



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 September 2012**

---

---

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

---

---

**12918/12**

**LIMITE**

**DATAPROTECT 97  
JAI 551  
MI 515  
DRS 101  
DAPIX 94  
FREMP 110  
COMIX 460  
CODEC 1978**

**NOTE**

---

from: Presidency  
to: Working Group on Information Exchange and Data Protection (DAPIX)

---

No. Cion prop.: 5853/12 DATAPROTECT 9 JAI 44 MI 58 DRS 9 DAPIX 12 FREMP 7  
COMIX 61 CODEC 219

---

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) - Questionnaire on delegated/implementing acts

---

1. At the July JHA Informal Ministerial Meeting in Nicosia, the Presidency invited Ministers to discuss three horizontal issues arising from the draft General Data Protection Regulation, on which delegations had expressed common concerns in the course of technical discussion in the DAPIX Council Working Party. These concerns specifically related to the administrative burden imposed by the draft regulation, to the application of data protection rules in the private and the public sector and the number of delegated and implementing acts that the proposed Regulation foresees.

2. Discussions at the July Informal Ministerial Meeting were conclusive on the need for a structured approach to identify those articles where:

- (a) administrative burden on SMEs could be reduced on the basis of specific, well-defined criteria;
- (b) a degree of flexibility for the application of data protection rules in the public sector could be achieved and,
- (c) provisions for delegated and implementing acts need to be revised on a case-by-case basis and/or more detailed rules should be built in the substantial provisions.

3. Based on these conclusions, the Presidency has taken the initiative to prepare this document, with the aim of further discussing the issues referred to in paragraph 2 above in the framework of Friends of Presidency meeting(s), which will be convened in due course.

4. Delegations are invited to fill in the annexed tables I and II and answer the question in annex III and send their replies to the General Secretariat of the Council ([guy.stessens@consilium.europa.eu](mailto:guy.stessens@consilium.europa.eu)) by 4 October 2012. Delegations are strongly encouraged to reply as briefly as possible, and where relevant, by stating "yes" or "no".

---

**Administrative Burdens**

For the purposes of this exercise, administrative burdens are defined as the costs incurred by enterprises, the non-profit sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including labelling, reporting, registration, monitoring and assessment needed to provide the information.<sup>1</sup> For example, pursuant to this definition, obligations on data controllers to notify data breaches and to maintain documentation of processing operations would constitute administrative burden, but that would not be the case with obligations to appoint a data protection officer or relating to the right to object, as they do not constitute information obligations, in spite of the fact that they do impose costs of compliance on data controllers. Compliance costs should be distinguished from administrative burdens as they constitute the totality of costs that flow from compliance with a given legal instrument.

In the first column the Commission will provide a list of the provisions that it considers to impose administrative burdens on data controllers. Delegations are free to add additional rows to this table, indicating where appropriate additional provisions of the draft Regulation that they consider to impose administrative burden on controllers. The second column requires delegations to present a brief proportionality assessment of the administrative burden described in the first column. Particular emphasis in this respect should be given to the burden imposed on micro, small and medium-sized enterprises.

---

<sup>1</sup> Definition from European Commission Impact Assessment Guidelines (2009) - [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/ia\\_guidelines\\_annexes\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/ia_guidelines_annexes_en.pdf)

The third and fourth columns requires an assessment of the appropriateness of the criteria proposed in the draft Regulation by the Commission to differentiate, in specific cases, the applicability of obligations on data controllers. The last four columns concern additional possible criteria suggested during the technical and political discussions by delegations. In those cases that delegations find that the criteria for the applicability of the listed obligations proposed by the Commission need to be changed, they are requested to indicate which of the other possible criteria in the last four columns they consider to be appropriate for that purpose.

At the end of the table delegations are invited to introduce their commentary on the additional compliance costs imposed by the draft Regulation.

---



The Presidency invites delegations to express their opinions, on a case-by-case basis, on the appropriateness of delegated/implementing acts in the Commission proposal for a draft Data Protection Regulation. To that end it has drawn up the table below which lists all instances of delegated (table 1) and implementing (table 2) acts proposed by the Commission. In the second column the Commission will provide a justification as to why it thinks a delegated/implementing act is appropriate for the specific case.

The main question for each of these proposed acts is whether delegations consider the granting of these powers to the Commission as legally and politically appropriate and necessary. To that end, delegations may look, inter alia, at the conditions and safeguards (specified by Articles 290 and 291 TFEU) which frame the conferral of these powers.

In the event that delegations consider that in the specific case delegated/implementing acts should not be used, they are invited to indicate which alternative they prefer. Please fill in the table below.

## 1. Delegated Acts

Article	COM justification for proposed delegated act (objectives, content, scope, likely duration of delegation)	Political assessment: is the delegation necessary? (YES/NO)	If not, which alternative solution would you accept? (a) Retain the provision, but with stricter conditions on COM (b) Replace with <sup>2</sup> : (c) Delete the provision
[...]			

## 2. Implementing Acts

Please fill in the table below.

Article	COM justification for proposed implementing act	Political assessment: is this empowerment necessary? (YES/NO)	If not, which alternative solution would you propose? (a) Retain the provision, but with stricter conditions on COM (b) Delete the provision (c) Other (please specify)

- <sup>2</sup> Options to replace the suggested provision with:
- <sup>1</sup> More detailed rules in the substantive provisions
  - <sup>2</sup> Codes of conduct
  - <sup>3</sup> Other (please specify)



**Flexibility in data protection rules for the public sector**

Please list the policy areas, as well as the specific articles in the draft Data Protection Regulation in which, in your opinion, a further degree of flexibility should be granted for the public sector within the Regulation.

1. ...
2. ...
3. ...
4. ...
5. ...

---