



Council of the
European Union

Brussels, 14 November 2014
(OR. en)

15544/14

Interinstitutional File:
2012/0011 (COD)

LIMITE

DATAPROTECT 166
JAI 875
MI 887
DRS 150
DAPIX 170
FREMP 204
COMIX 612
CODEC 2253

NOTE

From: Presidency
To: JHA Counsellors DAPIX/COREPER

Subject: Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)
- Chapter IX

Following the DAPIX meeting of 6-7 November 2014, delegations find attached a revised version of Chapter IX and the corresponding recitals.

JHA Counsellors are invited to discuss the changes (indicated in bold underlined text) in order to prepare the COREPER/Council discussion on this.

59) Restrictions on specific principles and on the rights of information, access, rectification and erasure or on the right to data portability, the right to object, measures based on profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, **further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes**¹ or the protection of the data subject or the rights and freedoms of others, including social protection and public health. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹ CZ proposal.

121) Member States law should reconcile the rules governing freedom of expression, including journalistic, **academic**, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data for journalistic purposes, or for the purposes of **academic**, artistic or literary expression may be subject to derogations or exemptions from certain provisions of this Regulation in order to reconcile the right to the protection of personal data, with the right to freedom of expression and information, as guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.² **This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities, on co-operation and consistency, and remedies, liability and sanctions**³. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. (...)⁴

² FR proposal.

³ FR proposal.

⁴ PL suggested adding: 'Therefore, Member States should classify activities as "journalistic" for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these activities is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes'.

121a) *This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Public access to official documents may be considered as a public interest. Personal data in documents held by a public authority or a public body **should** be publicly disclosed by this authority or body if the disclosure is provided for by Union law or Member State law to which the public authority or public body is subject. Such laws should reconcile the interest of public access to official documents **and public sector information** with the right to the protection of personal data. The reference to public authorities and bodies should in this context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Union and national law, and in particular does not alter the obligations and rights set out in this Regulation. In particular, that Directive should not apply to documents access to which is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data⁵.*

122) (...)⁶.

123) (...)⁷.

124) (...)⁸.

⁵ Moved from recital 18.

⁶ Moved to recital 42a.

⁷ Moved to recital 42b.

⁸ Moved to recital 35a

125) The processing of personal data for historical, statistical or scientific (...) purposes and for archiving purposes (...) should, in addition to the general principles and specific rules of this Regulation, in particular as regards the conditions for lawful processing, also comply with respect other relevant legislation such as on clinical trials. The **further** processing of personal data for historical, statistical and scientific purposes and for archiving 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 purpose⁹ (...). Member States should be authorised to provide, under specific conditions and in the presence of appropriate safeguards for data subjects, specifications and derogations to the information requirements and the rights to access, rectification, erasure, **to be forgotten**, restriction of processing and on the right to data portability **and the right to object when processing personal data for historical, statistical or scientific purposes and for archiving purposes**¹⁰ (...) The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles.

125a)(...)¹¹.

⁹ This sentence clarifies that the requirements of Article 6(3) and (4) are presumed to be met regarding this kind of processing.

¹⁰ DK proposal.

¹¹ Moved to recitals 126c and 126d.

125aa)By coupling information from registries, researchers can obtain new knowledge of great value when it comes to e.g. widespread diseases as cardiovascular disease, cancer, depression etc. On the basis of registries, research results will be much more valid, as they draw on a larger population, whereas research results obtained with other means lack the same solidity. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about long-term impact of a number of social conditions e.g. unemployment, education, and the coupling of this information to other life conditions. Research results obtained on the basis of registries provide solid, high quality knowledge, which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people, and improve the efficiency of social services etc. Therefore as an independent legitimate legal basis and in order to facilitate scientific research, personal data can be processed for scientific purposes subject to appropriate conditions and safeguards set out in Member State or Union law. Hence consent from the data subject should not be necessary in each case¹².

125b)The importance of archives for the understanding of the history and culture of Europe²²—and “that well-kept and accessible archives contribute to the democratic function of our societies”, were underlined by Council Resolution of 6 May 2003 on archives in the Member States¹³. Where personal data are processed for archiving purposes (...), this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons, unless information on deceased persons impinges the interests of other identified or identifiable individuals¹⁴.

¹² DK proposal.

¹³ OJ C 113, 13.5.2003, p. 2.

¹⁴ IE reservation on the last part of this sentence. ES and MT thought that it was repetitious to refer to the non-application to deceased persons (also e.g. in recital 126, end first paragraph). MT added that certain sensitive data of deceased could be interesting, for example it would be interesting for a child to know if a deceased parent had a certain illness. MT suggested to add text like "if it did not impinge the interests of other data subjects". Support from EE and SK to the MT suggestion. SK suggested alternatively drafting on the lines that data on deceased persons linked to living persons could be used.

Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have¹⁵ a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide that personal data may be further processed for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes¹⁶.

Codes of conduct may contribute to the proper application of this Regulation, including when personal data are processed for archiving purposes in the public interest by further specifying appropriate safeguards for the rights and freedoms of the data subject¹⁷. Such codes should be drafted by Member States' official archives or by the European Archives Group. Regarding international transfers of personal data included in archives, these must take place without prejudice of the applying European and national rules for the circulation of cultural goods and national treasures¹⁸.

¹⁵ SE wanted to delete the reference to *main mission* because very few entities have as their main mission to acquire access to records, but it is something that they do, such a drafting would narrow down the scope. Support from DK, IE and EE.

¹⁶ CZ reservation;

¹⁷ CZ, DK, FI, HU, FR, MT, NL, PT, RO, SE, SI and UK scrutiny reservation.

¹⁸ FR proposal.

126) Where personal data are processed for scientific (...) purposes, this Regulation should also apply to that processing. **For the purposes of this Regulation, processing of personal data for scientific purposes should include fundamental research, applied research, privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area**¹⁹. Scientific purposes should also include studies conducted in the public interest in the area of public health. (...) To meet the specificities of processing personal data for scientific purposes (...) specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific (...) purposes. (...) If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures²⁰.

¹⁹ DE proposal.

²⁰ CZ, DK, FI, FR, HU, MT, NL, PT, RO, SE, SI and UK scrutiny reservation. PL suggested to add the following text somewhere in the recital " 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."

126a) Where personal data are processed for historical purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased person, unless information on deceased persons impinges the interests of other identified or identifiable individuals²¹.

(...)

126b) For the purpose of consenting to the participation in scientific research activities in clinical trials and the processing of the collected personal data the relevant provisions of Regulation (EU) No. 536/2014 of the European Parliament and of the Council should apply²².

126c) Where personal data are processed for statistical purposes, this Regulation should also apply to that processing. 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.

126d) 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 law.

²¹ IE reservation on the last part of this sentence.

²² DE proposal.

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 Communities²³ provides further specifications on statistical confidentiality for European statistics.

- 127) As regards the powers of the supervisory authorities to obtain from the controller or processor access personal data and access to its premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy²⁴.
- 128) This Regulation respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union. (...).

²³ OJ L 87, 31.3.2009, p. 164–173.

²⁴ CZ suggested adding a sentence: "This is without prejudice to existing Member State obligations to adopt professional secrecy where required by Union law". One should consider whether this recital would not be better placed among the recitals related to Chapter VI.

HAVE ADOPTED THIS REGULATION:

CHAPTER IX

PROVISIONS RELATING TO SPECIFIC DATA PROCESSING SITUATIONS

Article 80

Processing of personal data and freedom of expression and information²⁵

1. The national law of the Member State shall (...) reconcile²⁶ the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including the processing of personal data for journalistic purposes and the purposes of academic, artistic or literary expression.

2. For the purposes of paragraph 1, Member States may²⁷ provide for exemptions or derogations from the provisions in Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organizations), Chapter VI (independent supervisory authorities), Chapter VII (co-operation and consistency)²⁸ **for the processing of personal data carried out for journalistic purposes or the purpose of academic artistic or literary expression** if they are necessary to²⁹ reconcile the right to the protection of personal data with the freedom of expression and information.

²⁵ Reservation by BE; scrutiny reservation by DE, EE and SI. BE and UK thought that the balance between competing fundamental rights should be struck by the judiciary and not by the legislature. SE thought that it was important to keep a broad margin of appreciation for Member States.

²⁶ HR, PL, PT and SI thought the term 'reconcile' was not very felicitous as both were fundamental rights.

²⁷ BE, DE, FR, PL, RO and SI preferred 'shall'. This was also supported by SE as an alternative to the deletion of para. 2.

²⁸ BE, DE, FR and SE had requested to include also a reference to Chapter VIII.

²⁹ BE, DE, FR and PL preferred to replace the necessity test by 'in order to'.

Article 80a

Processing of personal data and public access to official documents (...)³⁰

Personal data in official documents (...) held by a public authority or a (...) body **for the performance of a task carried out in the public interest**³¹ 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 (...) official documents (...) with the right to the protection of personal data pursuant to this Regulation. **For these purposes Member States may provide for exemptions or derogations from Articles 12 to 20 , 23, 28 and 32**³².

Article 80aa

Processing of personal data and reuse of public sector information³³

Personal data in in public sector information 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 the reuse of such official documents and public sector information with the right to the protection of personal data pursuant to this Regulation. **For these purposes Member States may provide for exemptions or derogations from Articles 12 to 20 , 23, 28 and 32**³⁴.

³⁰ SK scrutiny reservation.

³¹ DE suggestion.

³² Further to DE proposal.

³³ New separate article further to SE proposal.

³⁴ Further to DE proposal.

*Article 80b*³⁵

Processing of national identification number

(...) Member States may determine the specific conditions for the processing of a national identification number or any other identifier of general application. In this case the national identification number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation.

Article 81

Processing of personal data for health -related purposes

(...)³⁶

Article 81a

Processing of genetic data

(...)³⁷

³⁵ DK, PL, SK scrutiny reservation.

³⁶ See Article 9(2)(h) and (4).

³⁷ See Article 9(2)(ha) and (4).

Article 82

Processing in the employment context³⁸

1. Member States may **by law , including by collective agreements**³⁹ , **provide for more specific rules or for stricter** to ensure the protection of the rights and freedoms in respect of 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, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property⁴⁰ 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. [**These rules must not fall short of the level of protection of this Regulation; they may provide for a higher level for the protection of employees**⁴¹.]
- [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].
3. **Member States may by law determine the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee**⁴².

³⁸ See recital 35a.

³⁹ DK proposal.

⁴⁰ FI proposal; this refers to normal practice in companies to protect their property or their customer's property as well as their employees (like alone working employees) and their customer's safety with camera surveillance.

⁴¹ DE proposal. COM, FI, RO and SI scrutiny reservation.

⁴² DE proposal. COM, FI, RO and SI scrutiny reservation. DE also proposed a paragraph 4: "Member States shall also have the right to maintain or create rules for law enforcement through authorities and courts that derogate from this Regulation".

Article 82a

Processing for purposes of social protection

(...)

Article 83

Derogations applying to processing of personal data for archiving, scientific, statistical and historical purposes⁴³

1. Where personal data are **exclusively**⁴⁴ processed for archiving purposes **in the public interest**, scientific, statistical or historical purposes Union or Member State law may, subject to appropriate safeguards for the rights and freedoms of the data subject, provide for derogations from Articles 14a(1) and (2), 15, 16, 17, 17a, 18 and 19⁴⁵, insofar as such derogation is necessary for the fulfilment of the specific purposes.

⁴³ RO and SI scrutiny reservation. COM, AT and PL thought that the derogations for archiving should be confined to archiving in the public interest. IE thought such public interest filter could be acceptable.

⁴⁴ FR proposal.

⁴⁵ NL and DK proposed adding a reference to Article 7. SI supported this as far as scientific processing is concerned. However, derogating from consent would require many more safeguards, if only to make sure that processing for scientific purposes is not performed regardless of an individual's wishes. FR suggested adding reference to Articles 23, 32, 33, 53 (1b)(d) and (e). PL suggested deleting the reference to Article 19

2. The appropriate safeguards referred to in paragraph 1 shall **be laid down in Union or Member State law and be such to**⁴⁶ ensure that technological and/or organisational protection measures pursuant to **this Regulation**⁴⁷ are applied to the personal data, in particular to **minimise the processing of personal data in pursuance of the proportionality and necessity principles**, unless those measures prevent achieving the purpose of the processing and such purpose cannot be otherwise fulfilled [**within reasonable means**]⁴⁸. (...)
3. Without prejudice to Article 80a, the controller shall take appropriate measures to ensure that personal data which are processed for archiving purposes in the public interest may be made accessible and used only for important 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 subject⁴⁹.

⁴⁶ Further to DK suggestion.

⁴⁷ Further CZ, NL and IE comments.

⁴⁸ Further to DK suggestion.

⁴⁹ New paragraph proposed in order to allay concerns expressed by DE, FR and PL, which thought that archiving warranted a separate treatment.

Article 84

Obligations of secrecy^{50 51}

1. (...) Member States may adopt specific rules to set out the (...) ⁵² powers by the supervisory authorities laid down in points (da) and (db) of Article 53(1) in relation to controllers or processors that are subjects under **Union or Member State**⁵³ law or rules established by national competent bodies to an obligation of professional secrecy, other equivalent⁵⁴ obligations of secrecy or to a code of professional ethics supervised and enforced by professional bodies, 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 ⁵⁵.
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 them⁵⁶.

Article 85

Existing data protection rules of churches and religious associations⁵⁷

(...)

⁵⁰ UK preferred the term 'confidentiality', but this does not appear to be the correct term for professional secrecy imposed by legal or deontological rules.

⁵¹ DE, ES, IT, NL and UK scrutiny reservation. One should consider whether this articles would not be better linked to Article 53.

⁵² BE and DE suggestion to cover all powers set out in Article 53.

⁵³ Further to CZ proposal;

⁵⁴ UK would prefer deleting 'equivalent'.

⁵⁵ BE suggested adding a new paragraph: "The supervisory authority will consult the relevant independent professional body prior to taking a decision on data flows".

⁵⁶ CZ reservation. RO remarked that a uniform approach should be established for this type of provision, which might need to be moved to Chapter XI on final provisions.

⁵⁷ DE and RO scrutiny reservation on deletion.