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NOTE

from: Presidency
to: Working Group on Information Exchange and Data Protection (DAPIX)
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 IX : Articles 83a and 83c

Delegations will find attached the Presidency's revised proposals regarding Articles 83a and 83c.

125) The processing of personal data for historical, statistical or scientific (...) purposes **and for archiving purposes in the public interest** 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 processing of personal data for historical, statistical and scientific purposes **and for archiving purposes in the public interest** 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, subject to specific safeguards and provided that the controller provides appropriate measures to safeguard the rights and freedoms of the data subject. **Member States should be authorised to provide, under specific conditions, specifications and derogations to the information requirements and the rights to erasure, restriction of processing and on the right to data portability, and to determine that rectification may be exercised exclusively to the provision of a supplementary statement, taking into account the specificities of processing for historical, statistical or scientific purposes and for archiving purposes in the public interest.**

125a) The importance of archives for the understanding of the history and culture of Europe² and “that well-kept and accessible archives contribute to the democratic function of our societies”, as underlined by Council Resolution of 6 May 2003 on archives in the Member States¹. Where personal data are processed for archiving purposes **in the public interest**, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons, **unless information on deceased persons is related to other data subjects²**.

¹ OJ C 113, 13.5.2003, p. 2.

² ES and MT thought that it was repetitious to refer to the non-application to deceased persons (also *e.g.* in recital 126, end first paragraph). MT added that certain sensitive data of deceased could be interesting, for example it would be interesting for a child to know if a deceased parent had a certain illness. MT suggested to add text like "if it did not impinge the interests of other data subjects". Support from EE and SK to the MT suggestion. SK suggested alternatively drafting on the lines that data on deceased persons linked to living persons could be used.

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 as their main mission¹ a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Where personal data are collected for other purposes, processing of personal data for archiving purposes in the public interest should not be considered incompatible with the purpose for which the data are initially collected and may be processed for longer than necessary for that initial purpose. Member States should also be authorised to provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest², such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.

The processing of personal data for archiving purposes in the public interest should be subject to appropriate measures to safeguard the rights and freedoms of the data subject, including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons.

Codes of conduct may contribute to the proper application of this Regulation, **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 subject³.

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, and privately funded research **carried out in the public interest** 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. (...)

¹ SE wanted to delete the reference to *main mission* because very few entities have as their main mission to acquire access... to records, but it is something that they do, such a drafting would narrow down the scope. Support from DK, IE and EE.

² FI thought this phrase should be in the body of the text.

³ CZ, DK, FI, HU, FR, MT, NL, PT, RO, SE, SI and UK scrutiny reservation.

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. Member States should have the possibility to provide for derogations from certain rules of the Regulation. Where personal data are collected for other purposes, processing of personal data for scientific purposes (...) should not be considered incompatible with the purpose for which the data are initially collected and may be processed for a longer period than necessary for that initial purpose. The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject. In particular the controller should ensure that the data are not used for taking measures or decisions which might affect particular individuals. 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 that processing¹.

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, unless information on deceased persons is related to personal data concerning data subjects.

Where personal data are collected for other purposes, processing of personal data for historical purposes should not be considered incompatible with the purpose for which the data are initially collected and may be processed for longer than necessary for that initial purpose.

¹ CZ, DK, FI, FR, HU, MT, NL, PT, RO, SE, SI and UK scrutiny reservation. PL suggested to add the following text somewhere in the recital " When data are being processed for historical or archival purposes, the data subject shall have the right to obtain completion of incomplete or out of date personal data by means of providing a supplementary statement."

Processing of personal data
for archiving purposes in the public interest^{1,2}

- 1. Where personal data are processed for archiving purposes carried out by public authorities or bodies or private bodies in the public interest**³ **pursuant to Union or Member State law, Member State law may**⁴, **subject to appropriate measures to safeguard the rights and freedoms of the data subject**⁵, **provide for derogations**⁶ **from:**
- a) **Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law**⁷;;

¹ CZ, DE, DK, FI, FR, HU, MT, NL, PT, RO, SI, SE and UK scrutiny reservation. IT said that it was important to set out that archives must comply with the provisions in Articles 5.1 and 6. AT asked when data became archive material. PT thought that archives fulfilled its own purpose and own logic and that it was not necessary to explain why an archive existed.

² DE proposed adding: 'Establishments which are legally responsible for the documents of the secret police services of the former communist dictatorships may keep, process, publish and provide access to personal data insofar as the interests or fundamental rights and freedoms of the data subject do not outweigh the interests of processing, publishing and disclosing such documents.'

³ DE, ES and NL asked for a definition of *public interest*, and SI expressed scepticism to define *public interest*. NL, PT and FR found that the *public interest* was too narrow. NL indicated that that archives for taxation purposes was probably not considered as public interest but could be legitimate interest and PT thought that archives were useful *per se*. DE and ES found it necessary to decide the interest of protection (DE referred to archives of Google and Facebook and ES to data kept by *e.g.* the hunting club). COM added that the archives regime would not mean that the general rules should not be complied with., but that the archive rules kicked in when the original purpose was fulfilled or no longer applicable. The justification for the archiving rules were the public interest and archiving was not a purpose in itself for COM. UK said that it would like to see a reference to private bodies since the household exemption would not cover such archives. ES and UK doubted the need for a separate article;. UK queried whether Articles 6.3 and 20 would not suffice and ES indicated that Article 21 was enough to decide if personal data were processed for public interests and if derogations could be set out. BE also asked whether it would not be enough to refer to Articles 6.3 and 21. FI wanted to know if the cultural heritage was covered by the Article on archiving and suggested to clarify it in a recital. SK wanted that archives both from the public sector as well as from the private sector be covered.

⁴ PT and SI preferred to replace *may* with *shall*.

⁵ FR thought that the text from "subject to ..." until "data subject" was too broad.

⁶ IT wanted to underline that the derogations should be interpreted restrictively.

⁷ IE asked why there was a reference to EU law and MS law both in the *chapeau* and in paragraph (a).

- b) **Article 16¹ insofar as rectification may be exercised exclusively by the provision of a supplementary statement;**
- c) **Articles 17, 17a and 18² insofar as such derogation is necessary³ for the fulfilment for the archiving purposes.⁴**

2. **By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a)⁵, processing of personal data for archiving purposes (...) carried out in the public interest pursuant to Union or Member State law shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer⁶ longer⁶ (...) than necessary for the initial purpose subject to appropriate safeguards for the rights and freedoms of the data subject, in particular to ensure that the data, without prejudice to paragraph 3, are not processed for any other purposes or used in support of measures or decisions affecting any particular individual⁷, and subject to specifications on the conditions for access to the data⁸.**
3. **Without prejudice to Article 80a, the controller shall take appropriate measures to ensure that personal data which are processed for the purposes referred to in paragraph 1 may be made accessible to recipients only for important reasons of public interest or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law to which the controller is**

¹ ES expressed doubts on the reference to Article 16. IE asked why Article 16 had its own paragraph and how different that Article was to the Articles referred to in paragraph (c). IE further stated that it would be difficult to write history with the reference to Article 16 on rectification, IE therefore asked for the removal of that reference.

² DE proposed adding Article 19.

³ CZ did not believe a necessity test was required.

⁴ BE asked if the idea was that paragraph 1 related to data initially processed for archiving purposes and paragraph 2 for further processing. ES thought that there was a risk if archiving for private interests was covered by paragraph 1(c).

⁵ ES said that since Articles 5 and 6 are fundamental principles it was dangerous to allow derogations from them, the conditions in Article 5 and 6 should always be complied with. ES required to see examples of such derogations.

⁶ ES and DE indicated that no time limits should be set out for archives. PT said that it did not matter how long data were kept.

⁷ IE meant that it would be a mistake to prohibit the use of archives in support of measures affecting people since archives could help to e.g. to compensate children who had been erroneously displaced or who had been victims of abuse in the past. DE meant that decisions should be allowed in favour of individuals since many uses of archives currently explicitly permitted by law and intended to address past injustices would no longer be permissible.

⁸ In the UK opinion paragraph 2 and recital 125a were contradictory.

subject.

4. (...).
5. (...).

Article 83c

Processing of personal data for scientific purposes¹

1. **In accordance² with this Regulation and in particular with Article 6(1), personal data may be processed for scientific (...) purposes, including for scientific (...) research, provided that (...) these purposes cannot reasonably be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject and according to the following conditions:**
 - a) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner³; and
 - b) the personal data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions which may affect that individual⁴; and
 - c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject⁵.

¹ CZ, DK, FI, FR, MT, NL, PT, RO, SE, SI and UK scrutiny reservation. ES was sceptical and did not know if the Article was needed since there were general rules applicable. ES thought that Article 83c was not complete without including private archives. UK gave the example of a historical biography of a living person and asked whether Article 80 or 83c was applicable and how these Articles were interlinked. DK suggested to add in Article 6 and 9 research as long as the conditions in Article 83c were fulfilled. BE, IE, RO, SE and UK thought that addressing both scientific and historical purposes in one Article was a bad idea. The dividing line between scientific and historical purposes and e.g. political science purpose was not clear. They use different methods; for example in scientific research the names were not important whereas the name of the person in historic research is crucial. HU thought that the title should be changed into "Purpose of documentation".

² DK wanted to delete. PL asked why "In accordance with" was not added to Article 83a and required consistency.

³ DK thought that keeping data anonymous could represent administrative burden.

⁴ DK objected to paragraph (b) because of the links to clinical research and treatment. AT queried about the meaning of paragraph (b) and thought, like ES, that it could be solved by using Article 21. BE wanted to delete the point (b).

⁵ NL thought that paragraph 1 was drafted narrowly.

2. Where personal data are processed for scientific purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
- a) **Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort¹ or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law²;**
 - b) **Article 16³ insofar as rectification may be exercised exclusively by the provision of a supplementary statement⁴;**
 - c) **Articles 17, 17a, and 18⁵ insofar as such derogation is necessary for the fulfilment of the scientific purposes⁶.**
3. **By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific (...) purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual⁷ and by pseudonymisation of personal data⁸.**

1 BE suggested to add "or seriously impair the achievement of the research" giving as an example that patients should not no if they were given *real* medicine or placebo medication.

2 BE suggested to add "or seriously impair the achievement of the research" giving as an example that patients should not no if they were given *real* medicine or placebo medication.

3 BE wanted to add a reference to Article 15. AT informed that in AT rectifications can only be made to factual data and that the data were creating negative effect on the data subject, it therefore wanted references to Article 16 to be interpreted restrictively.

4 ES wanted to add more flexibility to the paragraph. NL meant that the purpose of scientific research was to publish and it should always be possible to publish albeit under certain conditions, it therefore supported the ES suggestion.

5 DE proposed adding Article 19.

6 BE was sceptical to this paragraph and meant that instead of harmonising the rules MS should be entitled to adopt rules.

7 DE meant that decisions should be allowed in favour of individuals since many uses of archives currently explicitly permitted by law and intended to address past injustices would no longer be permissible including examining the Stasi Records Act, security checks and criminal investigations.

8 BE stated that in the 1995 Directive further processing fell under the general regime and suggested that this be the case here as well. NL supported DK and the need for research in the area of health for example to use personal data, NL was opposed to any restriction for such

- 3a. Personal data processed for scientific (...) purposes may be published or otherwise publicly disclosed by the controller **provided that** the interests or the rights or freedoms of the data subject do not override these interests and when:
- a. the data subject has given explicit consent¹; or
 - b. the data were made manifestly public by the data subject.²;
 - c. the publication of personal data is necessary to present scientific findings³.
4. (...)

Article 83d

Processing of personal data for historical purposes

- 1. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for historical purposes (...) shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual⁴ and by pseudonymisation of personal data⁵.**

use.

- ¹ DE wanted that consent should not be required for research on health aspects and the use of biobanks. Support from DK that said that there are health legislation and ethics in science and consent from the relevant authorities should be enough. DK said that studies from the US showed that it was impossible to receive the consent of a large number of persons in order to do research, for deceases like cancer and infectious deceases it was important to use personal data. Support from SE and UK on consent.
- ² BE said that paragraph 2 could not be used for historical purposes.
- ³ HU requested the reinsertion of paragraph (c) on publication or public disclosure. DE queried whether the publication of personal data in the form of individual statistics if the data subject gives consent is possible under Article 83c(2) or not at all.
- ⁴ DE meant that decisions should be allowed in favour of individuals since many uses of archives currently explicitly permitted by law and intended to address past injustices would no longer be permissible including examining the Stasi Records Act, security checks and criminal investigations.
- ⁵ PL suggested to add the following text: "When data are being processed for historical or archival purposes, the data subject shall have the right to obtain completion of incomplete or

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- b) **Article 16¹ insofar as rectification may be exercised exclusively by the provision of a supplementary statement;**
- c) **Articles 17, 17a, and 18² insofar as such derogation is necessary for the fulfilment for the historical purposes.**

3. (...)

out of date personal data by means of providing a supplementary statement."

¹ BE wanted to add a reference to Article 15. AT informed that in AT rectifications can only be made to factual data and that the data were creating negative effect on the data subject, it therefore wanted references to Article 16 to be interpreted restrictively.

² BE suggested to add a reference to Article 19 as well.