



Council of the
European Union

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DAPIX 239
DATAPROTECT 184**

NOTE

From:	Presidency
To:	Delegations
Subject:	Preparation of the Council position on the evaluation and review of the General Data Protection Regulation (GDPR)

In preparation of the DAPIX Working Party meeting on 3 September 2019 delegations will find in Annex a Presidency plan on the preparation of the Council position on the evaluation and review of the General Data Protection Regulation (GDPR).

I INTRODUCTION

The General Data Protection Regulation (EU 2016/679, GDPR) entered into application on 25 May 2018, replacing Directive 95/46/EC. The two-fold aim of the Regulation is to create a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market.

According to Article 97 of the GDPR, the Commission shall submit a report on the evaluation and review of the Regulation to the European Parliament and the Council. The first report is due by 25 May 2020. The Commission shall take into account the positions and findings of the European Parliament and the Council, and of other relevant bodies and sources. The Commission may also request information from Member States and supervisory authorities.

In the context of this evaluation and review, the Commission shall examine, in particular, the application and functioning of:

- Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC; and
- Chapter VII on cooperation and consistency.

II. WORK IN THE COUNCIL

With a view to preparing the Council position on the functioning of the GDPR, the Presidency suggests to proceed as follows.

At the DAPIX meeting on 3 September, the Presidency will present its plans on how the Council position be drafted in the Council preparatory bodies. The Commission will provide information on how it intends to conduct its review and what kind of information the Commission expects to receive from the Member States in order to prepare its report. Delegations may already at this point raise some issues they wish to include in the Council position.

Following the general discussion on 3 September, the delegations will be asked to send in writing their observations on the experiences obtained from the application of the GDPR and their initial positions on and suggestions for items to be included in the Council report. The deadline for such observations is 30 September 2019 (COB) and they should be sent to the DAPIX Secretariat at: jai.data.protection@consilium.europa.eu and christina.stromholm@consilium.europa.eu and in copy to the Finnish Presidency DAPIX team: virpi.koivu@om.fi and anna-elina.pohjolainen@formin.fi

At the DAPIX meeting on 21 October 2019, the delegations will discuss a draft report setting out the observations made by the Member States.

The following DAPIX meeting is scheduled for 11 November 2019, where the discussion will continue if needed.

The last DAPIX meeting under the Finnish Presidency will take place on 5 December 2019.

The final version of the report of the Council will be presented in the form of an outcome of proceedings, with the aim of being adopted through an 'I/A' item note by the end of the year.

III. FRAMEWORK OF THE COMMENTS AND OBSERVATIONS/ASPECTS TO BE TAKEN INTO CONSIDERATION

The Presidency welcomes all observations from the delegations with respect to the review and evaluation of the GDPR. These observations may concern the issues specifically mentioned in Article 97(2), but there could also be other issues relating to the application of the GDPR the delegations deem relevant. Nevertheless, the Presidency reminds that the GDPR has only been applicable for a relatively short time and that several issues could be resolved when more experience has been gained on the application of the GDPR.

In order to comply with its obligations under Art 97 GDPR the Commission will request in particular:

- 1) Information Member States would like to share on the use of adequacy decisions by their stakeholders and/or relevant developments in countries or territories benefiting from a Commission's adequacy decision.
- 2) Information concerning the independence and resources of the Data Protection Authorities (DPAs). This includes notably their capacity to exercise their powers provided by the GDPR and to comply with their obligations in the context the cooperation and consistency mechanisms;
- 3) Information which would allow to verify the effectiveness of the coherent interpretation and application of the GDPR throughout the EU by the cooperation and consistency mechanism provided by the GDPR.

In addition to the positions and findings of the European Parliament and the Council, this work will take into account the stock-taking exercise carried out mid-2019, including the discussions held at the event organised by the Commission on 13 June 2019 and the report¹ from the GDPR multi-stakeholder group issued on this occasion. This group was established by the Commission and involves civil society and business representatives, academics and practitioners.

¹ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeeting&meetingId=15670>