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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament - Outcome of the European Parliament's first reading, (Strasbourg, 11 to 14 March 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure [1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

[1] OJ C 145, 30.6.2007, p.5

In this context, the rapporteurs, Rainer WIELAND (EPP, DE) and Mercedes BRESSO (S&D, IT), presented a compromise amendment (amendment 6) to the proposal for a Regulation on behalf of the Committee on Constitutional Affairs. This amendment had been agreed during the informal contacts referred to above.

In addition, the ENF political group tabled eight amendment (amendments 7, 8, 9, 10, 11,12, 13, 14).

II. VOTE

When it voted on 12 March 2019, the plenary adopted the compromise amendment (amendment 6) to the proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[2].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

Protection of personal data in the context of elections to the European Parliament ***I

European Parliament legislative resolution of 12 March 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament (COM(2018)0636 – C8-0413/2018 – 2018/0336(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2018)0636),

– having regard to Article 294(2) and Article 224 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0413/2018),

– having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 12 December 2018[3],

– after consulting the Committee of the Regions,

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 25 January 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Constitutional Affairs and also the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0435/2018),

[3] Not yet published in the Official Journal.

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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Position of the European Parliament adopted at first reading on 12 March 2019 with a view to the adoption of Regulation (EU, Euratom) 2019/… of the European Parliament and of the Council amending Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 224 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[4],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[5],

[4] Opinion of 12 December 2018 (not yet published in the Official Journal).
[5] Position of the European Parliament of 12 March 2019.

Whereas:

(1) Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council[6] established a specific European legal status for European political parties and European political foundations and provides for their funding from the general budget of the European Union. It also established an Authority for European political parties and European political foundations ("the Authority").

(2) In order to enable the Authority to fully fulfil its tasks, including the new ones provided for in this Regulation, and to enable it to do so in an independent manner, it is necessary to staff it in a permanent way and to confer the powers of an appointing authority on the Director of the Authority.

[6] Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1).

(3) Recent events have demonstrated the potential risks to electoral processes and to democracy that can arise from the unlawful use of personal data. It is therefore necessary to protect the integrity of the European democratic process by providing for financial sanctions in situations where European political parties or European political foundations take advantage of infringements of rules on protection of personal data with a view to influencing the outcome of elections to the European Parliament.

(4) To that end, a verification procedure should be established whereby the Authority must, in certain circumstances, ask the committee of independent eminent persons established by Regulation (EU, Euratom) No 1141/2014 to assess whether a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on protection of personal data. Where, ***in accordance with the verification procedure,*** that ***is found*** to be the case, the Authority should impose sanctions under the effective, proportionate and dissuasive sanctioning system established by Regulation (EU, Euratom) No 1141/2014.

(5) When the Authority imposes a sanction on a European political party or foundation in accordance with the verification procedure, it should take due account of the ne bis in idem principle, whereby sanctions cannot be imposed twice for the same offence. The Authority should also ensure that the principle of legal certainty is respected and that the European political party or European political foundation concerned has been given the opportunity to be heard.

(6) The new procedure should exist alongside the current procedures used for the verification of compliance with registration conditions and in cases of manifest and serious breaches of the values on which the Union is founded. However, the time limits for verification of compliance with registration conditions and requirements set in Article 10 of Regulation (EU, Euratom) No 1141/2014 should not apply to the new procedure.

(7) Since the new procedure is triggered by a decision of a competent national data protection supervisory authority, it should be possible for the European political party or European political foundation concerned to request that the sanction be reviewed if the decision of that national supervisory authority is repealed, or a remedy against that decision has been granted, ***provided that all national remedies have been exhausted***.

(8) In order to ensure that the 2019 elections to the European Parliament take place in accordance with strong democratic rules and in full respect of the European values of democracy, rule of law and respect of fundamental rights, it is important that the provisions on the new verification procedure enter into force in timely manner and that the procedure applies as soon as possible. In order to achieve this, the amendments to Regulation (EU, Euratom) No 1141/2014 introduced by this Regulation should enter into force on the date of its publication in the *Official Journal of the European Union*.

(9) Regulation (EU, Euratom) No 1141/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU, Euratom) No 1141/2014 is amended as follows:

(1) In Article 6, paragraph (5) is replaced by the following:

"5. The Director of the Authority shall be assisted by staff in respect of whom he or she shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Union and the powers conferred on the authority empowered to conclude contracts of employment of other servants by the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ('the appointing authority's powers'). The Authority may make use in any areas of its work of other seconded national experts or of other staff not employed by the Authority.

The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and Conditions of Employment of Other Servants shall apply to the staff of the Authority.

The selection of the staff shall not be liable to result in a conflict of interests between their duties at the Authority and any other official duties, and they shall refrain from any act which is incompatible with the nature of their duties.".

(2) In Article 10(3), the third subparagraph is replaced by the following:

"The procedures laid down in the first and second subparagraphs shall not be initiated within a period of two months prior to elections to the European Parliament. That time limit shall not apply with regard to the procedure set out in Article 10a.".

(3) The following Article is inserted:

"Article 10a

Verification procedure related to infringements of rules on the protection of personal data

1. No European political party or European political foundation shall deliberately influence, or attempt to influence, the outcome of elections to the European Parliament by taking advantage of an infringement by a natural or legal person of the applicable rules on the protection of personal data.

2. If the Authority ***is informed*** of a decision of a national supervisory authority within the meaning of point 21 of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council* finding that a natural or legal person has infringed applicable rules on the protection of personal data, and if it follows from that decision, or if there are otherwise reasonable grounds to believe, that the infringement is linked to political activities by a European political party or a European political foundation in the context of elections to the European Parliament, the Authority shall refer this matter to the committee of independent eminent persons established by Article 11 of this Regulation. ***The Authority may, if necessary, liaise with the national supervisory authority concerned.***

3. The committee referred to in paragraph 2 shall give an opinion as to whether the European political party or European political foundation concerned has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of that infringement. The Authority shall request the opinion without undue delay, and no later than 1 month after ***being informed*** of the decision of the national supervisory authority. The Authority shall set a short, reasonable deadline for the committee to give its opinion. The committee shall comply with that deadline.

4. Having regard to the committee's opinion, the Authority shall decide, pursuant to point (a)(vii) of Article 27(2), whether to impose financial sanctions on the European political party or European political foundation concerned. The decision of the Authority shall be duly reasoned, in particular with regard to the committee's opinion, and shall be published expeditiously.

5. The ***procedure*** set out in this Article is without prejudice to the procedure set out in Article 10.

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* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).".

(4) In Article 11(3), the first subparagraph is replaced by the following:

"When requested by the Authority, the committee shall give an opinion on:

(a) any possible manifest and serious breach of the values on which the Union is founded, as referred to in point (c) of Article 3(1) and point (c) of Article 3(2), by a European political party or a European political foundation;

(b) whether a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on the protection of personal data.

In the cases referred to in points (a) and (b) of the first subparagraph, the committee may request any relevant document or evidence from the Authority, the European Parliament, the European political party or European political foundation concerned, other political parties, political foundations or other stakeholders, and it may request to hear their representatives. In the case referred to in point (b) of the first subparagraph, the national supervisory authority referred to in Article 10a shall cooperate with the committee in accordance with applicable law.".

(5) In Article 18, paragraph (2) is replaced by the following:

"2. The European political party and the European political foundation must, at the time of its application, comply with the obligations listed in Article 23, and, from the date of its application until the end of the financial year or of the action covered by the contribution or grant, remain registered in the Register and may not be the subject of any of the sanctions provided for in Article 27(1) and in point (a) (v), (vi) and (vii) of Article 27(2).".

(6) Article 27 is amended as follows:

(a) in point (a) of paragraph (2), the following point is added:

"(vii) where, in accordance with ***the verification procedure provided for in*** Article 10a, ***it is established*** that a European political party or a European political foundation has deliberately influenced or attempted to influence the outcome of elections to the European Parliament by taking advantage of an infringement of the applicable rules on the protection of personal data.";

(b) the following paragraph is added:

"7. Where a decision of the ***national*** supervisory authority as referred to in Article 10a has been repealed, or where a remedy against such decision has been granted, ***provided that all national remedies have been exhausted,*** the Authority shall review any sanction imposed pursuant to point (a)(vii) of paragraph 2 at the request of the European political party or European political foundation concerned.".

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*