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LIMITE

DATAPROTECT 228 JAI 974 MI 783 DIGIT 107 DAPIX 234 FREMP 292 COMIX 660 CODEC 1666

NOTE

From:	German Delegation
То:	Delegations
No. prev. doc.:	14481/15
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 and on the free movement of such data (General Data Protection Regulation)
	 Principle of purpose / further processing of data

Courtesy translation from the German Delegation

The matter of the principle of purpose/further processing of data (Article 5 (1) (b), Article 6 (3a) and (4), Recitals 38 and 40) must be handled so that purpose has legal certainty and the fundamental rights of data subjects are appropriately balanced with legitimate economic interests. Overall, the applicable level of data protection must be maintained.

In order to achieve this goal, Germany believes that Recitals 38 and 40 must be revised, as a result of the Presidency having deleted Article 6 (4) and the addition of Article 6 (3a), which Germany welcomes, in Document 14481/15.

The following German proposal is based on the following considerations:

- making clear that the original legal basis can support further processing only if this legal basis also covers the purpose of the further processing. This clarification is systematically important;
- including foreseeable interests of data subjects, processors and third parties in the test of compatibility;
- > preserving legitimate business models with reference to the aspect of legal certainty.

Specifically, Germany believes the following revisions are needed (the reference text is the consolidated text in Document 14481/15 presented by the Presidency; revisions are in bold print):

Document 14481/15 - recital 38	DEU-proposal
The legitimate interests of a controller,	The legitimate interests of a controller,
including of a controller to which the data	including of a controller to which the data
may be disclosed, or of a third party may	may be disclosed, or of a third party may
provide a legal basis for processing,	provide a legal basis for processing, provided
provided that the interests or the	that the interests or the fundamental rights and
fundamental rights and freedoms of the	freedoms of the data subject are not
data subject are not overriding, taking into	overriding, taking into consideration the
consideration the reasonable expectations	reasonable expectations of data subjects based
of data subjects based on the relationship	on the relationship with the controller.
with the controller. Legitimate interest	Legitimate interest could exist for example
could exist for example when there is a	when there is a relevant and appropriate
relevant and appropriate relationship	relationship between the data subject and the
between the data subject and the controller	controller in situations such as the data
in situations such as the data subject being	subject being a client or in the service of the
a client or in the service of the controller.	controller.
At any rate the existence of a legitimate	At any rate the existence of a legitimate
interest would need careful assessment	interest would need careful assessment
including whether a data subject can	including whether a data subject can
reasonably expect at the time and in the	reasonably expect at the time and in the

context of the collection of the data that processing for this purpose may take place. context of the collection of the data that processing for this purpose may take place.

The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned.

The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

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Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks.

The processing of personal data strictly necessary for the purposes of preventing fraud also constitute a legitimate interest of the data controller concerned.

The processing of personal data for direct marketing purposes or credit information, may be regarded as carried out for a legitimate interest. This also applies to the enforcement of legal claims against a data subject, such as debt collection.

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Document 14481/15 - recital 40	DEU-proposal
The processing of personal data for other	The processing of personal data for other
purposes than the purposes for which the	purposes than the purposes for which the data
data have been initially collected should be	have been initially collected should be only
only allowed where the processing is	allowed where the processing is compatible
compatible with those purposes for which	with those purposes for which the data have
the data have been initially collected.	been initially collected.
In such case no separate legal basis is	In such case no separate legal basis is
required other than the one which allowed	required other than the one which allowed the
the collection of the data.	collection of the data as long as the original
	legal basis covers as well the processing for
	<u>the further purpose.</u>
If the processing is necessary for the	If the processing is necessary for the
performance of a task carried out in the	performance of a task carried out in the public
public interest or in the exercise of official	interest or in the exercise of official authority
authority vested in the controller, Union	vested in the controller, Union law or
law or Member State law may determine	Member State law may determine and specify
and specify the tasks and purposes for	the tasks and purposes for which the further
which the further processing shall be	processing shall be regarded as lawful.
regarded as lawful.	
[The further processing for archiving	[The further processing for archiving
purposes in the public interest, or	purposes in the public interest, or statistical,
statistical, scientific or historical purposes	scientific or historical purposesor should be
should be considered as compatible lawful	considered as compatible lawful processing
processing operations.]	operations.]
The legal basis provided by Union or	The legal basis provided by Union or Member
Member State law for the processing of	State law for the processing of personal data
personal data may also provide a legal	may also provide a legal basis for further
basis for further processing for other	processing for other purposes if these
purposes if these purposes are in line with	purposes are in line with the assigned task and
the assigned task and the controller is	the controller is entitled legally to collect the
entitled legally to collect the data for these	data for these other purposes.
other purposes.	

In order to ascertain whether a purpose of	In order to ascertain whether a purpose of
further processing is compatible with the	further processing is compatible with the
purpose for which the data are initially	purpose for which the data are initially
collected, the controller, after having met	collected, the controller, after having met all
all the requirements for the lawfulness of	the requirements for the lawfulness of the
the original processing, should take into	original processing, should take into account
account inter alia any link between those	inter alia any link between those purposes and
purposes and the purposes of the intended	the purposes of the intended further
further processing, the context in which the	processing, the context in which the data have
data have been collected, in particular the	been collected, including the reasonable
reasonable expectations of data subjects	expectations of the data subjects based on
based on his/her relationship with the	his/her relationship with the controller as to
controller as to their further use, the nature	their further use, foreseeable interests of the
of the personal data, the consequences of	data subject, of the controller or of a third
the intended further processing for data	<u>party</u> , the nature of the personal data, the
subjects, and the existence of appropriate	consequences of the intended further
safeguards in both the original and	processing for data subjects, and the existence
intended further processing operations.	of appropriate safeguards in both the original
	and intended further processing operations.
	Taking into account these criteria further
	processing for purposes such as credit
	information, debt collection or direct
	marketing may be considered compatible
	with the initial purpose.
Where the data subject has given consent	Where the data subject has given consent or
or the processing is based on Union or	the processing is based on Union or Member
Member State law the controller shall be	State law the controller shall be allowed to
allowed to further process the data	further process the data irrespective of the
irrespective of the compatibility of the	compatibility of the purposes.
purposes.	
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In any case, the application of the	In any case, the application of the principles
principles set out by this Regulation and in	set out by this Regulation and in particular the
particular the information of the data	information of the data subject on those other

subject on those other purposes and on his	purposes and on his or her rights including the
or her rights including the right to object,	right to object, should be ensured.
should be ensured.	
Indicating possible criminal acts or threats	Indicating possible criminal acts or threats to
to public security by the controller and	public security by the controller and
transmitting these data to a competent	transmitting these data to a competent
authority should be regarded as being in	authority should be regarded as being in the
the legitimate interest pursued by the	legitimate interest pursued by the controller.
controller.	
However such transmission in the	However such transmission in the legitimate
legitimate interest of the controller or	interest of the controller or further processing
further processing of personal data should	of personal data should be prohibited if the
be prohibited if the processing is not	processing is not compatible with a legal,
compatible with a legal, professional or	professional or other binding obligation of
other binding obligation of secrecy.	secrecy.