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**DATAPROTECT 181  
JAI 961  
MI 950  
DRS 163  
DAPIX 183  
FREMP 220  
COMIX 645  
CODEC 2375**

**NOTE**

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From: Presidency  
To: Council

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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)  
= Partial general approach  
= Orientation debate

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1. The purpose of this Presidency note is to finalise discussions on the inclusion of the public sector in the scope of the draft General Data Protection Regulation (hereinafter referred to as the 'GDPR') and on specific processing situations set out in Chapter IX.

2. The question whether and how to deal with processing of personal data by the public sector in the draft General Data Protection Regulation (GDPR) is one of particular sensitivity and importance to delegations. It was already debated at the JHA Informal Ministerial Meeting in Nicosia in July 2012 and at the JHA Council meetings in October and December 2012. At the latter Council meeting it was decided that the question as to whether and how the Regulation could provide flexibility for the Member States' public sector, would be decided following completion of the first examination of the text of the GDPR. More recently, at the informal Ministerial Meeting in Milan on 9 July 2014 an overall majority of Member States supported a Regulation as legal instrument, but the need to provide Member States with sufficient leeway to determine the data protection requirements applicable to the public sector was equally emphasised.
3. The agreed text of Articles 1, 6, paragraphs (2) (3), and 21 and of the corresponding recitals now clearly provides the framework within which Member States will be able to maintain and adopt legislation under this Regulation. The Presidency believes that the text is a balanced one, granting Member States an appropriate measure of flexibility while maintaining a coherent structure of the Regulation
4. *The Council is invited to reach a partial general approach on the text of Article 1, Article 6, paragraphs (2) and (3), Article 21 and Chapter IX contained in the Annex on the following understanding:*
  - i. *such partial general approach is to be reached on the understanding that nothing is agreed until everything is agreed and does not exclude future changes to be made to the text of the provisionally agreed Articles to ensure the overall coherence of the Regulation;*
  - ii. *such partial general approach is without prejudice to any horizontal question;*
  - iii. *such partial general approach does not mandate the Presidency to engage in informal trilogues with the European Parliament on the text.*

- .....
- 7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union. These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.
- 8) In order to ensure a consistent and high level of protection of individuals and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation,<sup>1</sup> for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC Member States have several sector specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules. Within this margin of manoeuvre sector-specific laws that Member States have issued implementing Directive 95/46/EC should be able to be upheld.

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<sup>1</sup> AT, supported by SI, made a proposal for a separate Article 82b which would allow Member States to adopt specific private sector provisions for specific situations (15768/14 DATAPROTECT 176 JAI 908 MI 916 DRS 156 DAPIX 179 FREMP 215 COMIX 623 CODEC 2300). The Presidency thinks that the revised recital 8 read together with Article 1(2a) sufficiently caters for this concern.

- 9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.
- 10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of personal data.
- 11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors (...), to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union should not be restricted or prohibited for reasons connected with the protection of individuals with regard to the processing of personal data. (...)

To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should not be claimed by any such person. (...).

.....

31) In order for processing to be lawful, personal data should be processed on the basis of the consent of the person concerned or some other legitimate legal basis laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

31a) Wherever this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant the constitutional order of the Member State concerned, however such legal basis or legislative measure should be clear and precise and its application foreseeable for those subject to it as required by the case law of the Court of Justice of the European Union and the European Court on Human Rights.

.....

- 35a) This Regulation provides for general rules on data protection **and that** in specific cases Member States are also empowered to lay down national rules on data protection. The Regulation does therefore not exclude Member State law that defines the circumstances of specific processing situations, including determining more precisely the conditions under which processing of personal data is lawful. National law may also provide for special processing conditions for specific sectors and for the processing of special categories of data.
- 36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a (...) basis in Union law or in the national law of a Member State. (...). It should be also for Union or national law to determine the purpose of the processing. Furthermore, this (...) basis could specify the general conditions of the Regulation governing the lawfulness of data processing, determine specifications for determining the controller, the type of data which are subject to the processing, the data subjects concerned, the entities to which the data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or national law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or by private law such as a professional association, where grounds of public interest so justify including for health purposes, such as public health and social protection and the management of health care services.

40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for archiving purposes in the public interest, or for statistical, scientific or historical (...) purposes. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the data are initially collected, the controller should take into account any link between those purposes and the purposes of the intended further processing, the context in which the data have been collected, including the reasonable expectations of the data subject as to their further use, the nature of the personal data, the consequences of the intended further processing for data subjects, and appropriate safeguards. Where the intended other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured. Further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

.....

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

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



121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Public access to official documents may be considered as a public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by this authority or body if the disclosure is provided for by Union law or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector information with the right to the protection of personal data and may therefore provide for the necessary derogations from the rules of this regulation. The reference to public authorities and bodies should in this context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Union and national law, and in particular does not alter the obligations and rights set out in this Regulation. In particular, that Directive should not apply to documents access to which is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data<sup>2</sup>.

122) (...)<sup>3</sup>.

123) (...)<sup>4</sup>.

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<sup>2</sup> Moved from recital 18.

<sup>3</sup> Moved to recital 42a.

<sup>4</sup> Moved to recital 42b.

- 124) National law or collective agreements (including 'works agreements')<sup>5</sup> may provide for specific rules on the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.
- 125) The processing of personal data for historical, statistical or scientific (...) purposes and for archiving purposes (...) should, in addition to the general principles and specific rules of this Regulation, in particular as regards the conditions for lawful processing, also comply with respect other relevant legislation such as on clinical trials. The further processing of personal data for historical, statistical and scientific purposes and for archiving purposes (...) should not be considered incompatible with the purposes for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose (...). Member States should be authorised to provide, under specific conditions and in the presence of appropriate safeguards for data subjects, specifications and derogations to the information requirements and the rights to access, rectification, erasure, to be forgotten, restriction of processing and on the right to data portability and the right to object when processing personal data for historical, statistical or scientific purposes and for archiving purposes (...) The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles.

125a)(...)<sup>6</sup>.

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<sup>5</sup> DE proposal.

<sup>6</sup> Moved to recitals 126c and 126d.

125aa)By coupling information from registries, researchers can obtain new knowledge of great value when it comes to e.g. widespread diseases as cardiovascular disease, cancer, depression etc. On the basis of registries, research results can be enhanced, as they draw on a larger population. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about long-term impact of a number of social conditions e.g. unemployment, education, and the coupling of this information to other life conditions. Research results obtained on the basis of registries provide solid, high quality knowledge, which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people, and improve the efficiency of social services etc.

In order to facilitate scientific research, personal data can be processed for scientific purposes subject to appropriate conditions and safeguards set out in Member State or Union law. Hence consent from the data subject should not be necessary for each further processing for scientific purposes.

125b) The importance of archives for the understanding of the history and culture of Europe<sup>22</sup> and “that well-kept and accessible archives contribute to the democratic function of our societies” were underlined by Council Resolution of 6 May 2003 on archives in the Member States<sup>7</sup>. Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide that personal data may be further processed for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes<sup>8</sup>.

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<sup>7</sup> OJ C 113, 13.5.2003, p. 2.

<sup>8</sup> CZ reservation.

Codes of conduct may contribute to the proper application of this Regulation, including when personal data are processed for archiving purposes in the public interest by further specifying appropriate safeguards for the rights and freedoms of the data subject<sup>9</sup>. Such codes should be drafted by Member States' official archives or by the European Archives Group. Regarding international transfers of personal data included in archives, these must take place without prejudice of the applying European and national rules for the circulation of cultural goods and national treasures.

126) Where personal data are processed for scientific purposes, this Regulation should also apply to that processing. For the purposes of this Regulation, processing of personal data for scientific purposes should include fundamental research, applied research, privately funded research<sup>10</sup> and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. Scientific purposes should also include studies conducted in the public interest in the area of public health. To meet the specificities of processing personal data for scientific purposes specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific purposes. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures<sup>11</sup>.

126a) Where personal data are processed for historical purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.

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

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<sup>9</sup> CZ, DK, FI, HU, FR, MT, NL, PT, RO, SE, SI and UK scrutiny reservation.

<sup>10</sup> AT and SE scrutiny reservation.

<sup>11</sup> CZ, DK, FI, FR, HU, MT, NL, PT, SE, SI and UK scrutiny reservation.

- 126c) Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union law or Member State law should, within the limits of this Regulation, determine statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for guaranteeing statistical confidentiality.
- 126d) The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union, while national statistics should also comply with national law. Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities<sup>12</sup> provides further specifications on statistical confidentiality for European statistics.
- 127) As regards the powers of the supervisory authorities to obtain from the controller or processor access personal data and access to its premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt professional secrecy where required by Union law.
- 128) This Regulation respects and does not prejudice the status under **existing constitutional** law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union. (...).

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<sup>12</sup> OJ L 87, 31.3.2009, p. 164–173.

**HAVE ADOPTED THIS REGULATION:**

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### ***Subject matter and objectives***

1. This Regulation lays down rules relating to the protection of individuals with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects (...) fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
- 2a. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to the processing of personal data for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or for other specific processing situations as provided for in Article 6(1)(c) and (e) by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX<sup>13</sup>.
3. The free movement of personal data within the Union shall neither be restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data<sup>14</sup>.

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<sup>13</sup> AT, CZ, HU, SI and SK reservation; these delegations were in favour of a minimum harmonisation clause for the public sector. LU reservation: this offers too much leeway.

<sup>14</sup> DK, FR, NL, SI scrutiny reservation.

## CHAPTER II

### PRINCIPLES

#### *Article 6*

#### ***Lawfulness of processing***<sup>15</sup>

- [1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:
- (a) the data subject has given unambiguous<sup>16</sup> consent to the processing of their personal data for one or more specific purposes<sup>17</sup>;
  - (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
  - (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
  - (d) processing is necessary in order to protect the vital interests of the data subject (...) <sup>18</sup>;
  - (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

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<sup>15</sup> DE, AT, PT, SI, SE and SK scrutiny reservation.

<sup>16</sup> FR, PL and COM reservation in relation to the deletion of 'explicit' in the definition of 'consent'; UK thought that the addition of 'unambiguous' was unjustified.

<sup>17</sup> UK suggested reverting to the definition of consent in Article 2(h) of the 1995 Directive.

<sup>18</sup> BG scrutiny reservation; UK preferred the wording of the 1995 Directive.

- (f) processing is necessary for the purposes of the legitimate interests<sup>19</sup> pursued by the controller or by a third party<sup>20</sup> except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. [This subparagraph shall not apply to processing carried out by public authorities in the exercise of their public duties<sup>21 22</sup>].
2. Processing of personal data which is necessary for archiving purposes in the public interest, or for historical, statistical or scientific purposes shall be lawful subject also to the conditions and safeguards referred to in Article 83.
3. The basis for the processing referred to in points (c) and (e) of paragraph 1 must be established in accordance with:
- (a) Union law, or
  - (b) national law of the Member State to which the controller is subject.

The purpose of the processing shall be determined in this legal basis or as regards the processing referred to in point (e) of paragraph 1, be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. This legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia the general conditions governing the lawfulness of data processing by the controller, the type of data which are subject to the processing, the data subjects concerned; the entities to, and the purposes for which the data may be disclosed; the purpose limitation; storage periods and processing operations and processing procedures, including measures to ensure lawful and fair processing, including for other specific processing situations as provided for in Chapter IX.

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<sup>19</sup> FR scrutiny reservation.

<sup>20</sup> Reinstated at the request of BG, CZ, DE, ES, HU, IT, NL, SE, SK and UK.

<sup>21</sup> BE, DK, MT SI, PT and UK had suggested deleting the last sentence. FR scrutiny reservation.

<sup>22</sup> DK and FR regretted there was no longer a reference to purposes set out in Article 9(2) and thought that the link between Article 6 and 9 needed to be clarified.



- [3a. In order to ascertain whether a purpose of further processing is compatible with the one for which the data are initially collected, the controller shall take into account, inter alia<sup>23</sup>:
- (a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;
  - (b) the context in which the data have been collected;
  - (c) the nature of the personal data;
  - (d) the possible consequences of the intended further processing for data subjects;
  - (e) the existence of appropriate safeguards<sup>24</sup>.
4. Where the purpose of further processing is incompatible with the one for which the personal data have been collected, the further processing must have a legal basis at least in one of the grounds referred to in points (a) to (e)<sup>25</sup> of paragraph 1<sup>26 27 28</sup>].
5. (...)

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<sup>23</sup> DK, FI, NL, SI and SE stressed the list should not be exhaustive. PT: add consent.

<sup>24</sup> BG, DE and PL reservation: safeguards as such do not make further processing compatible.

<sup>25</sup> DK, DE, ES FR and NL thought (f) should be added.

<sup>26</sup> DE, HU, NL and PT scrutiny reservation. PT thought paragraph 4 could be deleted.

<sup>27</sup> BE queried whether this allowed for a hidden 'opt-in', e.g. regarding direct marketing operations, which COM referred to in recital 40. BE, supported by FR, suggested adding 'if the process concerns the data mentioned in Articles 8 and 9'.

<sup>28</sup> HU thought that a duty for the data controller to inform the data subject of a change of legal basis should be added here: 'Where personal data relating to the data subject are processed under this provision the controller shall inform the data subject according to Article 14 before the time of or within a reasonable period after the commencement of the first operation or set of operations performed upon the personal data for the purpose of further processing not compatible with the one for which the personal data have been collected.'

**CHAPTER III**  
**SECTION 5**  
**RESTRICTIONS**

*Article 21*  
***Restrictions***<sup>29</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>30</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;

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<sup>29</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>30</sup> AT reservation.

- (b) the prevention, investigation, detection and prosecution of criminal offences and, for these purposes, safeguarding public security<sup>31</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
    - (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 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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<sup>31</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.

## CHAPTER IX

### PROVISIONS RELATING TO SPECIFIC DATA PROCESSING SITUATIONS

#### *Article 80*

##### ***Processing of personal data and freedom of expression and information***

1. The national law of the Member State shall (...) reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including the processing of personal data for journalistic purposes and the purposes of academic, artistic or literary expression.
  
2. For the processing of personal data carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall<sup>32</sup> provide for exemptions or derogations from the provisions in Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organizations), Chapter VI (independent supervisory authorities), Chapter VII (co-operation and consistency)<sup>33</sup> if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information (...).

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<sup>32</sup> HU, AT, SI and SE reservation; they would prefer not to limit this paragraph to journalistic processing.

<sup>33</sup> BE, DE, FR, IE and SE had requested to include also a reference to Chapter VIII. This was opposed to by COM. The Presidency points out that in case the freedom of expression prevails over the right to data protection, there will obviously no infringement to sanction. Where an infringement is found to have place, the interference with the freedom of expression will have to taken into account as an element in the determination of the sanction. This application of the proportionality principle should be reflected in Chapter VIII.

*Article 80a*

**Processing of personal data and public access to official documents**<sup>34</sup>

Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union law or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

*Article 80aa*

**Processing of personal data and reuse of public sector information**

Personal data in in public sector information held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union law or Member State law to which the public authority or body is subject **in order to reconcile the reuse of such official documents and public sector information with the right to the protection of personal data pursuant to this Regulation**<sup>35</sup>.

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<sup>34</sup> SK and PT scrutiny reservation.

<sup>35</sup> COM reservation in view of incompatibility with existing EU law, in particular Directive 2003/98/EC (as amended by Directive 2013/37/EU).

*Article 80b*<sup>36</sup>

**Processing of national identification number**

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

*Article 81*

**Processing of personal data for health -related purposes**

(...)<sup>37</sup>

*Article 81a*

**Processing of genetic data**

(...)<sup>38</sup>

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<sup>36</sup> DK, PL, SK scrutiny reservation.

<sup>37</sup> See Article 9(2)(g),(h), (hb) and (4) which enshrine the basic idea, previously expressed in Article 81, that sensitive data may be processed for purposes of medicine, health-care, public health and other public interests, subject to certain appropriate safeguards based on Union law or Member State law. This text is not part of the partial general approach which the Council is asked to agree at its meeting of 4 December 2014 and will be subject to further scrutiny at technical level.

<sup>38</sup> See Article 9(2)(ha) and (4) which enshrine the basic idea, previously expressed in Article 81a, that genetic data may be processed, e.g. for medical purposes or to clarify parentage, subject to certain appropriate safeguards based on Union law or Member State law. This text is not part of the partial general approach which the Council is asked to agree at its meeting of 4 December 2014 and will be subject to further scrutiny at technical level.

*Article 82*

***Processing in the employment context***

1. Member States may by law or by collective agreements, provide for more specific<sup>39</sup> rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. (...)
2. [Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them].
3. Member States may by law determine the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee<sup>40</sup> .

*Article 82a*

**Processing for purposes of social protection**

(...)

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<sup>39</sup> DE, supported, by AT, CZ, HU, DK and SI, wanted to refer to 'stricter' rules.

<sup>40</sup> This paragraph may need to be looked at again in the context of the discussions on Articles 7 and 8 for consent. COM, PL, PT scrutiny reservation.

Article 83

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

1. Where personal data are processed for scientific, statistical<sup>41</sup> or historical purposes Union or Member State law may, subject to appropriate safeguards for the rights and freedoms of the data subject, provide for derogations from Articles 14a(1) and (2), 15, 16, 17, 17a, 17b, 18 and 19<sup>42</sup>, insofar as such derogation is necessary for the fulfilment of the specific purposes.
- 1a. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may, subject to appropriate safeguards for the rights and freedoms of the data subject, provide for derogations from Articles 14a(1) and (2), 15, 16, 17, 17a, 17b, 18, 19, 23, 32, 33 and 53 (1b)(d) and (e), insofar as such derogation is necessary for the fulfilment of these purposes<sup>43</sup>.
- 1b. In case a type of processing referred to in paragraphs 1 and 1a serves at the same time another purpose, the derogations allowed for apply only to the processing for the purposes referred to in those paragraphs.
2. The appropriate safeguards referred to in paragraphs 1 and 1a shall be laid down in Union or Member State law and be such to ensure that technological and/or organisational protection measures pursuant to this Regulation are applied to the personal data (...), to minimise the processing of personal data in pursuance of the proportionality and necessity principles, such as *pseudonymising the data*, unless those measures prevent achieving the purpose of the processing and such purpose cannot be otherwise fulfilled within reasonable means.
3. (...).

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<sup>41</sup> PL and SI would want to restrict this to statistical processing in the public interest.

<sup>42</sup> NL and DK proposed adding a reference to Article 7. SI supported this as far as scientific processing is concerned. PL suggested deleting the reference to Article 19.

<sup>43</sup> COM and AT thought the list of articles from which can be derogated should be more limited.



*Article 84*

***Obligations of secrecy***<sup>44</sup>

1. (...) Member States may adopt specific rules to set out the (...) powers by the supervisory authorities laid down in points (da) and (db) of Article 53(1) in relation to controllers or processors that are subjects under Union or Member State law or rules established by national competent bodies to an obligation of professional secrecy, other equivalent obligations of secrecy or to a code of professional ethics supervised and enforced by professional bodies, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.
2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

*Article 85*

***Existing data protection rules of churches and religious associations***<sup>45</sup>

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.
2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1, shall be subject to the control of an independent supervisory authority which may be specific, provided that it fulfils the conditions laid down in Chapter VI of this Regulation.

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<sup>44</sup> DE and UK scrutiny reservation.

<sup>45</sup> MT, NL, AT and PT reservation.