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NOTE

From: German delegation

To: Delegations

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FREMP 233 COMIX 683 CODEC 2549

Subject: General Data Protection Regulation
- Consent

Delegations find in the Annex a revised version of the German proposal on consent in ***bold italics***.

Deleted text is in strikethrough.

Recital 25

Consent should be given unambiguously by any appropriate method enabling a freely-given, *conscious*, specific and informed indication of the data subject's wishes, either by a written, oral ~~or other statement~~ *or electronic declaration* or, *if required by specific circumstances*, by *any other* clear affirmative action by the data subject signifying his or her agreement to personal data relating to him or her being processed. This could include ticking a box when visiting an Internet website or any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data.

Silence or inactivity should therefore not constitute consent. Where it is technically feasible and effective, the data subject's consent to processing may be given by using the appropriate settings of a browser or other application. *Member States may, according to those provisions that provide a margin of manoeuvre for Member States, in particular Article 6 (1) (e), (3) or Article 82 (3), determine cases that require a written declaration.*

Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, unambiguous consent should be granted for all of the processing purposes. *It is often not possible to fully identify the purpose of data processing for scientific purposes at the time of data collection. Therefore it is necessary to ensure that consent may also cover as yet unknown issues while keeping with recognised ethical standards for scientific research, as has been the case in the past. Data subjects should have the opportunity to limit their consent to certain areas of research or parts of research projects to the extent allowed by the intended purpose and provided that this does not involve disproportionate efforts in view of the protective purpose.* If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Recital 34

In order to safeguard that consent has been freely-given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller and this imbalance makes it unlikely that consent was given freely in all the circumstances of that specific situation. ***Consent is presumed not to be freely given, if it does not allow separate consent to be given to different data processing operations despite it is appropriate in the individual case, or if the performance of a contract is made dependent on the consent despite this is not necessary for such performance and the data subject cannot reasonably obtain equivalent services from another source without consent.***

Article 7

Conditions for consent

1. Where Article 6(1)(a) applies the controller shall be able to demonstrate that unambiguous consent was given by the data subject.
 - 1a. Where article 9(2)(a) applies, the controller shall be able to demonstrate that explicit consent was given by the data subject.
2. If the data subject's consent is to be given in the context of a written ***or electronic*** declaration which also concerns other matters, the request for consent must be presented in a manner which is clearly distinguishable (...) from the other matters.
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal (...). ***Prior to giving consent, the data subject shall be informed thereof by the controller.***
4. ***A declaration of consent pre-formulated by the controller shall be provided in an intelligible and easily accessible form, using clear and plain language and its content shall not be so unusual within the overall context that the data subject could not reasonably expect such a declaration.***