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THE EUROPEAN UNION**

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NOTE

from: Presidency

to: Working Group on Information Exchange and Data Protection (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)
- Letter from the Chair of the Working Party on Statistics

Delegations find in Annex a letter from the Chair of the Council Working Party on Statistics regarding the General Data Protection Regulation.



Mr Christian Wiese Svanberg
Vice-Chairman of the Council Working Party on Data Protection
and Information Exchange (DAPIX)

25 May 2012

Proposals for changes in the General Data Protection Regulation

In continuation of my letter of 11 April 2012 regarding the serious concerns of the National Statistical Institutes (NSIs) in the European Statistical System with regard to the Commission's proposal for a General Data Protection Regulation, I hereby send you proposals for changes in the Regulation.

Within the Working Group on Statistical Confidentiality, a group has analysed the Regulation and has come up with the attached concrete proposal for amendments to the Regulation text, exempting statistics and science from certain measures that are relevant only to administrative data processing.

I should like to mention that the NSIs of some Member States favoured another solution, which includes totally exempting official statistics from this Regulation, understanding that there are in the statistical law at European and national level more specific provisions dealing with individual data protection. After extensive discussions on the alternatives, the confidentiality experts of the NSIs have had the opportunity to give their opinion about these approaches and have supported the attached proposal.

It is our hope that the attached proposal will be included in the coming draft proposal from DAPIX for the General Data Protection Regulation, thereby establishing the same legal regime for the statistical institutes as is the present state.

Should you have any questions or comments, please don't hesitate to call me.

Yours sincerely,

A handwritten signature in blue ink that reads 'Jan Plovsing'.

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Proposed changes to COM(2012) 11/4 draft – General Data Protection Regulation from the National Statistical Institutes within the European Statistical System

Blue underlined text indicates proposal for insertion.

~~Red strikethrough text indicates proposals for deletion.~~

Proposed changes	Comments
<p>Article 6, paragraph 2: Processing of personal data which is necessary for historical, statistical, or scientific research purposes shall be lawful subject to the conditions and safeguards referred to in Article 83.</p>	<p>Consistent terminology introduced and used throughout. “Historical, statistical, or scientific research purposes.”</p>

Proposed changes	Comments
<p>Article 14, paragraph 5:</p> <p>Paragraphs 1 to 4 shall not apply, where:</p> <p>(a) the data subject has already the information referred to in paragraphs 1, 2 and 3; or</p> <p>(b) the data are not collected from the data subject and the provision of such information, in particular when processing for historical, statistical, or scientific research purposes, proves impossible or would involve a disproportionate effort; or</p> <p>(c) the data are not collected from the data subject and recording or disclosure is expressly laid down by law; or</p> <p>(d) the data are not collected from the data subject and the provision of such information will impair the rights and freedoms of others, as defined in Union law or Member State law in accordance with Article 21.</p> <p>Article 14, INSERT NEW paragraph 5A after paragraph 5:</p> <p><u>5A. Paragraph 1(d) shall not apply where data are collected for historical, statistical or scientific research purposes and the conditions in Article 83(1A) are met.</u></p>	<p>Amendment to Art 14(5)(b) for clarification that this provision applies in particular to processing for historical, statistical or scientific research purposes.</p> <p>New paragraph 5A added to exempt controllers processing data only for historical, statistical and scientific research purposes from the requirement to inform data subjects of rights relating to matters that are exempted (under these amendments) when processing for these purposes.</p>
<p>Article 15, INSERT NEW paragraph 5:</p> <p>5. <u>The rights provided for in Article 15 do not apply when data are processed only for historical, statistical, or scientific research purposes and the conditions in Article 83(1A) are met.</u></p>	<p>Exempts controllers processing data for these purposes from the right to access for the data subject. Reflects the provisions of the current Data Protection Directive and have been considered non-controversial since introduction.</p>

Proposed changes	Comments
<p>Article 16, INSERT NEW paragraph 2:</p> <p><u>2. The rights provided for in Article 16 do not apply when data are processed only for historical, statistical, or scientific research purposes and the conditions in Article 83(1A) are met.</u></p>	<p>Exempts controllers processing data for these purposes from the right to rectification. Reflects the provisions of the current Data Protection Directive and have been considered non-controversial since introduction.</p>
<p>Article 18, INSERT NEW paragraph 4:</p> <p><u>4. The rights provided for in Article 18 do not apply when data are processed only for historical, statistical, or scientific research purposes and the conditions in Article 83(1A) are met.</u></p>	<p>Exempts controllers processing data for these purposes from the right to data portability.</p>
<p>Article 19, INSERT NEW paragraph 4:</p> <p><u>4. The rights provided for in Article 19 do not apply when data are processed only for historical, statistical, or scientific research purposes and the conditions in Article 83(1A) are met.</u></p>	<p>Exempts controllers processing data for these purposes from the right to object. Reflects the benign nature of these purposes, and the necessity for statistical, historical, and scientific research to maintain complete coverage of certain populations.</p>

Proposed changes	Comments
<p>Article 83, INSERT NEW PARAGRAPH after paragraph 1:</p> <p><u>1A. The provisions and exceptions for historical, statistical, and scientific research purposes within the limits of this Regulation shall apply only on condition:</u></p> <p><u>(a) that the data on any particular individual are not processed to support measures or decisions with respect to that individual, and</u></p> <p><u>(b) that the data are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.</u></p>	<p>Paragraph added to qualify the meaning of historical, statistical, and scientific research, justifying the exemptions sought for articles 14, 15, 16, 18, and 19.</p>
<p>Article 83, paragraph 1(b) should be DELETED:</p> <p>Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:</p> <p>(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;</p> <p>(b) 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 manner.</p>	<p>In historical, statistical, and scientific research it is not always possible to separate identifiers and the attributed information. Furthermore, it hinders correct archiving of original files in accordance with scientific principles.</p>

Proposed changes	Comments
<p>Article 83, paragraph 3 should be DELETED:</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2, as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.</p>	<p>The opinion of the European Data Protection Supervisor is that limitations on the rights of individuals should be included in the basic act text itself.</p>