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NOTE

From:	Incoming Presidency
To:	Working Group on Information Exchange and Data Protection (DAPIX)
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data - Discussion on questions suggested by the Presidency

The incoming Presidency intends to continue the work on the draft Data Protection Directive on the basis of a new document (doc. 10133/15) reflecting the work done under previous Presidencies and adapted to the Council's general approach on the General Data Protection Regulation.

Furthermore, the incoming Presidency would like to submit to delegations this working document pointing out some questions in order to bring forward the negotiations. It is the intention of the incoming Presidency to first focus on certain thematic issues before proceeding with discussions on the text itself.

In this respect, the incoming Presidency intends to discuss the following issues during the meeting of 2nd and 3rd July 2015:

A) Processing of special categories of personal data

Processing of special categories of personal data is of particular importance for competent authorities because of the close link between some specific serious crimes and these categories of data.

- In order to allow competent authorities to be effective, could delegations agree to insert in Article 8 a new sub-paragraph c)?

“c) the processing relates to data which are manifestly made public by the data subject.”

This wording already existed in the initial Commission proposal.

Furthermore the incoming Presidency invites delegations to express their opinion on the redraft of Article 8 of document 10133/15.

B) Anonymisation / pseudonymisation / restriction of processing

In the Commission proposal, “marking” is used in Article 3(4) as a technical modality of restricting the processing of data. During further discussions the question of anonymised data for specific purposes as well as the question of pseudonymisation were raised.

Recital 16 clarifies that the principles of data protection should not apply to anonymous information, that is information which does not relate to an identified or identifiable natural person or to data rendered anonymous in such a way that the data subject is no longer identifiable.

Where personal data are pseudonymised, these data remain personal data and do not constitute a category of “pseudonymous data”. “Pseudonymisation” is rather a technique of processing personal data in such a way that the data can no longer be attributed to a specific data subject without the use of additional information.

- In order to clarify the concept of “pseudonymisation” under the directive, do delegations think it is important to provide for a definition of “pseudonymisation”?

Relevant Articles in Chapter II of the Data Protection Directive concerning this issue might need to be considered during the meeting.

C) Transfer and communication of personal data for the same or other purposes and by different controllers?

In the view of the incoming Presidency, the draft text of the Directive is for the time being not yet sufficiently clear regarding these issues. Hence, the incoming Presidency would like to submit to delegations the following questions:

- 1) Should the Data Protection Directive provide that provisions pertaining to the communication of personal data between different competent authorities of the same Member State acting all within the scope of the Data Protection Directive are left to national legislations?

- 2) Is it deemed necessary that the Data Protection Directive should provide for explicit provisions pertaining to the transmission of personal data from competent authorities to controllers falling under the GDPR?

If the answer is yes, could Article 7a be drafted as follows:

“Article 7a: Specific processing conditions

1. Member States shall provide that personal data received from or made available by a competent authority may be transmitted to another recipient only if no rights or legitimate interests of the data subject are affected and where the transmission of the personal data is necessary for:
 - a) the compliance with a legal obligation to which the recipient is subject or for the performance of a task carried out in the public interest or in the exercise of official authority; or
 - b) the prevention of serious harm to the rights of individuals.

- 1a. Where competent authorities are entrusted by Member State law with the performance of tasks other than for the purposes referred to in Article 1(1), Regulation XXX shall apply for the processing for such purposes, in particular for archiving purposes in the public interest or for scientific, statistical or historical purposes, unless the processing is carried out in an activity which falls outside the scope of Union law.

- 1b. [current paragraph 1];
- 2. [current paragraph 2].”

D) Further processing of personal data for the same or other purposes

Concerning further processing, the Directive covers all processing within its scope (Article 1(1)). These purposes cover also further processing within the scope of the directive, including for scientific purposes etc. in relation to the prevention, investigation, detection and prosecution of criminal offences, including e.g. forensic purposes. The incoming Presidency’s reading is therefore that “further processing” by a competent authority can only mean that they use the data processed within the scope of the Directive. For a purpose beyond that scope the Regulation would apply.

- a) Do delegations share this understanding?
- b) If yes, do delegations agree that no specific provisions on further processing within the scope of the Directive is needed and that Article 4(2) and (3) as well as Article 11(6) and Article 11a (2a) should be deleted?

Relevant articles in Chapter II of this issue might need to be considered.

E) Transfer of personal data to third countries or international organisations

The incoming Presidency invites delegations to express their opinion on provisions of Chapter V.
