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NOTE

From: Swedish delegation
To: Working Group on Information Exchange and Data Protection (DAPIX)
Subject: General Data Protection Regulation
- Amendments to Article 9a, processing of data relating to criminal convictions and offences

1. Please find below Sweden's two proposals for amendments to Article 9a in the GDPR. New text is in **bold underlined**. The proposal is made on the basis of the text in document 17072/14.
2. Sweden agrees that processing of personal data relating to criminal convictions and offences or related security measures should be subject to strict conditions. Sweden therefore welcomes the Presidency's intention to restrict the conditions for this kind of processing. However, Sweden believes that it is important that processing of this kind of data, is also allowed when it is necessary for the establishment, exercise or defense of legal claims. Sweden has expressed its concern in this issue before in DAPIX.

3. In Sweden's opinion, there is no need for a stricter regulation in this matter, than the one set out in the current Directive (Art. 8.5 of the Directive 95/46/EG). The Directive allows processing of personal data relating to criminal convictions or offences if it is necessary for the establishment, exercise or defense of legal claims. This is necessary in many situations, e.g. for insurance companies, intellectual property owners, and individuals who have legal claims based on criminal acts. Sweden would like to elaborate its concern on this issue with the following, non-exhaustive, examples.
4. Private actors have the need to process personal data relating to criminal convictions or offences, is when performing tasks as a legal counsel, i.e. in the work of lawyers and other agents. Lawyers who act as agents need to process data relating to offences when they are writing an opinion or a pleading for a court. If a plaintiff or a defendant contacts a lawyer to represent him or her, the lawyer will also need to process personal data relating to a criminal offense. There are also cases where an attorney is engaged completely private for bringing an action for damages for breach or to settle a claim out of court. Even in these situations the attorney needs to be able to process data relating to an offence. This is relevant also in a case where a plaintiff brings an action in court on his or her own.
5. To our understanding the processing of IP addresses which have been used when committing an infringement of intellectual property (IPR) would fall under Article 8 in the Directive 95/46/EG, and under the proposed Article 9a in the GDPR. The rule in the Regulation should allow for the holders of IPRs to process IP addresses and other types of personal data relating to criminal offences (infringements), for the purpose of establishment, exercise or defense of legal claims, for example to obtain damages in civil proceedings on the grounds of infringements on the Internet.
6. Sweden is of the opinion that an exception for the situations pointed out above is needed in the GDPR to safeguard crucial processing of data relating to convictions and offences in the private sector. This can be achieved, by one of the two following proposed amendments to Article 9a:

I) Sweden's first proposed amendment to Article 9a

Article 9a

Processing of data relating to criminal convictions and offences

Processing of data relating to criminal convictions and offences or related security measures ~~based on points (c) and (e) of Article 6(1)~~ may only be carried out either under the control of official authority (...) or when the processing is authorised by Union law or Member State law providing for adequate safeguards for the rights and freedoms of data subjects. A complete register of criminal convictions may be kept only under the control of official authority.

II) Sweden's second, alternative, proposed amendment to Article 9a

Article 9a

Processing of data relating to criminal convictions and offences

Processing of data relating to criminal convictions and offences or related security measures ~~based on points (c) and (e) of Article 6(1)~~ may only be carried out either under the control of official authority (...) or when the processing is **based on points (c) and (e) of Article 6(1) or when the processing is necessary for the establishment, exercise or defence of legal claims and in so far as** authorised by Union law or Member State law providing for adequate safeguards for the rights and freedoms of data subjects. A complete register of criminal convictions may be kept only under the control of official authority.

7. Sweden maintains a scrutiny reservation on article 9a.