



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 November 2013

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LIMITE

**DATAPROTECT 158
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MI 969
FREMP 172
RELEX 987**

NOTE

from: Commission Services

to: Delegations

Subject: Negotiations on the modernisation of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of personal data (EST 108) - Information with a view to the CAHDATA-meeting on 12 14 November 2013 (Strasbourg)

The document enclosed in the Annex identifies the provisions of the draft text that the Commission intend to leave open or maintain a reservation until a compromise is reached between the EU co-legislators. For ease of reference, the document contains the text of the "equivalent" articles of the current directive, the General Data Protection Regulation as proposed by COM, the current Council text and the voted EP text.

Proposed text of the Convention 108 (version 18.12.2012)	Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 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 (COM (2012) 11 final)	General Data Protection Regulation (PRES text, 21 June 2013, doc. 11013/13)	EP LIBE committee amendments (voted on 21 October 2013)
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Article 5 – Legitimacy of data processing and quality of data	Article 7	Article 6 Lawfulness of processing	Article Lawfulness of processing 6	Article 6 <i>Lawfulness of processing</i>
1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.	Member States shall provide that personal data may be processed only if:	1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:	1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:	1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

<p>Proposed text of the Convention 108 (version 18.12.2012)</p>	<p>Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data</p>	<p>General Data Protection Regulation (COM (2012) 11 final)</p>	<p>General Data Protection Regulation (PRES text, 21 June 2013, doc. 11013/13)</p>	<p>EP LIBE committee amendments (voted on 21 October 2013)</p>
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<p>2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and [<i>explicit, unambiguous</i>] consent of the data subject or of some legitimate basis laid down by law.</p>	<p>(a) the data subject has unambiguously given his consent; or</p>	<p>(a) the data subject has given consent¹ to the processing of their personal data for one or more specific purposes;</p>	<p>(a) the data subject has given unambiguous consent² to the processing of their personal data for one or more specific purposes</p>	<p>(a) the data subject has given consent³ to the processing of their personal data for one or more specific purposes;</p>
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¹ According to Article 4 ("Definitions") COM (2012) 11 final: "For the purposes of this Regulation: (...) (8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed".

² According to Article 4 ("Definitions") PRES text, 21 June 2013, doc. 11013/13: "For the purposes of this Regulation: (...) (8) 'the data subject's consent' means any freely-given, specific and informed (...) indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed".

³ According to Article 4 ("Definitions") EP LIBE committee amendments (voted on 21 October 2013): "For the purposes of this Regulation: (...) (8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed".

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Article 6 – Processing of sensitive data	Article 8 The processing of special categories of data	Article 9 Processing of special categories of personal data	Article 9 Processing of special categories of personal data	Article 9 <i>Special categories of data</i>
1 The processing of genetic data, of personal data concerning <u>offences, criminal convictions and related security measures, the processing of biometric data uniquely identifying a person</u> , as well as the processing of personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides appropriate safeguards, complementing those of the present Convention.	1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.	1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions or related security measures shall be prohibited.	1. The processing of personal data, revealing racial or ethnic origin, political opinions, religion or philosophical beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life (...) shall be prohibited	1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or philosophical beliefs, sexual orientation or gender identity, trade-union membership and activities, and the processing of genetic or biometric data or data concerning health or sex life, administrative sanctions, judgments, criminal or suspected offences, convictions, or related security measures shall be prohibited.

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Article 8 – Rights of the data subject	Article 12 Right of access	Article 15 Right of access for the data subject	Article 15 Right of access for the data subject	Article 15 <i>Right to access and to obtain data for the data subject</i>
Any person shall be entitled: [...] c. to obtain, on request, at reasonable intervals and without excessive delay <i>or expense</i> confirmation of the processing of personal data relating to him/her, the communication in an intelligible form of the data processed, all available information on their origin, on the preservation period as well as any other information that the controller is required to provide to ensure the transparency of processing in accordance with Article 7bis paragraph 1; [...]	Member States shall guarantee every data subject the right to obtain from the controller: (a) without constraint at reasonable intervals and without excessive delay or expense: - confirmation as to whether or not data relating to him are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed,	1. The data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed. Where such personal data are being processed, the controller shall provide the following information:	1. The data subject shall have the right to obtain from the controller at reasonable intervals and free of charge (...) confirmation as to whether or not personal data concerning him or her are being processed and where such personal data are being processed access to the data and the following information:	1. Subject to Article 12(4), the data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed, and in clear and plain language, the following information:

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Article 12 Transborder flows of personal data	Article 25 Principles	Article 40 General principle for transfers	Article 41 Transfers with an adequacy decision⁴	Article 40 General principle for transfers
1 The following provisions shall apply to the <i>disclosure or making available</i> of data to a recipient who is not subject to the jurisdiction of the Party where data are.	1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection.	Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international	1. A transfer of personal data to a recipient or recipients in a third country or an international organisation may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any specific authorisation.	Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international
2 A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of data to a recipient who is subject to the jurisdiction of another Party to the Convention, unless the Party referred to at the beginning of the present paragraph is				

⁴ Article 40 has been deleted in the PRES text and its content in part been merged with Article 41.

regulated by binding harmonised rules of protection shared by States belonging to a regional international organisation and the transfer of data is not governed by measures provided for in paragraph 3.b.		organisation.		organisation.
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