



Council of the
European Union

Brussels, 5 November 2014
(OR. en)

15106/14

**Interinstitutional File:
2012/0011 (COD)**

LIMITE

**DATAPROTECT 159
JAI 840
MI 848
DRS 146
DAPIX 162
FREMP 195
COMIX 590
CODEC 2170**

NOTE

From: German delegation
To: Working Group on Information Exchange and Data Protection (DAPIX)
Subject: General Data Protection Regulation
- Processing for purposes of social protection

COURTESY TRANSLATION PROVIDED BY THE GERMAN DELEGATION

The protection of social data is an elementary and indispensable component of social law. Social law provisions and thus also regulations in the context of the protection of social data are considered a special right tailored to the specific situation of people submitting an application for social benefits paid by the state; and it is thus interpreted by the social courts' jurisdiction. As a general rule, the applicant is dependant on the social benefits he applies for. Thus, he cannot decide freely which data he wants to entrust to the (in most cases) state authority representative. If he really wants to obtain the social benefit he must accept the social law provisions and disclose his personal data. These data are often very sensitive - especially in the context of social security - e.g. medical data.

According to the distribution of competences of the TFEU and in particular Title X, social policy is subject to the responsibility shared between the European Union and the Member States. This also applies to procedural law. As for social security many Member States have a specific and highly complex regulatory system that has developed over the years and should be maintained. Therefore the European Parliament draft provides for a special regulation in the context of social security.

As far as Germany is concerned, it is indispensable to introduce a special regulation in the area of social security. The opening clause must not only allow for the enactment of specific regulations, tailored to the special situation of data-processing in the context of social security, but also for the adoption of stricter regulations.

In the area of social security there are also private service providers who would not be covered by the horizontal opening clause and for whom a sectoral opening clause must apply (in the area of active labour market policy measures e.g. programmes for activation and vocational re-integration according to section 45 of Social Code Book III or a large part of the measures addressing young people are put up to tender which are then carried out by so-called programme providers); the Member States must have the right within their national legislative framework to regulate that private service providers are subject to the same strict and/or to specific regulations as public administrative authorities concerning the protection of social data in the context of social security.

Based on these considerations, the following regulation concerning the protection of personal data is suggested:

Article 82a

Processing for purposes of social protection

Member States may provide for stricter rules ensuring a higher level of protection of the rights and freedoms of the data subject and for more specific rules for the processing of personal data in the context of social security including respective data concerning health.