



Council of the  
European Union

Brussels, 8 February 2016  
(OR. en)

---

---

**Interinstitutional File:  
2012/0011 (COD)**

---

---

5455/16  
ADD 1

**DATAPROTECT 3  
JAI 44  
MI 27  
DIGIT 2  
DAPIX 13  
FREMP 5  
COMIX 39  
CODEC 55**

**"I/A" ITEM NOTE**

---

From: General Secretariat of the Council  
To: Council

---

No. prev. doc.: 15321/15

---

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) [first reading]  
- Political agreement  
= Statements by Austria and by Commission

---

Delegations will find below the statements that the Austrian delegation and the Commission respectively wish to have included in the minutes of the Council on 12 February 2016 adopting the political agreement on the above mentioned proposal.

**Statement by the Austrian delegation:**

Austria has always tried to contribute to a Regulation that respects the fundamental rights but also takes into account business interests so that the result also is workable in practice.

For many problems a suitable solution was found. Unfortunately in our point of view some important issues remain unresolved.

Among others, the final compromise text fails to provide a consistent approach regarding the interplay between the principle of purpose limitation as set out in Article 5 para 1 subparagraph b in conjunction with the requirement of a legal basis according to Article 6 para 1, on the one hand, and the “compatibility test” according to Article 6 para 3a on the other hand. Thus, the practical operability of Article 5 and 6 in its entirety is doubtful.

Apart from this, Austria still holds the view that imposing the burden of proof on the data subject as foreseen in Article 6 para 1 subparagraph is contradictory both to the protection purpose of the Regulation and to that of Art 8 CFR.

In its Note to the 3396th Council (DS 1384/15) Austria mentioned other main issues which needed to be resolved. In order to avoid repetition Austria refers to points 2 to 7 and 10 of this note which still remain valid.

So all in all Austria regrets not being in the position to endorse the final compromise text as proposed.

**Statement by the Commission:**

The Commission regrets the change to its initial proposal through deletion of recitals 136, 137 and 138 related to the Schengen acquis. The Commission considers that in particular as visas, border control and return are concerned, the General Data Protection Regulation constitutes a development of the Schengen acquis for the four States associated with the implementation, application and development of said acquis.

---