision is desirable. We would also welcome the amendment of Article 9 so-called generally applicable identifier (social security number or other personal identification number of the data subject). Taking into account that all natural persons in all MS disposes by unique identification data, it is necessary that the regulation proposal should also take into consideration special provision of these data mainly in relation to those states that provide them with special and increased legal protection.

We would also call attention on it that the regulation proposal does not put sufficient attention to camera systems and monitoring of publicly accessible places. The making of video and audio recordings intervenes into the data protection area and we are of the opinion that it would be advisable to address this issue more. In this relation we remark that this requirement is justifiable for the reason that such monitoring also occurs on the processing of special categories of personal data pursuant to Article 9.

In connection to changes in document of PRES 8004/2/13 we have a following commentary. We have no problem from the point of greater political correctness in what concern the current specification of word “race” to “racial and ethnic origin”. We also support replacement of “substantial” by the word “important” in Paragraph 2 (g). We consider more positively the revised wording of paragraph 2a as precedent version and we are the opinion that this revised wording is in accordance with our national conception of personal data processing related to conviction of a crime or offence in so far that we can formulate our support to the wording of paragraph 2a.

Article 10

We share the Hungary opinion stated in footnote no. 171 in document of PRES 8004/13. We must further analyse the Belgian proposal supplemented to paragraph 2 in document of PRES 8004/2/13 but we support its basic idea. Like the PRES we consider as needed to stress the limitation of data subject rights only to the cases when data subject provides its personal data allowing its identification to a controller processing data not allowing a identification of data subject.