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NOTE

From: General Secretariat of the Council
To: Delegations

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 by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002 [First reading]
- Compilation of Member States written contributions

In preparation of the meeting of DAPIX (Friends of Presidency) on 19 February 2018 delegations will find attached a compilation of Member States written contributions on document 5580/18. **This revised document contains additional comments by the Finnish delegation compared to the initial document 6153/18.**

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BELGIUM

- Given the crucial importance of the close cooperation between Eurojust and Europol, we still have difficulties understanding why a differentiation of regime should be made between them. At this stage, we would prefer to see the two agencies being treated on equal footing, meaning that Eurojust would be bound by the new chapter together with Europol according to the review clause.
- We support proposals from Slovenia and some other MS aiming to clarify further the *lex specialis / lex generalis* approach.
- We would like to add a new provision written as follow:

‘the EDPS will exercise its supervision powers in accordance with the rules contained in the founding acts establishing these bodies, offices or agencies’

GERMANY

Proposal of the Presidency of 31 January 2018	Comments and Proposals of Germany
<p>(7a) This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. However, where other legal acts of the European Union <i>such as the founding acts of Europol and the European Public Prosecutor's Office</i>, provide for specific rules on the processing of personal data by Union institutions and bodies, these rules should remain unaffected by this Regulation.</p>	<p>(7a) This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. However, where other legal acts of the European Union <i>such as the founding acts of Europol and the European Public Prosecutor's Office</i>, <u>which</u> provide for specific rules on the processing of <u>operational</u> personal data by Union institutions and bodies, these rules should remain unaffected by this Regulation.</p>
<p>(8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. <i>A specific Chapter of this Regulation should therefore not apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU without prejudice to specific rules contained in the acts establishing these bodies, offices or agencies.</i></p>	<p>(8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. <i>A specific Chapter of this Regulation should therefore not apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU <u>such as Eurojust in so far as without prejudice to specific rules contained in the existing and future acts establishing these bodies, offices or agencies do not provide for diverging rules.</u></i></p>

	<p><u><i>This means that in case of conflict between the provisions of this Regulation and provisions of existing and future acts establishing Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU such as the Eurojust Regulation, the latter-mentioned acts should prevail.</i></u></p> <p>Reasons:</p> <p>It is of utmost importance that JHA agencies operating under Chapters 4 and 5 of Title V of Part Three of the TFEU may keep their respective tailor-made data protection regimes contained in the founding acts even in the future. This is only possible if the principle <i>lex specialis derogate legi generali</i> is fully implemented in the text of the Regulation. The formulation “without prejudice to” is not clear enough to solve the conflict of norms with the necessary clarity. What is needed is that the provisions in the founding acts of the JHA agencies <u>prevail</u> over the provisions of the modernised Regulation (EC) no. 45/2001.</p>
<p><i>(8a) The Chapter of this Regulation containing general rules on the processing of operational personal data by those Union bodies, offices or agencies, should not apply to Europol and the European Public Prosecutor's Office until this Regulation is amended on the basis of proposals of the Commission that may, if appropriate, be submitted as a result from a review of this Chapter and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. After such a review to assess the need to supplement this Chapter by further general provisions and to apply it to all those Union bodies, offices or agencies has</i></p>	<p><i>(8a) The Chapter of this Regulation containing general rules on the processing of operational personal data by those Union bodies, offices or agencies, should not apply to Europol and the European Public Prosecutor's Office until <u>the acts establishing Europol and the European Public Prosecutor's Office as well as this Regulation are</u> amended on the basis of proposals of the Commission that may, if appropriate, be submitted as a result from a review of this Chapter and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. After such a review to assess the need to supplement this Chapter</i></p>

been carried out by the Commission, the acts establishing Europol and the European Public Prosecutor's Office could be amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data applicable to Europol and the European Public Prosecutor's Office. Processing of administrative personal data by those bodies, offices or agencies, such as staff data, should be covered by this Regulation.

~~*by further general provisions and to apply it to all those Union bodies, offices or agencies has been carried out by the Commission, the acts establishing Europol and the European Public Prosecutor's Office could be amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data applicable to Europol and the European Public Prosecutor's Office. Processing of administrative personal data by those bodies, offices or agencies, such as staff data, should be covered by this Regulation.*~~

Reasons:

It is essential that the review and the evaluation are undertaken in a neutral way - this means without any predetermination of the outcome. Therefore the marked sentence should be deleted because it suggests that Chapter VIIIa could be supplemented. But the result of the evaluation may also be that Chapter VIIIa does not have to be supplemented. Moreover, the possible outcome of the evaluation could be that the founding acts of Europol and EPPO both contain a well-functioning, sophisticated data protection regime and that for this reason even in the future Chapter VIIIa should not be applicable to Europol and EPPO.

<p>(9) Directive (EU) 2016/680 provides harmonised rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. In order to foster the same level of protection for natural persons through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU in the fields of judicial cooperation in criminal matters and police cooperation and competent authorities in Member States, the rules for the protection and the free movement of operational personal data processed by such Union bodies, offices or agencies should draw on the principles underpinning this Regulation and be consistent with Directive (EU) 2016/680.</p>	
<p>(10) Where the founding act of a Union agency carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of the Treaty lays down a standalone data protection regime for the processing of operational personal data such regimes should be unaffected by this Regulation. However, the Commission should, in accordance with Article 62 of Directive (EU) 2016/680, by 6 May 2019 review Union acts which regulate processing by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and, where appropriate, make the necessary proposals to amend those acts to ensure a consistent approach to the protection of personal data in the area of judicial cooperation in criminal matters and police cooperation.</p>	

<p>(10a) This Regulation should apply to the processing of personal data by Union institutions, bodies, offices or agencies carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU. This Regulation does not apply to the processing of personal data by missions referred to in Articles 42(1), and 43 and 44 of the TEU, which implement the common security and defence policy. Where appropriate, relevant proposals should be put forward to further regulate the processing of personal data in the field of the common security and defence policy.</p>	
<p>HAVE ADOPTED THIS REGULATION:</p>	
<p>CHAPTER I GENERAL PROVISIONS</p>	
<p><i>Article 1 Subject-matter and objectives</i></p>	
<p>1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions and, bodies, offices and agencies and rules relating to the free movement of personal data between themselves or to other recipients established in the Union and subject to Regulation (EU) 2016/679 or the provisions of national law adopted pursuant to Directive (EU) 2016/680.</p>	
<p>2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.</p>	
<p>3. The European Data Protection Supervisor ('EDPS') shall monitor the application of the provisions of this Regulation to all processing operations carried out by a Union institution or body.</p>	

<p>Article 2 Scope</p>	
<p>1. This Regulation applies to the processing of personal data by all Union institutions and bodies insofar as such processing is carried out in the exercise of activities which fall, wholly or partially within the scope of Union law.</p>	<p>“This Regulation applies to the processing of personal data by all Union institutions and bodies insofar as such processing is carried out in the exercise of activities which fall, wholly or partially within the scope of Union law. <u>in so far as other legal acts of the European Union do not provide for diverging rules.</u>”</p> <p>Reasons: This formulation implements in a very clear way the principle of <i>lex specialis</i>.</p>
<p>1a. This Regulation, with the exception of Chapter VIIIa, shall not apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.</p>	
<p>1aa. Chapter VIIIa shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office until Regulation (EU) 2016/794 and Regulation (EU) 2017/1939 which apply to the processing of operational data respectively by Europol and the European Public Prosecutor's Office, are adapted in accordance with Article 70b.</p>	<p>1aa. Chapter VIIIa shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office until <u>in accordance with</u> Regulation (EU) 2016/794 and Regulation (EU) 2017/1939 which apply to the processing of operational data respectively by Europol and the European Public Prosecutor's Office, <u>are adapted in accordance with</u> <u>without prejudice to a possible amendment of those regulations following the review foreseen in</u> Article 70b.</p> <p>Reasons: The text must not predetermine the outcome of the evaluation. Therefore, text should be adapted as indicated above.</p>
<p>1b. This Regulation shall not apply to the processing of personal data by missions referred to in Articles 42(1), and 43 and 44 of the TEU.</p>	

2. This Regulation shall apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.	
<i>Article 3</i> <i>Definitions</i>	
1. For the purposes of this Regulation, the following definitions shall apply:	
(a) the definitions in Regulation (EU) 2016/679, with the exception of the definition of ‘controller’ in point (7) of Article 4 of that Regulation;	
(b) the definition of ‘electronic communications data ’ in point (a) of Article 4(3) of Regulation (EU) XX/XXXX [ePrivacy Regulation];	
(c) the definitions of ‘electronic communications network’ and ‘end-user’ in points (1) and (14) of Article 2 of Directive 00/0000/EU [Directive establishing the European Electronic Communications Code] respectively;	
(d) the definition of ‘terminal equipment’ in point (1) of Article 1 of Commission Directive 2008/63/EC.	
2. In addition, for the purposes of this Regulation the following definitions shall apply:	
(a) 'Union institutions and bodies' means the Union institutions, bodies, offices and agencies set up by, or on the basis of, the Treaty on European Union, the Treaty on the Functioning of the European Union or the Euroatom Treaty;	
(aa) ' Operational personal data ' means personal data processed by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU to meet the objectives laid down in the acts establishing these bodies, offices or agencies;	

<p>(b) 'Controller' means the Union institution, body, office or agency or the Directorate-General or any other organisational entity which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by a specific Union act, the controller or the specific criteria for its nomination can be provided for by Union law;</p>	
<p>(ba) 'Controllers other than Union institutions and bodies' means controllers within the meaning of Article 4(7) of Regulation (EU) 2016/679 and controllers within the meaning of Article 3(8) of Directive (EU) 2016/ 680;</p>	
<p>(c) 'user' means any natural person using a network or terminal equipment operated under the control of a Union institution or body;</p>	
<p>(d) 'directory' means a publicly available directory of users or an internal directory of users available within a Union institution or body or shared between Union institutions and bodies, whether in printed or electronic form.</p>	
<p>CHAPTER VIIIa <i>PROCESSING OF OPERATIONAL PERSONAL DATA</i></p>	<p>CHAPTER VIIIa <i>PROCESSING OF OPERATIONAL PERSONAL DATA <u>BY UNION BODIES, OFFICES OR AGENCIES CARRYING OUT ACTIVITIES WHICH FALL WITHIN THE SCOPE OF CHAPTER 4 OR CHAPTER 5 OF TITLE V OF PART THREE OF THE TFEU</u></i></p> <p><u>Reasons:</u> The headline should be adapted for reasons of clarity: This chapter only applies to the processing of operational personal data carried by Union bodies, offices or agencies <u>carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.</u></p>

<p>Article 69a Scope</p>	
<p><i>The provisions of this Chapter shall apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, without prejudice to specific rules relating to the protection of natural persons with regard to the processing of operational personal data by those Union bodies, offices or agencies, contained in their founding legal acts.</i></p>	<p><i>The provisions of this Chapter shall apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU <u>in so far as the legal acts establishing these Union bodies, offices or agencies do not provide for diverging rules.</u> without prejudice to specific rules relating to the protection of natural persons with regard to the processing of operational personal data by those Union bodies, offices or agencies, contained in their founding legal acts.</i></p>
	<p>Reasons:</p> <p>It is of utmost importance that the principle of lex specialis is implemented in a very clear manner. The formulation above is suggested; the formulation “without prejudice to” cannot be accepted.</p> <p>In any event, the words „rules relating to the protection of natural persons” must be deleted. The principle of lex specialis cannot be limited to rules specifically concerning the protection of natural persons, but it must cover the entire processing of operational personal data - whether a specific rule is intended to protect natural persons or not.</p>
<p>Article 69b Definitions</p>	
<p>For the purpose of this Chapter:</p>	
<p><i>a) 'international organisations' means an organisations and its subordinate bodies governed by public international law or any other body which is set up by, or on the basis of an agreement between two or more countries;</i></p>	<p>GENERAL COMMENT: Terms should <u>only</u> be defined here if they are used in Chapter VIIIa.</p>

<p><i>b) 'personal data' means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;</i></p>	
<p><i>c) 'operational personal data' means all personal data processed by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU to meet the objectives laid down in the acts establishing these bodies, offices or agencies;</i></p>	<p>The definition must be aligned with the definition contained in Article 3 § 2 letter aa) which reads:</p> <p>(aa) 'Operational personal data' means personal data processed by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU to meet the objectives laid down in the acts establishing these bodies, offices or agencies;</p> <p>The word “all” before the words “personal data“ can only be found in Article 69b letter c), but not in Article 3 § 2 letter aa).</p>
<p><i>d) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;</i></p>	

<p><i>e) ‘supervisory authority’ means an independent public authority which is established by a Member State pursuant to Article 51 of Regulation (EU) 2016/679 of the European Parliament and of the Council or pursuant to Article 41 of Directive (EU) 2016/680;</i></p>	<p>GENERAL COMMENT: Is this definition correct? The EDPS is not mentioned. But, at least partly, the EDPS is likely to have competences concerning the concerned Union bodies, offices and agencies.</p>
<p><i>(f) ‘restriction of processing’ means the marking of stored personal data with the aim of limiting their processing in the future;</i></p>	
<p><i>(g) ‘profiling’ means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;</i></p>	
<p><i>(h) ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;</i></p>	
<p><i>(i) ‘filing system’ means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;</i></p>	

<p>(j) ‘controller’ means a Union body, office or agency carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU or another competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union law or law of a Member State of the European Union, the controller or the specific criteria for its nomination may be provided for by Union law or law of a Member State of the European Union;</p>	<p><u>GERNERAL COMMENT:</u> It is doubtful whether the words „or another competent authority” make sense here at all. Chapter VIIIa only applies to the processing of operational personal data by certain Union bodies, offices and agencies. Which other competent authority could be the controller?</p>
<p>(k) ‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;</p>	
<p>(l) ‘recipient’ means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed, whether a third party or not. However, Member States of the European Unions’ public authorities other than competent authorities defined in point 7(a) of Article 3 of Directive (EU) 2016/680 of the European Parliament and of the Council, which receive personal data in the framework of a particular inquiry of a Union body, office or agency carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;</p>	<p><u>GENERAL COMMENT:</u> Is is unclear why the definition was altered. Please explain! Sentence 2 should be formulated this way: <u>However, public authorities which receive personal data in the framework of a particular inquiry of a Union body, office or agency carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;</u></p>
<p>(m) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;</p>	

<p><i>n) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;</i></p>	
<p><i>o) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;</i></p>	
<p><i>p) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status.</i></p>	
<p>Article 69c <i>Principles relating to processing of operational personal data</i></p>	
<p>1. Operational personal data shall be:</p>	
<p><i>(a) processed lawfully and fairly ('lawfulness and fairness');</i></p>	
<p><i>(b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered incompatible with the initial purposes provided that the Union body, office or agency provides appropriate safeguards for the rights and freedoms of data subjects ('purpose limitation');</i></p>	
<p><i>(c) adequate, relevant, and not excessive in relation to the purposes for which they are processed ('data minimisation');</i></p>	

<p><i>(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ("accuracy");</i></p>	
<p><i>(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods in so far as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes provided that the Union body, office or agency provides appropriate safeguards for the rights and freedoms of data subjects, in particular by the implementation of the appropriate technical and organisational measures ("storage limitation");</i></p>	
<p><i>(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ("integrity and confidentiality").</i></p>	
<p><i>2. Processing by a Union body, office or agency for any of the purposes set out in the founding legal act of the Union body, office or agency, other than that for which the operational personal data are collected shall be permitted in so far as:</i></p>	<p>Question: This formulation excludes the possibility of transferring personal data for another purpose than the ones foreseen by the acts defining the tasks of the concerned Union bodies, offices and agencies. For example: Why isn't a transfer of personal data possible if the transfer is intended to protect the vital interests of the data subject?</p>
<p><i>(a) the Union body, office or agency is authorised to process such operational personal data for such a purpose in accordance with its founding legal act; and</i></p>	
<p><i>(b) processing is necessary and proportionate to that other purpose in accordance with Union law.</i></p>	

3. The Union body, office or agency shall be responsible for, and be able to demonstrate compliance with paragraph 1 ('accountability') when processing operational personal data.	
Article 69d Lawfulness of processing	
Processing shall be lawful only if and to the extent that processing is necessary for the performance of a task carried out by Union bodies, offices and agencies and that it is based on Union law. Specific Union legal acts as regards the processing within the scope of this Chapter shall specify the objectives of processing, the operational personal data to be processed and the purposes of the processing.	
CHAPTER IX IMPLEMENTING ACTS	
Article 70 Committee procedure	
1. The Commission shall be assisted by the committee established by Article 93 of Regulation (EU) 2016/679. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	
CHAPTER X FINAL PROVISIONS	
Article 70a Processing of personal data and public access to documents	
Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law.	
Article 70b Review clause	

<p><i>By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement Chapter VIIIa of this Regulation by further general provisions and to apply it to Europol and the European Public Prosecutor's Office.</i></p>	
<p><i>The Commission shall, if appropriate, submit legislative proposals, in order to ensure a consistent approach to the protection of personal data within the scope of Chapter VIIIa of this Regulation. Such proposals may in particular concern provisions amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939 and Regulation (EU) 2018/xxx (Eurojust) and supplementing Chapter VIIIa of this Regulation.</i></p>	<p><i>By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement Chapter VIIIa of this Regulation by further general provisions and to apply it to Europol and the European Public Prosecutor's Office.</i></p> <p><i>The Commission shall, if appropriate, submit legislative proposals, in order to ensure a consistent approach to the protection of <u>operational</u> personal data within the scope of Chapter VIIIa of this Regulation. Such proposals may in particular concern provisions amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939 and Regulation (EU) 2018/xxx (Eurojust) and supplementing Chapter VIIIa of this Regulation.</i></p>

	<p>Reasons: The text must not predetermine the outcome of the evaluation. Therefore, text should be adapted as indicated above.</p>
<p><i>Article 71</i> <i>Repeal of Regulation (EC) No 45/2001 and of Decision No 1247/2002/EC</i></p>	
<p>1. Regulation (EC) No 45/2001 and Decision No 1247/2002/EC are repealed with effect from 25 May 2018.</p>	
<p>2. References to the repealed Regulation and Decision shall be construed as references to this Regulation.</p>	
<p><i>Article 72</i> <i>Transitional measures</i></p>	
<p>1. The Decision 2014/886/EU of the European Parliament and of the Council and the current terms of office of the European Data Protection Supervisor and the Assistant Supervisor shall not be affected by this Regulation.</p>	
<p>2. The Assistant Supervisor shall be considered equivalent to the Registrar of the Court of Justice of the European Union as regards the determination of remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.</p>	
<p>3. Article 54(4), (5) and (7), and Articles 56 and 57 of this Regulation shall apply to the current Assistant Supervisor until the end of his term of office on 5 December 2019.</p>	
<p>4. The Assistant Supervisor shall assist the European Data Protection Supervisor in all the latter's duties and act as a replacement when the European Data Protection Supervisor is absent or prevented from attending to those duties until the end of the Assistant Supervisor's term of office on 5 December 2019.</p>	
<p><i>Article 73</i> <i>Entry into force and application</i></p>	
<p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	

<p>2. It shall apply from 25 May 2018.</p>	<p><u>GENERAL COMMENT:</u> The Eurojust-Regulation will not be applicable before 2019. Since Chapter VIIIa of the modernised Regulation (EC) no. 45/2001 is intended to apply to the processing of operational personal data by Eurojust, there needs to be clarity what data protection rules will apply in case that both Regulations will not have the same date of entry into force.</p>
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ITALY

Italy, in response to the invitation made by the Bulgarian Presidency during the 9.2.2018 meeting, submits the following contribution on the compromise proposal illustrated in doc. 5580/18.

Preliminarily, we recall that, since the very beginning, the Italian delegation has fully supported the idea, passed in the Council general approach, that operational data processed by the agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU should not be included in the scope of the present proposal of Regulation.

Nevertheless we are aware that the European Parliament firmly require those data to be included in the scope of the present proposal of Regulation, and that such a divergence has led to a block of current negotiations.

For that reason, we are grateful to the Presidency for all the efforts made in order to find a possible way forward and intend to be flexible to a compromise proposal.

In general, we consider that the Presidency's idea to found a possible compromise on the criterion *lex generalis-lex specialis* (where the present Regulation would be the *lex generalis* and the founding acts of above said agencies would be the *lex specialis*) is interesting and may prove to be a solution to unblock the negotiation with EP.

Anyways we think that the current text of the proposal should be fine-tuned, since the current wording does not properly express the idea illustrated by the Presidency in the key elements of doc. 5580/18.

Specifically, we are of the opinion that Eurojust should be mentioned in recital 7a (as it is for Europol and Eppo); furthermore we consider it important that, in case of conflicting provisions, the prevalence of the specific rules set forth in in the founding legal acts of the agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU against the general rules provided for in the present Regulation should be expressed in clear terms, at least in a recital (rec. 8).

Finally, we think that the same criterion *lex specialis-lex generalis* should be confirmed also as regards the review clause in article 70b.

In any case, we share the opinion put forward by others MS during the meeting, that such a compromise should be presented to the EP as the last and only concession possible on the MS' side.

Thus, we present the following suggestions to the compromise proposal presented in doc. 5580/18 (the suggestions are in red):

- (7a) **This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. However, where other legal acts of the European Union such as the founding acts of Europol, Eurojust and the European Public Prosecutor's Office, provide for specific rules on the processing of personal data by Union institutions and bodies, these rules should remain unaffected by this Regulation.**
- (8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. *A specific Chapter of this Regulation should therefore ~~not~~ apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU without prejudice to specific rules contained in the acts establishing these bodies, offices or agencies. In case of conflict between the general rules provided for in this Regulation and the specific rules provided for in the founding legal acts establishing these bodies, offices or agencies the latter will prevail.*

Article 70b

Review clause

By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement Chapter VIIIa of this Regulation by further general provisions and to apply it to Europol and the European Public Prosecutor's Office.

The Commission shall, if appropriate, submit legislative proposals, in order to ensure a consistent approach to the protection of personal data within the scope of Chapter VIIIa of this Regulation. ~~Such proposals may in particular concern provisions amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939 and Regulation (EU) 2018/xxx (Eurojust) and supplementing Chapter VIIIa of this Regulation.~~ In case of conflict between the general rules provided for in this Regulation and the specific rules provided for in the founding legal acts of Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, the latter will prevail.

LATVIA

We would like to thank the Bulgarian Presidency for all the efforts in this file. To be able to proceed constructively, Latvian delegation would like to submit several proposals on the text.

- With regards to the Article 70b “Review clause” we would like to propose to prolong the time limit for the review from 2022 to 2024. It should be taken into account that EPPO will initiate its work at the end of 2020. Possibly two years will not be sufficient time to start the review.
- With regards to Article 69c and 69d we believe reference should be made to the data processing, which take place in accordance with the national law. That complies with Article 47 of the EPPO regulation. It should be also taken into account that Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU (further – authorities) process data, which is gathered based on the national regulation.
- We would like to call the PRES to evaluate once again whether we need new Chapter VIIIa. We understand that in this chapter the same definitions are rewritten as in GDPR and Police directive. It would be more effective if this Chapter will only provides those definitions, which are different from the text of GDPR. If there are no such, then this Chapter may provide a reference that GDPR definition apply, if this Chapter do not provide otherwise. Thus, if there will be some other definition, then the ones of this Chapter will apply, if not – from the text of the Regulation.
- Moreover, we do not see it reasonable to speak about the principles of data processing in Article 69c, because they are already in the GDPR, police directive as well as in the beginning of this instrument. If it is necessary to provide for exceptions or provide for specific application of the principle, then they should be provided in the separate Chapter.
- We propose to propose to delete in Article 3, 2 (ba) definition of ‘controller other than Union institutions and bodies’, because it is not used in the body of the regulation.

Since the definition of „operational personal data” applied only to the data processing in specific cases, for example, for Eurojust, we propose to move to the specific Chapter.

LUXEMBOURG

As stated during the meeting on Friday, Luxembourg would be highly in favor to specify in the recitals as well as in the Article on the scope of Chapter VIIIa that the Chapter VIIIa would be the general regime for processing of operational personal data and that other Union acts, and in particular the Union acts establishing Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 or 5 of Title V of Part Three of the TFEU, may contain a more specific regime for processing of operational personal data. We would also recommend to include a sentence specifying that if a specific regime exists it would prevail over the general regime, especially in case of a conflict with the general regime. In this sense we can support the Slovenian approach on recital (7a) and (8a) as well as on Articles 2, 69a and 69c.

In addition, we support the Slovenian approach on additional clarity for the review clause as stated in recital (8a) and Article 70b. For us it is very important that it has to be clear that the general provisions can only apply to EUROPOL and EPPO if their respective establishing acts are amended in accordance with the procedure in the respective founding act.

AUSTRIA

Article 69b – Definitions:

- Except for b) ‚personal data‘, c) ‚operational personal data‘, d) ‚processing‘ and i) ‚filing system‘, none of the definitions set out in Art. 69b are used in the further text. We should aim at avoiding such „standalone“-definitions.
- We should avoid different definitions of one term (e.g. ‚controller‘) in Art. 3 (or Regulation (EU) 2016/679) and Art. 69b, as this might create confusion if used in general provisions relating to the Regulation as a whole, such as in Chapter I (General provisions) and Chapter X (Final Provisions).
- The full reference to Directive (EU) 2016/680 should be in lit. e) instead of lit. l)
- In lit. j), we would suggest to use the shorter wording „Union or Member State law“ instead of „Union law or law of a Member State of the European Union“.

Article 69c – Principles relating to processing of operational personal data:

- Para. 1 lit. b) relates to „further processing“. „Further processing“ is a concept of the GDPR that does not exist in Directive 2016/680; however, it appears to be used in the Europol-Regulation and in the draft Eurojust-Regulation. For reasons of coherency with the data protection framework for Member States, it may be worth reflecting whether this concept should be used in Chapter VIIIa (being a *lex generalis*) or not (without prejudice to specific rules for the EU agencies in their founding acts allowing them to process personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes).

PORTUGAL

Recitals

(7a) This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

(7aa) *The rules set out in this Regulation should apply to the processing of administrative personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU, such as staff data.* [former last paragraph of recital (8a)]

(8) In Declaration 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. ***Therefore, a Chapter of this Regulation is dedicated to the principles and general rules which should apply*** to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU. ***The rules set out in this Chapter constitute lex generalis in regards to the specific rules contained in the acts establishing the aforementioned bodies, offices and agencies, which constitute lex specialis.*** Accordingly, these *specific* rules should remain unaffected by this Regulation.

(8a) This Chapter of the Regulation should not apply to Europol and the European Public Prosecutor's Office. ***The Commission takes on to review this Chapter and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement it by further general provisions and/or to render it applicable to all those Union bodies, offices or agencies. In this regard, the acts establishing Europol and the European Public Prosecutor's Office could be amended accordingly.***

Articles

Article 2

[...]

1. [...]

1a. ***With the exception of Chapter VIIIa***, this Regulation shall not apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU.

1aa. ***[Moved to article 69a, par. 3]***

1b. [...]

2. [...]

Chapter VIIIa

Article 69a

Scope delimitation

1. The provisions of this Chapter set out the general rules and principles applicable to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU.

2. The provisions set out in this Chapter shall not affect the application of the specific rules relating to the protection of natural persons with regard to the processing of operational data as set out in the founding legal acts of the Union bodies, offices or agencies mentioned in paragraph 1.

3. This Chapter shall only apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office subject to the review clause set out in article 70b.

Article 69b

Other definitions

For the purpose of this Chapter only, the following definitions shall apply:

- *‘controller’: a Union body, office or agency carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU or another competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union law or law of a Member State of the European Union, the controller or the criteria for its nomination may be provided for by Union law or law of a Member State of the European Union; [current subparagraph (j) of the Presidency’s proposal]*
- *‘supervisory authority’: an independent public authority which is established by a Member State pursuant to Article 51 of Regulation (EU) 2016/679 of the European Parliament and of the Council or pursuant Article 41 of Directive (EU) 2016/680; [current subparagraph (e) of the Presidency’s proposal]*
- *‘recipient’: a natural or legal person, public authority, agency or any other body to which the personal data are disclosed, whether a third party or not. However, Member States of the European Unions’ public authorities other than competent authorities defined in point 7(a) of Article 3 of Directive (EU) 2016/680 of the European Parliament and of the Council, which received personal data in the framework of a particular inquiry of a Union body, office or agency carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purpose of the processing. [current subparagraph (l) of the Presidency’s proposal].*

Article 69c

[...]

Article 69d

Lawfulness of processing *of operational data*

[...]

Article 70b

[...]

1. By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement this Chapter by further general provisions and/or to render it applicable to all those Union bodies, offices or agencies.

2. When, following the review mentioned in paragraph 1, is considered appropriate to ensure a consistent approach to the protection of personal data, the Commission may submit legislative proposals amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and supplementing Chapter VIIIa of this Regulation.

SLOVENIA

- (7a) **This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. However, where other legal acts of the European Union such as the founding acts of Europol, of Eurojust and the European Public Prosecutor's Office, provide for specific rules on the processing of personal data by Union institutions and bodies, these rules should remain unaffected by this Regulation.**

If there would be a conflict between the general rules in this Regulation and the specific rules in the Eurojust Regulation, the latter will prevail.

- (8) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. *A specific Chapter of this Regulation should therefore ~~not~~ apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU without prejudice to specific rules contained in the founding acts establishing these bodies, offices or agencies.*

(8a) *The Chapter of this Regulation containing general rules on the processing of operational personal data by those Union bodies, offices or agencies, should not apply to Europol and the European Public Prosecutor's Office, subject to a review by the Commission in 2022. until this Regulation is amended on the basis of proposals of the Commission that may, if appropriate, be submitted as a result from a review of this Chapter and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. After the such a review the Commission would need to assess the need to supplement this Chapter by further general provisions or to apply it to Europol and the European Public Prosecutor's Office while preserving the lex specialis- lex generalis approach. and to apply it to all those Union bodies, offices or agencies has been carried out by the Commission, the acts establishing Europol and the European Public Prosecutor's Office could be amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data applicable to Europol and the European Public Prosecutor's Office. In order for these general provisions to apply to EUROPOL and EPPO, their founding acts should be amended in accordance with the procedure determined in the respective founding act.*

Processing of administrative personal data by those bodies, offices or agencies, such as staff data, should be covered by this Regulation.

- (9) Directive (EU) 2016/680 provides harmonised rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. In order to foster the same level of protection for natural persons through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between Union **bodies, offices or agencies** carrying out activities **which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU in the fields of judicial cooperation in criminal matters and police cooperation** and competent authorities in Member States, the rules for the protection and the free movement of operational personal data processed by such Union **bodies, offices or agencies** should **draw on the principles underpinning this Regulation and** be consistent with Directive (EU) 2016/680.

- 1a. **This Regulation, with the exception of Chapter VIIIa, shall not apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.**
- ~~1aa. *Chapter VIIIa shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office until Regulation (EU) 2016/794 and Regulation (EU) 2017/1939 which apply to the processing of operational data respectively by Europol and the European Public Prosecutor's Office, are adapted in accordance with Article 70b.*~~
- 1b. **This Regulation shall not apply to the processing of personal data by missions referred to in Articles 42(1), and 43 and 44 of the TEU.**
2. This Regulation shall apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
- (a) the definitions in Regulation (EU) 2016/679, with the exception of the definition of ‘controller’ in point (7) of Article 4 of that Regulation;
 - (b) the definition of ‘electronic communications **data**’ in point (a) of Article 4(3) of Regulation (EU) XX/XXXX [ePrivacy Regulation];
 - (c) the definitions of ‘electronic communications network’ and ‘end-user’ in points (1) and (14) of Article 2 of Directive 00/0000/EU [Directive establishing the European Electronic Communications Code] respectively;

CHAPTER VIIIa

PROCESSING OF OPERATIONAL PERSONAL DATA

Article 69a

Scope

The provisions of this Chapter shall apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 and Chapter 5 of Title V of Part Three of the TFEU, without prejudice to specific rules relating to the protection of natural persons with regard to the processing of operational personal data by those Union bodies, offices or agencies, contained in their founding legal acts.

This chapter shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office subject to the review in accordance with Article 70b.

Article 69b

Definitions

For the purpose of this Chapter:

- a) *'international organisations' means an organisations and its subordinate bodies governed by public international law or any other body which is set up by, or on the basis of, an agreement between two or more countries;*

- b) *'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;*

- n) *'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;*

- o) *'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;*

- p) *'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status.*

Article 69c

Principles relating to processing of operational personal data

1. *'Notwithstanding OR Without prejudice' to 'specific OR further' rules set out in the founding legal act of the Union body, office or agency processing of operational personal data shall be permitted in so far:*
 - (a) *processed lawfully and fairly ('lawfulness and fairness');*

- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered incompatible with the initial purposes provided that the Union body, office or agency provides appropriate safeguards for the rights and freedoms of data subjects ("purpose limitation");*
- (c) adequate, relevant, and not excessive in relation to the purposes for which they are processed ("data minimisation");*
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ("accuracy");*
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods in so far as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes provided that the Union body, office or agency provides appropriate safeguards for the rights and freedoms of data subjects, in particular by the implementation of the appropriate technical and organisational measures ("storage limitation");*
- (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ("integrity and confidentiality").*

2. *Processing by a Union body, office or agency for any of the purposes set out in the founding legal act of the Union body, office or agency, other than that for which the operational personal data are collected shall be permitted in so far as:*
 - (a) *the Union body, office or agency is authorised to process such operational personal data for such a purpose ~~in accordance with its founding legal act~~; and*
 - (b) *processing is necessary and proportionate to that other purpose in accordance with Union law.*
3. *The Union body, office or agency shall be responsible for, and be able to demonstrate compliance with paragraph 1 ('accountability') when processing operational personal data.*

Article 69d

Lawfulness of processing

Processing shall be lawful only if and to the extent that processing is necessary for the performance of a task carried out by Union bodies, offices and agencies and that it is based on Union law. Specific Union legal acts as regards the processing within the scope of this Chapter shall specify the objectives of processing, the operational personal data to be processed and the purposes of the processing.

[Article 69e

1. Union bodies, offices and agencies may adopt specific measures delaying, restricting or omitting the provision of the information to the data subject, the right of access, the refusal of rectification or erasure of personal data or restriction of processing, to the extent that, and for as long as, such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;*
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offense or the execution of criminal penalties*

- (c) protect public security;
- (d) protect national security;
- (e) protect the rights and freedoms of others.

2. Union bodies, offices and agencies may provide for the exercise of the data subject rights to be carried out in accordance with specific rules where the personal data are contained in a judicial decision or record or case file processed in the course of criminal investigations and proceedings".]

CHAPTER X

FINAL PROVISIONS

Article 70a

Processing of personal data and public access to documents

Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law.

Article 70b

Review clause

By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement Chapter VIIIa of this Regulation by further general provisions ~~or~~ to apply it to Europol and the European Public Prosecutor's Office while preserving the lex specialis-lex generalis approach. In order for these general provisions to apply to EUROPOL and EPPO, their founding acts should be amended in accordance with the procedure determined in the respective founding act.

~~*The Commission shall, if appropriate, submit legislative proposals, in order to ensure a consistent approach to the protection of personal data within the scope of Chapter VIIa of this Regulation. Such proposals may in particular concern provisions amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939 and Regulation (EU) 2018/xxx (Eurojust) and supplementing Chapter VIIa of this Regulation.*~~

Article 73

Entry into force and application¹

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 25 May 2018.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

¹ Eurojust comment: The text says that this Regulation will enter into force in May 2018 while the EJ Regulation will only enter into force later, most probably in 2019. It would be advisable to have a provision specifying that, as far as Eurojust is concerned, this regulation will enter into force at the same time than our Regulation as, otherwise, we will have two supervisory bodies competent at the same time, two sets of rules in parallel (also for administrative data) and so forth.

FINLAND

Finland would like to make the following points:

- Recital (7a): The references to Europol and EPPO should be deleted from Recital (7a) since the processing of personal data for operational purposes by these agencies would be left outside the scope of application of the new regulation (for now). Referring to Europol and EPPO here creates unnecessary confusion as to which rules apply to the processing of personal data for administrative purposes and which rules apply to the processing of personal data for operational purposes. The latter is sufficiently covered by the two following recitals (8 and 8a)
- Article 2(1aa): The reference to the exclusion of Europol and EPPO from the scope of Chapter VIIIa should be moved from Article 2(1aa) to Article 69a. The reference to adaptation in accordance with Article 70b should be deleted as unnecessary. Article 69a would be a logical place to mention the exclusion of Europol and EPPO, because they are excluded (only) from the scope of application of Chapter VIIIa (whereas other parts of the Regulation would apply to the processing of personal data for administrative purposes by these two agencies).
- Article 69b: As a general comment, only definitions necessary for the application of Chapter VIIIa should be included in Article 68b. At the very least, definitions not currently used in Chapter VIIIa should be deleted.
- the terms “operational personal data” and “administrative personal data”, used in e.g. Recitals (8) and (8a) and Article 69b(c): In our view, it would be better to refer to ”personal data processed for operational purposes” and “personal data processed for administrative purposes”. This is because personal data are not “operational” or “administrative” in nature; the difference lies in the purpose for which the personal data are processed. Depending on the situation, the very same personal data can be processed for either administrative or operational purposes. We are aware that the terms “operational personal data” and “administrative personal data” have been used in the EPPO and Europol regulations (and the Eurojust GA). However, since this Regulation is meant to be a model for the future, it presents an opportunity for clarification. Furthermore, the terms “operational personal data” and “administrative personal data” have not been used in the Police Directive.

- Article 69c (2) (a): We propose replacing “its founding legal act” with “Union law”. This is because the authorisation might also be based on other Union legislation and not the founding act of the body, office or agency (e.g. ECRIS-TCN).

Furthermore, Finland can support the comments of the SI delegation as follows:

- Recital 7a: As an alternative to our own modification proposals for this recital, we can support the changes proposed by the SI delegation (i.e. adding a reference to Eurojust and the primacy of the Eurojust Regulation).
- Recital 8a: We support the addition of a reference to the *lex specialis/lex generalis* approach.
- Article 69c (1), chapeau: We can support the modifications proposed (“Notwithstanding...permitted in so far as”)
- Article 70b: We support the addition of a reference to the *lex specialis/lex generalis* approach."

UNITED KINGDOM

Presidency Text	UK comment
<p>Article 2.1 This Regulation applies to the processing of personal data by all Union institutions and bodies insofar as such processing is carried out in the exercise of activities which fall, wholly or partially within the scope of Union law.</p>	<p>To mitigate the risk of the scope being misinterpreted, the paragraph should be redrafted to make clear that this Regulation applies to the processing of personal data by all Union institutions and bodies in so far as other legal acts of the European Union do not provide for specific rules. Therefore, it will only apply to law enforcement bodies' processing when there is no lex specialis regime.</p>
<p>Article 2.1a This Regulation, with the exception of Chapter VIIIa, shall not apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.</p>	<p>The UK finds this article to be helpful and clear. However, it needs to be consistent with A69a.</p> <p>This article could potentially be removed to avoid duplication with Article 69a, but it has added the useful clarity that <i>only</i> Chapter VIIIa applies to the processing of operational data by law enforcement bodies. If it is removed, this point will need to be made explicitly elsewhere in the operative text and the recitals.</p>
<p>Recital 7a This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. However, where other legal acts of the European Union such as the founding acts of Europol and the European Public Prosecutor's Office, provide for specific rules on the processing of personal data by Union institutions and bodies, these rules should remain unaffected by this Regulation.</p>	<p>The UK would propose the following text: <i>This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data, wholly or partially by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. However, where other legal acts of the European Union such as the founding acts of Europol and the European Public Prosecutor's Office provide for specific rules on the processing of personal data by Union institutions and bodies, these rules should remain unaffected by this Regulation.</i></p>

	<p>Other comments:</p> <p>It seems unclear whether the Regulation (aside from the new Chapter) or the bespoke regimes would prevail if there is contradiction. Currently, it appears to suggest it would be the bespoke regimes that prevail.</p>
<p>Recital 8</p> <p>In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. <i>A specific Chapter of this Regulation should therefore not apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU without prejudice to specific rules contained in the acts establishing these bodies, offices or agencies.</i></p>	<p>The UK would suggest using Recital 8 to make it clear that Chapter VIIIa is the <u>only</u> part of the Regulation which applies to the processing of operational data by law enforcement bodies, and also that this Regulation does not diverge from relevant existing legislation.</p> <p>We suggest the following text:</p> <p><i>A specific Chapter of this Regulation should therefore not apply to the processing of operational personal data, such as personal data processed for criminal investigation purposes by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapters 4 and 5 of Title V of Part Three of the TFEU <u>such as Europol, the European Public Prosecutor's Office and Eurojust, in so far as the acts establishing these bodies, offices or agencies do not provide for specific rules on the processing of personal data without prejudice to specific rules contained in the acts establishing these bodies, offices or agencies.</u></i></p>

Recital 8a (also in Article 2.1aa)
The Chapter of this Regulation containing general rules on the processing of operational personal data by those Union bodies, offices or agencies, should not apply to Europol and the European Public Prosecutor's Office until this Regulation is amended on the basis of proposals of the Commission that may, if appropriate, be submitted as a result from a review of this Chapter and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. After such a review to assess the need to supplement this Chapter by further general provisions and to apply it to all those Union bodies, offices or agencies has been carried out by the Commission, the acts establishing Europol and the European Public Prosecutor's Office could be amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data applicable to Europol and the European Public Prosecutor's Office. Processing of administrative personal data by those bodies, offices or agencies, such as staff data, should be covered by this Regulation.

We suggest the following text, which should also be replicated in the operative text (Article 2.1aa)

*The Chapter of this Regulation containing general rules on the processing of operational personal data by those Union bodies, offices or agencies, should not apply to Europol, [Eurojust](#) and the European Public Prosecutor's Office ~~until this Regulation is~~ ***unless the acts establishing Europol, Eurojust and the European Public Prosecutor's Office as well as this Regulation are*** amended on the basis of proposals of the Commission that may, if appropriate, be submitted as a result from a review of this Chapter and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. ~~After such a review to assess the need to supplement this Chapter by further general provisions and to apply it to all those Union bodies, offices or agencies has been carried out by the Commission, the acts establishing Europol and the European Public Prosecutor's Office could be amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data applicable to Europol and the European Public Prosecutor's Office. Processing of administrative personal data by those bodies, offices or agencies, such as staff data, should be covered by this Regulation.~~*

<p>Article 3(2)(aa) and Article 69(c) (definition of “operational data”) –</p> <p>'Operational personal data' means personal data processed by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU to meet the objectives laid down in the acts establishing these bodies, offices or agencies;</p>	<p>The UK believes it could be made clearer that it is the <u>processing itself</u> which must meet the objectives/purposes of those bodies, as opposed to their <u>general activities</u>. Otherwise, there could be a remote risk of catching non-law enforcement processing. The UK would suggest amending the wording, including possibly adding an example of what type of data is excluded:</p> <p><i>Operational personal data means personal data processed by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, <u>where such data is processed</u> to meet the objectives laid down in the acts establish these bodies, offices or agencies”. [It would therefore not include, for example, personal data relating to appointments, discipline, pay or other personnel matters].”</i></p> <p>The UK notes, in addition, that the definitions used in the Eurojust and EPPO working texts differ slightly in that they refer to data which is processed to “fulfil the tasks” and “meet the purposes” respectively, as opposed to “meet the objectives”. It would be sensible to ensure consistency across the board in to avoid any ambiguity. As far possible we ought to ensure that a single expression is used across the Regulations when defining ‘operational data’, although it may be impossible to get consistency across all legislation. The alternative is to use a term other than ‘operational data’ but this would probably lead to more, not less, confusion.</p>
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<p>Chapter VIIIa: PROCESSING OF OPERATIONAL PERSONAL DATA</p>	<p>The UK would suggest changing the title to <i>PROCESSING OF OPERATIONAL PERSONAL DATA <u>BY UNION BODIES, OFFICES OR AGENCIES CARRYING OUT ACTIVITIES WHICH FALL WITHIN THE SCOPE OF CHAPTER 4 OR CHAPTER 5 OF TITLE V OF PART THREE OF THE TFEU</u></i></p>
<p>Article 69a - scope <i>The provisions of this Chapter shall apply to the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, without prejudice to specific rules relating to the protection of natural persons with regard to the processing of operational personal data by those Union bodies, offices or agencies, contained in their founding legal acts.</i></p>	<p>Rather than using a “without prejudice” clause, the UK would like this to specify that it applies in so far as the legal acts establishing these Union bodies, offices or agencies do not provide for specific rules. Hence, it will only apply to law enforcement bodies' processing where there is no lex specialis regime.</p>
<p>Article 69d - Lawfulness of processing <i>Processing shall be lawful only if and to the extent that processing is necessary for the performance of a task carried out by Union bodies, offices and agencies and that it is based on Union law. Specific Union legal acts as regards the processing within the scope of this Chapter shall specify the objectives of processing, the operational personal data to be processed and the purposes of the processing.</i></p>	<p>The UK believes it should be made clear this refers to operational data.</p>

<p>Article 70b – Review Clause</p> <p><i>By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU, in order to assess the need to supplement Chapter VIIIa of this Regulation by further general provisions and to apply it to Europol and the European Public Prosecutor's Office.</i></p> <p><i>The Commission shall, if appropriate, submit legislative proposals, in order to ensure a consistent approach to the protection of personal data within the scope of Chapter VIIIa of this Regulation. Such proposals may in particular concern provisions amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939 and Regulation (EU) 2018/xxx (Eurojust) and supplementing Chapter VIIIa of this Regulation.</i></p>	<p>In line with our above comments, the UK suggests this be rewritten as follows:</p> <p><i>By xxxx2022, the Commission shall review Chapter VIIIa of this Regulation, Regulation (EU) 2016/794, Regulation (EU) 2017/1939, Regulation (EU) 2018/XXX (Eurojust) and other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU in order to assess the need to supplement Chapter VIIIa of this Regulation by further general provisions and to apply it to Europol and the European Public Prosecutor's Office.</i></p> <p><i>The Commission shall, if appropriate, submit legislative proposals, in order to ensure a consistent approach to the protection of operational personal data within the scope of Chapter VIIIa of this Regulation [by these bodies]. Such proposals may in particular concern provisions amending Regulation (EU) 2016/794, Regulation (EU) 2017/1939 and Regulation (EU) 2018/xxx (Eurojust) and supplementing Chapter VIIIa of this Regulation.</i></p>
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