



Council of the  
European Union

035701/EU XXVI. GP  
Eingelangt am 21/09/18

Brussels, 21 September 2018  
(OR. en)

---

---

Interinstitutional File:  
2017/0002(COD)

---

---

12221/18  
ADD 1

CODEC 1477  
JAI 888  
COPEN 301  
DATAPROTECT 182  
DAPIX 283  
EUROJUST 118  
FREMP 145  
ENFOPOL 453  
DIGIT 174  
RELEX 759

#### 'I/A' ITEM NOTE

---

|          |                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| From:    | General Secretariat of the Council                                                                                                                                                                                                                                                                                                                                                                  |
| To:      | Permanent Representatives Committee/Council                                                                                                                                                                                                                                                                                                                                                         |
| Subject: | Draft Regulation of the European Parliament and of the Council on the protection of natural persons 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/EC <b>(first reading)</b><br>- Adoption of the legislative act<br>- Statements |

---

STATEMENTS BY THE COMMISSION

The Commission regrets the exclusion of missions referred to in Articles 42(1), 43 and 44 TEU from the scope of the Regulation and notes that, as a result, there will be no data protection rules in place for such missions. The Commission notes that a Council decision, based on Article 39 TEU, could only lay down the data protection rules for processing of personal data by Member States when carrying out activities that fall within the scope of the Common Foreign and Security Policy. Such a Council decision could not include rules that apply to activities carried out by EU institutions, bodies, offices and agencies. In order to remedy the legal lacuna, a possible Council decision therefore would need to be accompanied by an additional, complementary instrument, based on Article 16 TFEU.

The Commission notes that paragraph 3 of Article 9 (former Article 70a of the Council's General Approach) does not create a new obligation on Union institutions and bodies as regards the balance to be struck between personal data protection and public access to documents.

---