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#### NOTE

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From: Presidency  
To: JHA Counsellors (DAPIX)

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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 III

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Following the discussions at the DAPIX meetings on 23-24 March and 30 -31 March 2015, the Presidency has revised the text of Chapter III.

All changes made to the original Commission proposal are underlined text; where text has been deleted, this is indicated by (...). Where existing text has been moved, this text is indicated in italics. Changes that were not yet fully discussed in DAPIX are marked in **bold underlining**.

- 46) The principle of transparency requires that any information addressed to the public or to the data subject should be easily accessible and easy to understand, and that clear and plain language is used. This information could be provided **also** in electronic form, for example, when addressed to the public, through a website. This is in particular relevant where in situations, such as online advertising, the proliferation of actors and the technological complexity of practice makes it difficult for the data subject to know and understand if personal data relating to them are being collected, by whom and for what purpose. Given that children deserve specific protection, any information and communication, where processing is addressed (...) to a child, should be in such a clear and plain language that the child can easily understand.
- 47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to request, (...) in particular access to data, rectification, erasure and to exercise the right to object. Thus the controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests of the data subject **without undue delay and at the latest** within a fixed deadline **of one month** and give reasons where the controller does not intend to comply with the data subject's request. **However, if requests are manifestly unfounded such as when the data subject repetitiously requests information or where the data subject abuses its right to receive information for example by providing false or misleading information when making the request, the controller could refuse to act on the request.**

- 48) The principles of fair and transparent processing require that the data subject should be informed (...) of the existence of the processing operation and its purposes (...). The controller should provide the data subject with any further information necessary to guarantee fair and transparent processing. Furthermore the data subject should be informed about the existence of profiling, and the consequences of such profiling. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data.
- 49) The information in relation to the processing of personal data relating to the data subject should be given to them at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. **Where the controller intends to process the data for a purpose other than the one for which the data were collected the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information**<sup>1</sup>. Where the origin of the data could not be provided to the data subject because various sources have been used, the information should be provided in a general manner.
- 50) However, it is not necessary to impose this obligation where the data subject already possesses this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. The latter could be particularly the case where processing is for historical, statistical or scientific (...) purposes; in this regard, the number of data subjects, the age of the data, and any appropriate safeguards adopted may be taken into consideration.

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<sup>1</sup> Further to HU proposal.

- 51) A natural person should have the right of access to data which has been collected concerning him or her, and to exercise this right easily and at reasonable intervals, in order to be aware of and verify the lawfulness of the processing. *This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.* Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, where possible for what period, which recipients receive the data, what is the logic involved in any automatic data processing and what might be, at least when based on profiling, the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller may request that before the information is delivered the data subject specify to which information or to which processing activities the request relates.
- 52) The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. (...) A controller should not retain personal data for the sole purpose of being able to react to potential requests.

53) A natural person should have the right to have personal data concerning them rectified and a 'right to be forgotten' where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is in particular relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet<sup>2</sup>. However, the further retention of the data should be allowed where it is necessary for *exercising the right of freedom of expression and information*, *for compliance with a legal obligation*, *for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller*, *for reasons of public interest in the area of public health*, *for archiving purposes in the public interest*, *for historical, statistical and scientific (...) purposes* or *for the establishment, exercise or defence of legal claims*.

53a) Inasmuch as the removal of links from the list of internet search results could, depending on the information at issue, have effects upon the **right to freedom of expression and information**, Member States should, when reconciling the right to the protection of personal data with the right to freedom of expression and information, provide that a fair balance should be sought in particular between that **fundamental right** and the data subject's fundamental rights under Articles 7 and 8 of the Charter. (...)<sup>3</sup>

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<sup>2</sup> FR suggestion to strengthen the rights of children as follows: This right should be exercised notwithstanding the fact that the data subject is no longer a child.

<sup>3</sup> UK considered that the balance should be made in the individual case and not horizontally; the recital could therefore be deleted. ES and DE thought that the part from the Google case should be deleted. DE was opposed to setting out that the data subjects' rights as a *general rule* should prevail and therefore wanted to delete the second sentence. CZ doubted the need of the recital (the second sentence needed redrafting). COM said that the Google case should not be codified in the Regulation and wanted to delete the paragraph.

54) To strengthen the 'right to be forgotten' in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the known controllers<sup>4</sup> who are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. **A known controller is a controller whose identity was known to the controller that made the personal data public at the time it was made public. It should also only extend to controllers which fall into that category who were deliberately and intentionally provided with the data by the controller which made the data public**<sup>5</sup>.

To ensure **the above mentioned** information, the controller should take (...) reasonable steps, taking into account available technology and the means available to the controller, including technical measures, in relation to data for the publication of which the controller is responsible. (...).

54a) Methods to restrict processing of personal data could include, inter alia, temporarily moving the selected data to another processing system or making the selected data unavailable to users or temporarily removing published data from a website. In automated filing systems the restriction of processing of personal data should in principle be ensured by technical means; the fact that the processing of personal data is restricted should be indicated in the system in such a way that it is clear that the processing of the personal data is restricted.<sup>6</sup>

54aa)<sup>7</sup> However the right “to be forgotten” should be balanced with other fundamental rights. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. This may lead to the result that the personal data has to be maintained for exercising the right of freedom of expression or (...) for archiving purposes in the public interest or for historical, statistical and scientific (...) purposes, or for reasons of public interest in the area of public health or social protection, or for the establishment, exercise or defence of legal claims.<sup>8</sup>

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<sup>4</sup> PL and UK found that as regards *known controller* the text should be drafted tighter. HU preferred to delete *known*.

<sup>5</sup> UK proposal

<sup>6</sup> HR wanted to make a reference to cyber bullying.

<sup>7</sup> This part is moved from the last part of recital 53.

<sup>8</sup> COM wanted to delete the first part of the recital.

In order to exercise the right to be forgotten, the data subject may address his request to the controller without prior involvement of a public authority, such as a supervisory or judicial authority, without prejudice to the right of the data subject to lodge a complaint or initiate court proceedings against the decision taken by the controller. In these cases it should be the responsibility of the controller to apply the balance between the interest of the data subject and the other interests set out in this Regulation.<sup>9</sup>

- 55) To further strengthen the control over their own data (...), where the processing of personal data is carried out by automated means, the data subject should also be allowed to **withdraw and receive** the personal data concerning him or her, which he or she has provided to a controller, in a **structured and** commonly used and machine-readable format **and transmit it to another controller**.

This right should apply where the data subject provided the personal data based on his or her consent or in the performance of a contract. It should not apply where processing is based on another legal ground other than consent or contract. By its very nature this right should not be exercised against controllers processing data in the exercise of their public duties. It should therefore in particular not apply where processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official duty vested in the controller.

Where, in a certain set of personal data, more than one data subject is concerned, the right to transmit the data should be without prejudice to the requirements on the lawfulness of the processing of personal data related to another data subject in accordance with this Regulation. This right should also not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should in particular not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract, to the extent and as long as the data are necessary for the performance of that contract. (...)

- 56) In cases where personal data might lawfully be processed (...) on grounds of (...) the legitimate interests of a controller, any data subject should nevertheless be entitled to object to the processing of any data relating to them. It should be for the controller to demonstrate that their legitimate interests may override the interests or the fundamental rights and freedoms of the data subject.

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<sup>9</sup> CZ and UK did not approve the drafting of recital 54aa and HU saw need for clarification of the second part of the paragraph.

- 57) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing free of charge and in a manner that can be easily and effectively invoked.
- 58) The data subject should have the right not to be subject to a decision evaluating personal aspects relating to him or her (...) which is based solely on automated processing, which produces legal effects concerning him or her or significantly affects him or her, like automatic refusal of an on-line credit application or e-recruiting practices without any human intervention. Such processing includes also 'profiling' **consisting in any form of automated processing of personal data** evaluating personal aspects relating to a natural person, in particular to analyse or predict aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements **as long as it produces legal effects concerning him or her or significantly affects him or her**; in particular to analyse or predict aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements<sup>;</sup>. However, decision making based on such processing, including profiling, should be allowed when authorised<sup>10</sup> by Union or Member State law to which the controller is subject, including for fraud and tax evasion monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention, to express his or her point of view, to get an explanation of the decision reached after such assessment and the right to contest the decision. **In order to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context in which the personal data are processed, the controller shall use adequate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure that factors which result in data inaccuracies are corrected and the risk of errors is minimized, secure personal data in a way which takes account of the potential threats involved for the interests and rights of the data subject**<sup>11</sup>. Automated decision making and profiling based on special categories of personal data should only be allowed under specific conditions.

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<sup>10</sup> BE suggested adding ' or recommended', with regard to e.g. ECB recommendations.

<sup>11</sup> Further to DE proposal.



58a) The creation and the use of a profile, i.e. a set of data characterising a category of individuals that is applied or intended to be applied to a natural person as such is subject to the (general) rules of this Regulation governing processing of personal data (legal grounds of processing, data protection principles etc.) with specific safeguards (for instance the obligation to conduct an impact assessment in some cases or provisions concerning specific information to be provided to the concerned individual). The European Data Protection Board should have the possibility to issue guidance in this context.

*Article 4*  
***Definitions***

(12a) ‘Profiling’ means **any** form of automated processing of personal data **consisting of using those data to evaluate** personal aspects to a natural person, in particular **to analyse and predict** aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements;

(12b) (...);

# CHAPTER III

## RIGHTS OF THE DATA SUBJECT<sup>12</sup>

### SECTION 1

#### TRANSPARENCY AND MODALITIES

##### *Article 11*

##### *Transparent information and communication*

1. (...)
2. (...)

##### *Article 12*

##### **Transparent information, communication and modalities for exercising the rights of the data subject<sup>13</sup>**

1. The controller shall take appropriate measures<sup>14</sup> to provide any information referred to in Articles 14 and 14a and any communication under Articles 15 to 19 and 32 relating to the processing of personal data to the data subject in an intelligible and easily accessible form, using clear and plain language<sup>15</sup>. The information shall be provided in writing, or where appropriate, electronically<sup>16</sup> or by other means<sup>17</sup>. **Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject. When requested by the data subject, the information may be given orally provided that the identity of the data subjects is proven.**<sup>18</sup>

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<sup>12</sup> General scrutiny reservation by UK on the articles in this Chapter.

<sup>13</sup> DE, SE, SI and FI scrutiny reservation.

<sup>14</sup> AT suggested to delete the text *take appropriate measures*, in contrast DE and NL liked that AT preferred the COM text.

<sup>15</sup> AT suggested adding : "and adapted to the data subject".

<sup>16</sup> SE did not see any added value in *or where appropriate, electronically*, in contrast to CZ and PL, which wanted to keep it.

<sup>17</sup> AT meant that the information could be provided orally as well as long as the data subject agreed to that. COM found that idea sympathetic as long as the data subject was content and that it was not for the data subject to decide what form to use.

<sup>18</sup> AT suggestion.

- 1a. The controller shall facilitate the exercise of data subject rights under Articles 15 to 19<sup>19</sup>. (...) **In cases referred to in Article 10 (2) rights of the data subject can never be denied by the controller unless he demonstrates the impossibility to identify the data subject.**<sup>20</sup>
2. The controller shall provide (...) information on action taken on a request under Articles 15, 16 to 19 to the data subject without undue delay and at the latest within one month<sup>21</sup> of receipt of the request (...). This period may be extended for a further two months when necessary, taking into account the complexity of the request and the number of requests. Where the extended period applies, the data subject shall be informed within one month of receipt of the request of the reasons for the delay.
3. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without **undue**<sup>22</sup> delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint to a supervisory authority (...).

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<sup>19</sup> SI, CZ and UK thought this paragraph should be deleted.

<sup>20</sup> Inserted at the request of FR.

<sup>21</sup> FR suggested a two months period. UK said that the 1995 Directive uses '*without excessive delay*' and suggested to use it here too. NL supported FR and UK to extend the deadline. CZ, SI, UK pleaded in favour of deleting the one-month period. BG and PT thought it more simple to revert to the requirement of '*without excessive delay*' under the 1995 Data Protection Directive. SI suggested to say 'in accordance with law' because the MS have general rules on deadlines. BE was opposed to the one month deadline but thought it necessary to set out a fixed deadline. ES and Cion said that a deadline was necessary.

<sup>22</sup> Suggestion by SE, supported by SI.

4. Information provided under Articles 14 and 14a (...) <sup>23</sup> and any communication under Articles 16 to 19 and 32 shall be provided free of charge <sup>24</sup>. Where requests from a data subject are manifestly unfounded <sup>25</sup> or excessive <sup>26</sup>, in particular because of their repetitive character, the controller (...) may refuse to act on <sup>27</sup> the request. In that case, the controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request <sup>28</sup>.
- 4a. Without prejudice to Article 10, where the controller has reasonable doubts concerning the identity <sup>29</sup> of the individual making the request referred to in Articles 15 to 19, the controller may request the provision of additional information necessary to confirm the identity of the data subject.
5. (...)
6. (...)

*Article 13*

***Rights in relation to recipients <sup>30</sup>***

(...)

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<sup>23</sup> UK wanted to see the reinsertion of a reference to Article 15.

<sup>24</sup> SE, HU thought that since information in Article 14 was to be provided by the data subject it did not fit in the context to talk about free of charge.

<sup>25</sup> DE, supported by BE, ES and PL suggested to say *abusive* instead of manifestly unfounded. SI thought that *abusive* could be used in a recital. IE, AT, NL, DK, UK, PT, NO, RO, HR, EL, SI, CY, FI, CZ, LT, SE, MT supported term “manifestly unfounded”.

<sup>26</sup> PL, supported by BE and SE, thought that the criterion of 'manifestly excessive' required further clarification, e.g. through an additional recital.

<sup>27</sup> NL scrutiny reservation: avoid that this gives the impression that public authority cannot refuse to consider request by citizen.

<sup>28</sup> IT scrutiny reservation.

<sup>29</sup> BE, supported by SI, suggested to replace *identity* with *authentication*.

<sup>30</sup> FR suggested a new Article 13a on standardised information policies with the following wording: 'In order to ensure that the information to be provided to the data subjects according to this Regulation will be presented in an easily visible and clearly legible way and will appear in a language easily understood by the data subjects concerned, the European Data Protection Board shall issue guidelines to further specify the requirements for specific categories of processing or specific data processing sectors, including by issuing aligned tabular, using text and symbols or pictographs.' that is inspired by a suggestion by the EP.

## SECTION 2

### INFORMATION AND ACCESS TO DATA

#### *Article 14*

#### ***Information to be provided where the data are collected from the data subject***<sup>31</sup>

- 1<sup>32</sup>. Where personal data relating to a data subject are collected from the data subject, the controller shall (...), at the time when personal data are obtained, provide the data subject with the following information:
- (a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller **shall** also include the contact details of the data protection officer, if any;
  - (b) the purposes of the processing for which the personal data are intended (...).

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<sup>31</sup> DE, ES, NL, SE, FI, PT and UK scrutiny reservation. DE, supported by ES and NL, has asked the Commission to provide an assessment of the extra costs for the industry under this provision. DE found the EP idea of providing information in the form of symbols was an interesting idea which facilitates the provision of information. SE found it peculiar that for example a court would be obliged to provide separate information to the data subject about a case that the data subject had initiated; such obligations are set out in the code on procedure.

<sup>32</sup> HU thought the legal basis of the processing should be included in the list.

- 1a. In addition to the information referred to in paragraph 1, the controller shall<sup>33</sup> provide the data subject with such further information<sup>34</sup> necessary to ensure fair and transparent processing (...) <sup>35</sup>, having regard to the specific circumstances and context in which the personal data are processed<sup>36</sup>:
- (a) (...);<sup>37</sup>
  - (b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
  - (c) the recipients or categories of recipients of the personal data<sup>38</sup>;
  - (d) where applicable, that the controller intends to transfer personal data to a recipient in a third country<sup>39</sup> or international organisation;

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<sup>33</sup> DE, EE, and PL asked to insert "on request". BE suggested to replace *shall* with *may*. DE, DK, NL and UK doubted whether the redraft would allow for a sufficient risk-based approach and warned against excessive administrative burdens/compliance costs. NL, supported by CY, EE and CZ, suggested therefore to add 'where appropriate' after *shall*. DK and UK in particular referred to the difficulty for controllers in assessing what is required under para. 1a in order to ensure fair and transparent processing. DE, EE and PL pleaded for making the obligation to provide this information contingent upon a request thereto as the controller might otherwise take a risk-averse approach and provide all the information under Article 14(1a), also in cases where not required. UK thought that many of the aspects set out in paragraph 1a of Article 14 (and paragraph 2 of Article 14a) could be left to guidance under Article 39. DE suggested to insert 'at the time when the personal data was obtained'. In contrast, IT thought that it was not necessary to provide the information at the same time.

<sup>34</sup> CZ suggested adding the word 'obviously'.

<sup>35</sup> Deleted at the suggestion of FR. BE wanted to delete the end of the sentence from 'having regard ...'

<sup>36</sup> COM reservation on deletion of the words 'such as'. AT preferred the COM proposal because in particular the new paragraph 1a was drafted in a too open and vague manner, therefore the NL suggestion to add *where appropriate* went in the wrong direction. IT was against reducing the safeguards and considered the text as the bare minimum.

<sup>37</sup> BE wanted either to reintroduce the text of Article 14(1)(c) on storage period or add as the EP has done *the criteria used to determine the period*. IT and COM also supported the reinsertion on text on a storage period.

<sup>38</sup> AT and DE thought that this concept was too vague (does it e.g. encompass employees of the data controller?).

<sup>39</sup> BE wanted to delete the part of the sentence from 'personal data' to 'third country' but add references to *BCR, standard clauses and adequacy decisions*.

- (e) the existence of the right to request from the controller access to and rectification or erasure<sup>40</sup> of the personal data or restriction of processing of personal data concerning the data subject and to object to the processing of such personal data (...) **as well as the right to data portability**<sup>41</sup>;
- (ea) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2)<sup>42</sup>, the existence of the right to withdraw consent at any time<sup>43</sup>, without affecting the lawfulness of processing based on consent before its withdrawal;<sup>44</sup>
- (f) the right to lodge a complaint to a supervisory authority (...);
- (g) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the data and of the possible consequences of failure to provide such data<sup>45</sup>;
- (h) *the existence of **automated decision making including profiling** referred to in Article 20(1) and (3) and information concerning (...) **the logic involved in any automated data processing**, as well as the significance and the envisaged consequences of such processing for the data subject.*<sup>46</sup>

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<sup>40</sup> BE suggestion.

<sup>41</sup> BE suggestion, supported by COM. The reference to direct marketing was deleted in view of comments by DK, FR, IT and SE. IT said that the information in paragraphs (e) and (f) were set out in Article 8 of the Charter and always had to be provided.

<sup>42</sup> Suggestion by DK and NL. (DK, supported by NL, suggested to insert a reference to Article 9(2)(a), as in Article 17(1)(b) said NL).

<sup>43</sup> DE suggested to insert a reference to Article 7(3).

<sup>44</sup> NL found that Article 7(3) already covered the situation in Article 14(1)(ea). In contrast BE, HR and NO supported point (ea).

<sup>45</sup> CZ, DE, ES and NL reservation. NL asked if it was mandatory to provide the information if the processing was based on a legal obligation.

<sup>46</sup> SE and IE scrutiny reservation. IT meant that there were problems with this paragraph if the current text of Article 20 was maintained.



- 1b. Where the controller intends to **further** process the data (...) for a purpose other than the one for which the data were collected the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 1a.<sup>47</sup>
2. (...)<sup>48</sup>
3. (...)
4. (...)
5. Paragraphs 1, 1a **and 1b**<sup>49</sup> shall not apply where and insofar as the data subject already has the information.<sup>50</sup>
6. (...)
7. (...)
8. (...)

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<sup>47</sup> NL said that business was worried how this provision would be interpreted if it becomes an obligation. AT meant that the paragraph was relevant and important. FR, IT, PL, RO, NO and COM supported paragraph (1b). HU said that recital 49 must be amended to take into account new Article 14(1b).

<sup>48</sup> HU and AT reservation on the deletion of this paragraph.

<sup>49</sup> Suggestion by CZ, DK, NL, SE and NO.

<sup>50</sup> SE, supported by CZ, thought that it was necessary to insert more exceptions to the obligation to provide information SE mentioned such as illness or a fire. COM cautioned against limiting Article 14 too much. SE further considered that a similar provision to the one in Article 14a(4)(c) should be added. SE noted that recital 50 did not make a difference between the situations in Article 14 and 14a. Article 21 on restrictions would be difficult to use to create exceptions considered SE.

Article 14 a

**Information to be provided where the data have not been obtained from the data subject**<sup>51</sup>

- 1.<sup>52</sup> Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information<sup>53</sup>:
  - (a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller shall<sup>54</sup> also include the contact details of the data protection officer, if any;
  - (b) the purposes of the processing for which the personal data are intended.
  
2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with such further information necessary to ensure fair and transparent processing in respect of the data subject, <sup>55</sup>having regard to the specific circumstances and context<sup>56</sup> in which the personal data are processed (...):
  - (a) the categories of personal data concerned;
  - (b) (...)
  - (c) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
  - (d) the recipients or categories of recipients of the personal data;

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<sup>51</sup> DE, EE, ES, NL (§§1+2), AT, PT scrutiny reservation. For BE Article 14a only dealt with further processing for compatible purposes by a third party.

<sup>52</sup> HU, AT and SK thought the legal basis of the processing should be included in the list.

<sup>53</sup> RO wanted to add that this information should be provided once per year.

<sup>54</sup> BE suggestion.

<sup>55</sup> BE suggested to delete the end of the sentence from *having regard to ...*'

<sup>56</sup> IT and FR doubts on the addition of the words 'and context'.

- (e) the existence of the right to request from the controller access to and rectification or erasure of the personal data **or restriction of processing of**<sup>57</sup> concerning the data subject and to object to the processing of such personal data **as well as the right to data portability** (...);
  - (ea) where the processing is based on point (a) of Article 6(1) are point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
  - (f) the right to lodge a complaint to a supervisory authority (...);
  - (g) the origin of the personal data, unless the data originate from publicly accessible sources<sup>58</sup>;
  - (h) *the existence of **automated decision making including** profiling referred to in Article 20(1) and (3) and information concerning **the logic involved in any automated data processing**, as well as the significance and the envisaged consequences of such processing for the data subject.*<sup>59</sup>
3. The controller shall provide the information referred to in paragraphs 1 and 2<sup>60</sup>:
- (a) within a reasonable period after obtaining the data, but at the latest within one month, having regard to the specific circumstances in which the data are processed, or
  - (b) if a disclosure to another recipient is envisaged, at the latest when the data are first disclosed.

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<sup>57</sup> SE suggestion.

<sup>58</sup> COM and AT scrutiny reservation. BE, supported by AT, ES, IT and SE, suggested to delete paragraph (g).

<sup>59</sup> SE found that the drafting of Article 15(1)(h) was better than this one, also applicable for Article 14(1a)(h).

<sup>60</sup> BE proposed to add: 'possibly through an easily accessible contact person where the data subject concerned can consult his data'. This is already covered by the modified recital 46.

- 3a Where the controller intends to process the data (...) for a purpose **other** than the one for which the data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.<sup>61</sup>
4. Paragraphs 1 to 3a<sup>62</sup> shall not apply where and insofar as:
- (a) the data subject already has the information; or
  - (b) the provision of such information (...) proves impossible or would involve a disproportionate effort<sup>63</sup> or is likely to render impossible or to seriously impair the achievement of the purposes of the processing<sup>64</sup>; in such cases the controller shall take appropriate measures to protect the *data subject's* rights and freedoms and legitimate interests<sup>65</sup>; or
  - (c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests<sup>66</sup>; or
  - (d) (...) <sup>67</sup>;

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<sup>61</sup> IT meant that paragraph 3a represented the bare minimum of protection. AT support of the paragraph. UK meant that it should be used taking into account proportionality and practicability.

<sup>62</sup> PL suggestion, supported by SE.

<sup>63</sup> FR and AT asked what the words *or is likely .. purposes of the processing* were supposed to mean. COM wanted to delete that part of the paragraph. CZ wanted to keep the text in order to avoid fraud. COM noted that it was important to avoid fraud but considered that Article 21 gave the necessary flexibility for that.

<sup>64</sup> COM scrutiny reservation.

<sup>65</sup> Several delegations (DK, FI, PL, SK, and LT) thought that in this Regulation (contrary to the 1995 Directive) the text should be specified so as to clarify both the concepts of 'appropriate measures' and of 'legitimate interests'. According to the Commission, this should be done through delegated acts under Article 15(7). DE warned that a dangerous situation might ensue if these delegated acts were not enacted in due time.

<sup>66</sup> UK thought the requirement of a legal obligation was enough and no further appropriate measures should be required.

<sup>67</sup> Deleted at the request of a large number of delegations. DE, CZ and SE emphasised the importance of this exception.

- (e) where the data must remain confidential in accordance with a legal provision in Union or Member State law (...)<sup>68</sup>.
5. (...)
6. (...)

*Article 15*

***Right of access for the data subject***<sup>69</sup>

1. The data subject shall have the right to obtain from the controller at reasonable intervals and free of charge<sup>70</sup> (...) confirmation as to whether or not personal data concerning<sup>71</sup> him or her are being processed and where such personal data are being processed access to the data and the following information:
- (a) the purposes of the processing<sup>72</sup>;
  - (b) (...)
  - (c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular to recipients in third countries<sup>73</sup>;
  - (d) where possible, the envisaged<sup>74</sup> period for which the personal data will be stored;

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<sup>68</sup> COM and AT reservation on (d) and (e). UK referred to the existence of case law regarding privilege (confidentiality). BE, supported by PL, thought the reference to the overriding interests of another person was too broad.

<sup>69</sup> DE, FI and SE scrutiny reservation. DE, LU and UK expressed concerns on overlaps between Articles 14 and 15.

<sup>70</sup> DE, ES, HU, IT and PL reservation on the possibility to charge a fee. DE and SE thought that free access once a year should be guaranteed.

<sup>71</sup> FR suggested to change *concerning* to *belonging* so that different forms of telecommunication would be covered. COM said that *concerning* was used in Article 8 in the Charter.

<sup>72</sup> HU thought the legal basis of the processing should be added.

<sup>73</sup> UK reservation on the reference to recipients in third countries. IT thought the concept of recipient should be clarified, inter alia by clearly excluding employees of the controller.

<sup>74</sup> ES and UK proposed adding 'where possible'; FR reservation on 'where possible' and 'envisaged'; FR emphasised the need of providing an exception to archives.

- (e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;
  - (f) the right to lodge a complaint to a supervisory authority (...)<sup>75 76</sup>;
  - (g) where the personal data are not collected from the data subject, any available information as to their source<sup>77</sup>;
  - (h) in the case of decisions based on automated processing including profiling referred to in Article 20(1) and (3), knowledge of the logic involved<sup>78</sup> in any automated data processing as well as the significance and envisaged consequences of such processing<sup>79</sup>.
- 1a. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 42 relating to the transfer<sup>80</sup>.
  - 1b. On request<sup>81</sup> and without an excessive charge, the controller shall provide a copy of the personal data undergoing processing to the data subject.<sup>82</sup>
2. (...)

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<sup>75</sup> DE thought it was too onerous to repeat this for every data subject and pointed to difficulties in ascertaining the competent DPA in its federal structure.

<sup>76</sup> IT and SK suggestion to delete subparagraphs (e) and (f) as under Article 14 this information should already be communicated to the data subject at the moment of the collection of the data.

<sup>77</sup> SK scrutiny reservation: subparagraph (g) should be clarified.

<sup>78</sup> PL and RO reservation on the reference to 'logic': the underlying algorithm should not be disclosed. SE wanted to delete it. BE and IT opposed the deletion of the words *logic* because it would go below the level of the 1995 Directive (Article 12(a)). DE reservation on reference to decisions.

<sup>79</sup> NL scrutiny reservation. CZ and FR likewise harboured doubts on its exact scope.

<sup>80</sup> FR and UK scrutiny reservation on links with Chapter V

<sup>81</sup> FR wanted to delete the reference to *excessive charge* since FR wants the information to be free of charge. FR considered that *free of charge* was in contradiction with paragraph 1b. SK asked what that notion meant.

<sup>82</sup> FR suggested to add that for online communication service accessible to the public the data subject should all the data be provided (7464/15).

2a. The right to obtain a copy referred to in paragraph 1b (...) shall not apply where such copy cannot be provided without disclosing personal data of other data subjects<sup>83</sup>.

3. (...)

4. (...)

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<sup>83</sup> COM reservation; DE, supported by UK, referred to the danger that data pertaining to a third party might be contained in such electronic copy. FR suggested to add text on intellectual property rights in relation to the processing of personal data with a corresponding recital 51 with the addition of login data.

## SECTION 3

### RECTIFICATION AND ERASURE

#### *Article 16*

#### ***Right to rectification***<sup>84</sup>

1. (...) The data subject shall have the right<sup>85</sup> to obtain from the controller **without undue delay**<sup>86</sup> the rectification of personal data concerning him or her which are inaccurate. Having regard to the purposes<sup>87</sup> for which data were processed, the data subject shall have the right to obtain completion of incomplete personal data, including by means of providing a supplementary (...) statement.
2. (...)

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<sup>84</sup> DE and UK scrutiny reservation.

<sup>85</sup> UK, supported by CZ, suggested to insert the qualification 'where reasonably practicable'

UK, supported by CZ, also suggested inserting the qualification 'where necessary'.

<sup>86</sup> Suggestion from the SE.

<sup>87</sup> BE asked why the reference to the *purposes* had been inserted.



Article 17

**Right to erasure and “to be forgotten”<sup>88</sup>**

1. <sup>89</sup>The (...) controller shall have the obligation to erase personal data without undue delay, especially in relation to personal data which are collected when the data subject was a child, and the data subject<sup>90</sup> shall have the right to obtain the erasure of personal data concerning him or her without undue delay where one of the following grounds applies:
- (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

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<sup>88</sup> DE, EE, PT, SE, SI, FI and UK scrutiny reservation. EE, FR, NL, RO and SE reservation on the applicability to the public sector. Whereas some Member States have welcomed the proposal to introduce a right to be forgotten (AT, EE, FR, IE); other delegations were more sceptical as to the feasibility of introducing a right which would go beyond the right to obtain from the controller the erasure of one's own personal data ( DE, DK, ES). The difficulties flowing from the household exception (UK), to apply such right to personal data posted on social media were highlighted (BE, DE, FR), but also the impossibility to apply such right to 'paper/offline' data was stressed (EE, LU, SI). Some delegations (DE, ES) also pointed to the possible externalities of such right when applied with fraudulent intent (e.g. when applying it to the financial sector). Several delegations referred to the challenge to make data subjects active in an online environment behave responsibly (DE, LU and UK) and queried whether the creation of such a right would not be counterproductive to the realisation of this challenge, by creating unreasonable expectations as to the possibilities of erasing data (DK, LU and UK). Some delegations thought that the right to be forgotten was rather an element of the right to privacy than part of data protection and should be balanced against the right to remember and access to information sources as part of the freedom of expression (DE, ES, LU, NL, SI, PT and UK). It was pointed out that the possibility for Member States to restrict the right to be forgotten under Article 21 where it interferes with the freedom of expression is not sufficient to allay all concerns in that regard as it would be difficult for controllers to make complex determinations about the balance with the freedom of expression, especially in view of the stiff sanctions provided in Article 79 (UK). In general several delegations (CZ, DE, FR) stressed the need for further examining the relationship between the right to be forgotten and other data protection rights. The Commission emphasised that its proposal was in no way meant to be a limitation of the freedom of expression. The inherent problems in enforcing such right in a globalised world outside the EU were cited as well as the possible consequences for the competitive position of EU companies linked thereto (BE, AT, LU, NL, SE and SI).

<sup>89</sup> SE suggested to insert in the beginning of the sentence *At the request of the data subject, the controller ...* to indicate that the controller was not supposed to act at its own initiative.

<sup>90</sup> SE wanted to delete the part of the text from *without* until *and the data subject*.

- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1) or point (a) of Article 9(2) and (...) there is no other legal ground for the processing of the data;<sup>91</sup>
  - (c) the data subject objects to the processing of personal data<sup>92</sup> pursuant to Article 19(1) and there are no overriding legitimate grounds for the processing or the data subject objects to the processing of personal data pursuant to Article 19(2);
  - (d) the data have been unlawfully processed<sup>93</sup>;
  - (e) the data have to be erased for compliance with a legal obligation to which the controller is subject<sup>94</sup>;
  - (f) (...).<sup>95</sup>
2. (...).

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<sup>91</sup> AT asked if this referred to further processing and wanted that to be clarified in a recital.

<sup>92</sup> NL suggested to refer to a specific request for erasure pursuant to Article 19(1).

<sup>93</sup> UK and CZ scrutiny reservation: this was overly broad.

<sup>94</sup> DE pointed to the difficulties in determining who is the controller in respect of data who are copied/made available by other controllers (e.g. a search engine) than the initial controller (e.g. a newspaper). AT opined that the exercise of the right to be forgotten would have take place in a gradual approach, first against the initial controller and subsequently against the 'secondary' controllers. ES referred to the problem of initial controllers that have disappeared and thought that in such cases the right to be forgotten could immediately be exercised against the 'secondary controllers' ES suggested adding in paragraph 2: 'Where the controller who permitted access to the personal data has disappeared, ceased to exist or cannot be contacted by the data subject for other reasons, the data subject shall have the right to have other data controllers delete any link to copies or replications thereof'. The Commission, however, replied that the right to be forgotten could not be exercised against journals exercising freedom of expression. According to the Commission, the indexation of personal data by search engines is a processing activity not protected by the freedom of expression.

<sup>95</sup> FR suggested to add: 'the data have been collected when the data subject was a child', with corresponding changes to recital 53. CY support.

2a. *Where the controller<sup>96</sup> (...) has made the personal data public<sup>97</sup> and is obliged pursuant to paragraph 1 to erase the data, the controller, taking account of available technology and the cost of implementation<sup>98</sup>, shall **at the request of the data subject<sup>99</sup>** take (...) reasonable steps<sup>100</sup>, including technical measures, (...) to inform known controllers<sup>101</sup> which are processing the data, that **the data subject has specifically requested the erasure by such controllers of any links to, or copy or replication of that personal data<sup>102</sup>**.*

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<sup>96</sup> BE, DE and SI queried whether this also covered controllers (e.g. a search engine) other than the initial controller (e.g. a newspaper).

<sup>97</sup> ES prefers referring to 'expressly or tacitly allowing third parties access to'. IE thought it would be more realistic to oblige controllers to erase personal data which are under their control, or reasonably accessible to them in the ordinary course of business, i.e. within the control of those with whom they have contractual and business relations. BE, supported by IE and LU, also remarked that the E-Commerce Directive should be taken into account (e.g. through a reference in a recital) and asked whether this proposed liability did not violate the exemption for information society services provided in that Directive (Article 12 of Directive 2000/31/EC of 8 June 2000), but COM replied there was no contradiction. LU pointed to a risk of obliging controllers in an online context to monitor all data traffic, which would be contrary to the principle of data minimization and in breach with the prohibition in Article 15 of the E-Commerce Directive to monitor transmitted information.

<sup>98</sup> Further to NL suggestion. This may hopefully also accommodate the DE concern that the reference to available technology could be read as implying an obligation to always use the latest technology. FR raised doubts about the fact that the provision was only applicable when the data had been made public.

<sup>99</sup> IE suggestion.

<sup>100</sup> LU queried why the reference to all reasonable steps had not been inserted in paragraph 1 as well and SE, supported by DK, suggested clarifying it in a recital. COM replied that paragraph 1 expressed a results obligation whereas paragraph 2 was only an obligation to use one's best efforts. ES thought the term should rather be 'proportionate steps'. DE, ES and BG questioned the scope of this term. ES queried whether there was a duty on controllers to act proactively with a view to possible exercise of the right to be forgotten. DE warned against the 'chilling effect' such obligation might have on the exercise of the freedom of expression.

<sup>101</sup> BE, supported by ES, FI, PL and FR, suggestion.

<sup>102</sup> BE and ES queried whether this was also possible for the offline world and BE suggested to clearly distinguish the obligations of controllers between the online and offline world. Several Member States (CZ, DE, LU, NL, PL, PT, SE and SI) had doubts on the enforceability of this rule. ES and PL suggested to delete paragraph 2a. IE scrutiny reservation on 2a. HU meant that the content was not clear. COM did not find the paragraph too narrow.

3. Paragraphs 1 and 2a shall not apply<sup>103</sup> to the extent that (...) processing of the personal data is necessary:<sup>104</sup>
- a. for exercising the right of freedom of expression **and information referred to in** Article 80<sup>105</sup>;
  - b. *for compliance with a legal obligation **which requires processing of***<sup>106</sup> *personal data by Union or Member State law to which the controller is subject*<sup>107</sup> *or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller*<sup>108</sup>;
  - c. for reasons of public interest in the area of public health in accordance with Article 9(2) (h)<sup>109</sup> and (hb) as well as Article 9(4)<sup>110</sup>;
  - d. for archiving purposes in the public interest or for *scientific, statistical and* historical (...) purposes in accordance with Article 83;
  - e. (...)
  - f. (...)
  - g. for the establishment, exercise or defence of legal claims.

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<sup>103</sup> DE queried whether these exceptions also applied to the abstention from further dissemination of personal data. AT and DE pointed out that Article 6 contained an absolute obligation to erase data in the cases listed in that article and considered that it was therefore illogical to provide for exception in this paragraph.

<sup>104</sup> BE found that paragraph 3 and Article 21 were overlapping.

<sup>105</sup> DE and EE asked why this exception had not been extended to individuals using their own freedom of expression (e.g. an individual blogger).

<sup>106</sup> FI suggestion, supported by DE and COM, to narrow down the scope.

<sup>107</sup> In general DE thought it was a strange legal construct to lay down exceptions to EU obligations by reference to national law. DK and SI were also critical in this regard. UK thought there should be an exception for creditworthiness and credit scoring, which is needed to facilitate responsible lending, as well as for judicial proceedings. IT suggested inserting a reference to Article 21(1).

<sup>108</sup> AT scrutiny reservation.

<sup>109</sup> COM thought that (h) should be deleted.

<sup>110</sup> DK queried whether this exception implied that a doctor could refuse to erase a patient's personal data notwithstanding an explicit request to that end from the latter. ES and DE indicated that this related to the more general question of how to resolve differences of view between the data subject and the data controller, especially in cases where the interests of third parties were at stake. PL asked what was the relation to Article 21.

4. (...)

5. (...)

#### Article 17a

#### **Right to restriction of processing**

1. The data subject shall have the right to obtain from the controller the restriction of the processing of personal data where:
  - (a) the accuracy of the data is contested by the data subject, for a period enabling the controller to verify the accuracy of the data<sup>111</sup>;
  - (b) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims; or
  - (c) he or she has objected to processing pursuant to Article 19(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.
2. (...)
3. Where processing of personal data has been restricted under paragraph 1, such data may, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest<sup>112</sup>.

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<sup>111</sup> FR scrutiny reservation: FR thought the cases in which this could apply, should be specified.

<sup>112</sup> DE, RO and SI asked who was to define the concept of public interest. DE reservation.

4. A data subject who obtained the restriction of processing pursuant to paragraph 1 (...) shall be informed by the controller before the restriction of processing is lifted<sup>113</sup>.
5. (...)
- 5a. (...)<sup>114</sup>

*Article 17b*

**Notification obligation regarding rectification, erasure or restriction**<sup>115 116</sup>

The controller shall communicate any rectification, erasure or restriction of processing carried out in accordance with Articles 16, 17(1) and 17a to each **known**<sup>117</sup> recipient to whom the data have been disclosed (...).

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<sup>113</sup> DE, PT, SI and IT thought that this paragraph should be a general obligation regarding processing, not limited to the exercise of the right to be forgotten. DK likewise thought the first sentence should be moved to Article 22. FR preferred the previous version of the text.

<sup>114</sup> Deleted in view of the new article 83.

<sup>115</sup> Whilst several delegations agreed with this proposed draft and were of the opinion that it added nothing new to the existing obligations under the 1995 Directive, some delegations (DE, PL, SK and NL) pointed to the possibly far-reaching impact in view of the data multiplication since 1995, which made it necessary to clearly specify the exact obligations flowing from this proposed article. Thus, DE, supported by PL, was opposed to a general obligation to log all the disclosures to recipients. DE, supported by PL, also pointed out that the obligation should exclude cases where legitimate interests of the data subject would be harmed by a further communication to the recipients, that is not the case if the recipient would for the first time learn negative information about the data subject in which he has no justified interest. BE and ES asked that the concept of a 'disproportionate effort' be clarified in a recital.

<sup>116</sup> DE suggested a new Article 17c on dispute settlement (7567/15). Supported by IT,IE, FR.

<sup>117</sup> BE suggestion, supported by ES, FR and PL.

*Article 18*  
***Right to data portability***<sup>118</sup>

1. (...)
  2. The data subject shall have the right to **withdraw**<sup>119</sup> the personal data<sup>120</sup> concerning him or her which he or she has provided to a controller and receive it in a **structured and**<sup>121</sup> commonly used<sup>122</sup> and<sup>123</sup> machine-readable format without hindrance from the controller to which the data have been provided to, where
- (a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9 (2) or on a contract pursuant to point (b) of Article 6 (1) ; and

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<sup>118</sup> UK reservation: while it supports the concept of data portability in principle, the UK considers it not within scope of data protection, but in consumer or competition law. Several other delegations (DK, DE, FR, IE, NL, PL and SE) also wondered whether this was not rather a rule of competition law and/or intellectual property law or how it related to these fields of law. Therefore the UK thinks this article should be deleted. NL and CZ thought its scope should be limited to social media. DE, DK and UK pointed to the risks for the competitive positions of companies if they were to be obliged to apply this rule unqualifiedly and referred to/raises serious issues about intellectual property and commercial confidentiality for all controllers. DE, FI, HU, SE and UK also underscored the considerable administrative burdens this article would imply. DE and FR referred to services, such as health services where the exercise of the right to data portability might endanger on-going research or the continuity of the service. Reference was also made to an increased risk of fraud as it may be used to fraudulently obtain the data of innocent data subjects (UK). DE, ES, FR, HR, HU, IE, PL and NO were in principle supportive of this right. SK thought that the article was unenforceable and DE, supported by HU, referred to the difficulty/impossibility to apply this right in 'multi-data subject' cases where a single 'copy' would contain data from several data subjects, who might not necessarily agree or even be known or could not be contacted, for example group photos. HU therefore questioned the added value of this right. BE, CZ, DE, DK, FI, RO and NO thought that the exclusion of the public sector should be mentioned not only in recital 55, but also here (ES was opposed thereto).

<sup>119</sup> IE meant that *transmit* narrowed the scope and preferred the term *withdraw*. BE preferred *obtain*.

<sup>120</sup> PL suggested to specify that this pertained to personal data in their non-aggregated or non-modified form. DE also queried about the scope of this right, in particular whether it could extend to data generated by the controller or data posted by third persons.

<sup>121</sup> Consistency of language with Article 15(2).

<sup>122</sup> DE and FI queried whether this meant the scope was restricted to currently used formats (excluding future developments) and whether it implied an obligation for controllers to use one of these commonly used formats.

<sup>123</sup> PT thought 'and' should be deleted.

(b) the processing is carried out by automated means<sup>124</sup>.

- 2a. The exercise of this right shall be without prejudice to Article 17. **The right referred to in paragraph 2 shall be without prejudice to processing carried out by public authorities or bodies.**
- 2aa. The right referred to in paragraph 2 shall be without prejudice to intellectual property rights in relation to the processing of those personal data<sup>125</sup>.
- [3. The Commission may specify (...) the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).]<sup>126</sup>
4. (...) <sup>127</sup>.

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<sup>124</sup> BE, DE, ES, IE, FI and FR these delegations thought emphasis should be put on the right to withdraw data, also with a view to creating an added value as compared to the right to obtain a copy of personal data. VY and HU also thought the obligation of the controller should be emphasised.

<sup>125</sup> ES thought there should be an exception in case disproportionate efforts would be required.

<sup>126</sup> FR, HU, SE and UK reservation: this would better set out in the Regulation itself. SE did not see the need for this provision and meant that such measures for transmission could quickly be outdated; the paragraph should therefore be deleted. CZ supported the deletion of the paragraph. In contrast, COM saw the need to specify technicalities.

<sup>127</sup> Deleted in view of the new Article 83



## SECTION 4

### RIGHT TO OBJECT AND PROFILING

#### *Article 19*

#### ***Right to object***<sup>128</sup>

1. The data subject shall have the right to object, on **compelling legitimate**<sup>129</sup> grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her which is based on points (...) **(e)**<sup>130</sup> **or** (f) of Article 6(1). **The controller shall no longer process the personal data (...)** unless the controller demonstrates **compelling** legitimate grounds for the processing which override the interests, (...) rights and freedoms of the data subject<sup>131</sup> or **compelling legitimate grounds for the establishment, exercise or defence of legal claims**<sup>132</sup>.

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<sup>128</sup> DE, ES, AT, SI, SK and UK scrutiny reservation.

<sup>129</sup> IE proposal.

<sup>130</sup> The reference to point (e) of Article 6(1) was restored in view of the support PL, IT, DK, ES, DE, RO, SI, AT, EL, CY. Objected by UK, BE, CZ, FI, HU and NL. ES and IT asked for the reinsertion of the reference to paragraph (e). COM stated that 1995 Directive contained a reference to point (e). BE noted that excluding a reference to point (e) was a step backwards compared to the 1995 Directive. UK, supported by DE, queried whether the right to object would still apply in a case where different grounds for processing applied simultaneously, some of which are not listed in Article 6. ES and LU queried why Article 6(1) (c) was not listed here. ES asked that a reference to Article 6(2) be added.

<sup>131</sup> SE scrutiny reservation: SE and NL queried the need to put the burden of proof on the controller regarding the existence of compelling legitimate grounds. DE and FI queried the need for new criteria, other than those from the 1995 Directive. COM stressed that the link with the 'particular situation' was made in order to avoid whimsical objections. CZ also stated that this risked making processing of data an exceptional situation due to the heavy burden of proof. NL and SE queried whether the right would also allow objecting to any processing by third parties.

<sup>132</sup> Moved from paragraph (1a). UK proposed adding ' for demonstrating compliance with the obligations imposed under this instrument'. This might also cover the concern raised by DE that a controller should still be able to process data for the execution of a contract if the data were obtained further to a contractual legal basis. CZ, DK, EE, IT, SE and UK have likewise emphasised the need for allowing to demonstrate compliance. CZ and SK also referred to the possibility of further processing on other grounds.

- 1a. (...)
2. Where personal data are processed for direct marketing<sup>133</sup> purposes, the data subject shall have the right to object (...) at any time to the processing of personal data concerning him or her for such marketing. **Prior to processing,** this right<sup>134</sup> shall be explicitly brought to the attention of the data subject (...) and shall be presented clearly and separately from any other information<sup>135</sup>.
- 2a. Where the data subject objects to the processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.
3. (...)
4. (...)

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<sup>133</sup> FR and UK underlined the need to have clarity regarding the exact content of this concept, possibly through a definition of direct marketing. DE asked which cases were covered exactly.

<sup>134</sup> DE suggestion, supported by COM, to inform the data subject as soon as possible of the right to object.

<sup>135</sup> At the request of several delegations (FR, LT, PT), COM confirmed that this paragraph was not meant to create an opt-in system and that the E-Privacy Directive would remain unaffected. DE feels there is a need to clarify the relationship between Article 19(2) on the one hand and Article 6(1)(f) and Article 6(4) on the other. It can be concluded from the right to object that direct marketing without consent is possible on the basis of a weighing of interests. On the other hand, Article 6(1)(f) no longer refers to the interests of third parties and Article 6(4) also no longer refers to Article 6(1)(f) in regard to data processing which changes the original purpose. DE is therefore of the opinion that this also needs to be clarified in view of online advertising and Directive 2002/58/EC and Article 89 of the Proposal for a Regulation.

Article 20

**Automated individual decision making**<sup>136</sup>

1. The data subject shall have the right not to be subject to a decision (...) <sup>137</sup>based solely on automated processing, including profiling, **which produces legal effects concerning him or her or significantly** <sup>138</sup> affects him or her.<sup>139</sup>
- 1a. **Paragraph 1 shall not apply if the decision**<sup>140</sup>: (...)
  - (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller (...) <sup>141</sup>; or

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<sup>136</sup> DE, ES, FR, AT, HU, PL, SE and UK scrutiny reservation. IT and COM reservation: COM is of the opinion that that the level of data protection in the current draft of this article is below that of Directive 95/46. DE thinks this provision must take account of two aspects, namely, whether and under what conditions a profile (= the linking of data which permits statements to be made about a data subject's personality) may be created and further processed, and, secondly, under what conditions a purely automated measure based on that profile is permissible if the measure is to the particular disadvantage of the data subject. It appears expedient to include two different rules in this regard. According to DE Article 20 only covers the second aspect and DE would like to see a rule included on profiling in regard to procedures for calculating the probability of specific behaviour (cf. Article 28b of the German Federal Data Protection Act, which requires that a scientifically recognized mathematical/statistical procedure be used which is demonstrably essential as regards the probability of the specific behaviour). ES was not favourable to the new drafting and asked that the objective was. DE stressed that it was important to look at the definition of profiling in order to ensure consistency. IT said that the way the Article was drafted it dealt with decisions based on profiling and not profiling as a technique. IT noted that for example fingerprints and exchanges between machines would be more common in the future.

<sup>137</sup> IE, supported by ES, wanted to delete the words from *a decision* until *him or her*.

<sup>138</sup> DE and PL wondered whether automated data processing was the right criterion for selecting high risk data processing operations and provided some examples of automated data processing operation which it did not consider as high risk. DE and ES pointed out that there are also cases of automated data processing which actually were aimed at increasing the level of data protection (e.g. in case of children that are automatically excluded from certain advertising). IT was concerned about the word *significantly* and wanted it clarified in a recital. COM meant that it could be clarified in a recital.

<sup>139</sup> DE meant that the title and definition in Article 4(12a) required a particular need for clarification.

<sup>140</sup> COM suggestion.

<sup>141</sup> NL had proposed to use the wording 'and arrangements allowing him to put his point of view, inspired by Article 15 of Directive 95/46. BE suggested adding this for each case referred in paragraph 2. NL meant that profiling was more about transparency for the data subject. CZ preferred the text in the 1995 Directive.

- (b) is (...) authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
- (c) is based on the data subject's explicit consent (...).
- 1b. In cases referred to in paragraph 1a (a) and (c)<sup>142</sup> the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least<sup>143</sup> the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision<sup>144</sup>:
2. (...)
3. Decisions referred to in paragraph 1a shall not (...) be based on special categories of personal data referred to in Article 9(1), unless points (a) or (g)<sup>145</sup> of Article 9(2) apply and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests<sup>146</sup> are in place.
4. (...)
5. (...)<sup>147</sup>

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<sup>142</sup> IE suggestion.

<sup>143</sup> BE suggestion, supported by FR.

<sup>144</sup> NL had proposed to use the wording 'and arrangements allowing him to put his point of view, inspired by Article 15 of Directive 95/46.

<sup>145</sup> UK did not want to limit processing to only points (a) or (g) so it suggested to delete the reference to points (a) and (g) whereas HU wanted to add points (b) and (c).

<sup>146</sup> BE, FR, IT, PL, PT, AT, SE and UK reservation FR and AT reservation on the compatibility with the E-Privacy Directive. BE would prefer to reinstate the term 'solely based', but FR and DE had previously pointed out that 'not ... solely' could empty this prohibition of its meaning by allowing sensitive data to be profiled together with other non-sensitive personal data. DE would prefer to insert a reference to the use of pseudonymous data.

<sup>147</sup> DE suggested new paragraphs 4-6 (7586/15) because of particular constitutional sensitivities. NL approved parts of it, especially paragraph 4 and thought that it was good to impose obligations on the controller.

## SECTION 5 RESTRICTIONS

### *Article 21*

#### ***Restrictions***<sup>148</sup>

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in (...) Articles 12 to 20 and Article 32, as well as Article 5<sup>149</sup> in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 20, when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard:
- (aa) national security;
  - (ab) defence;
  - (a) public security;
  - (b) the prevention, investigation, detection and prosecution of criminal offences and, for these purposes, safeguarding public security<sup>150</sup>, or the execution of criminal penalties;
  - (c) other important objectives of general 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, including, monetary, budgetary and taxation matters, public health and social security, the protection of market stability and integrity

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<sup>148</sup> SI and UK scrutiny reservation. SE and UK wondered why paragraph 2 of Article 13 of the 1995 Data Protection Directive had not been copied here. DE, supported by DK, HU, RO, PT and SI, stated that para. 1 should not only permit restrictions of the rights of data subjects but also their extension. For example, Article 20(2)(b) requires that Member States lay down 'suitable measures to safeguard the data subject's legitimate interests', which, when they take on the form of extended rights of access to information as provided for under German law in the case of profiling to assess creditworthiness (credit scoring), go beyond the Proposal for a Regulation.

<sup>149</sup> AT reservation.

<sup>150</sup> The wording of points (b), and possibly also point (a), will have to be discussed again in the future in the light of the discussions on the relevant wording of the text of the Data Protection Directive for police and judicial cooperation.

- (ca) the protection of judicial independence and judicial proceedings;
  - (d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
  - (e) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (aa), (ab), (a), (b), (c) and (d);
  - (f) the protection of the data subject or the rights and freedoms of others;
  - (g) the enforcement of civil law claims.
2. Any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to the purposes of the processing or categories of processing, the categories of personal data, the scope of the restrictions introduced, the specification of the controller or categories of controllers, the storage periods and the applicable safeguards taking into account of the nature, scope and purposes of the processing or categories of processing and the risks for the rights and freedoms of data subjects.
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