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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)

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Delegations will find below comments on Articles 83a, 83b and 83c, received as of 9 October 2013.

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## DENMARK

### General

Chapter IX, into which the proposed Articles 83a to 83c are to be incorporated, is a key chapter of the proposal for a Regulation as it establishes the framework for national legislation in certain essential domains. Denmark is therefore most grateful to the Lithuanian Presidency for bringing this matter up for discussion.

It is unclear why the Commission has proposed special rules for precisely those aspects which are to be covered by Chapter IX. In Denmark's view, the room for manoeuvre which Chapter IX appears to accord to Member States applies to other areas too. It is also one of the main reasons why Denmark would still prefer a directive to a regulation.

Regarding the current proposal contained in 12384/13, the Presidency has chosen to divide former Article 83 into three separate articles. This immediately raises the question as to what purpose is served by such a division. The division may be inappropriate as it may raise doubts as to whether data which are transferred to a storage facility, library, museum or archive for further processing for historical purposes cannot (also) be used for statistical or scientific purposes.

If the division is maintained, Denmark will propose that the close interrelationship between the provisions be described in the recitals.

From a general viewpoint, it can also be added that Denmark is not in favour of the deletion of recital 42 and Article 9(2)(i). The provision in Article 9(2)(i) is extremely important in terms of ensuring that sensitive data can be processed for historical, statistical and scientific purposes without the need for any other basis for processing, e.g. the obtaining of consent. The deletion of this provision - which would mean having to obtain consent in certain cases of scientific research, for example - would have catastrophic consequences for register-based research. We would also refer to our comments below concerning Article 83c.

## **Article 83a and recital 125a**

### Article 83a(1)

Denmark supports the provision's explicit confirmation of the fact that further processing for historical purposes is not incompatible with the purpose for which the data were initially collected. We can also support the corresponding wording of Article 83b(1) and Article 83c(3).

As far as the scope of the provision is concerned, we would note that the field of activity of public storage facilities is often wider than "historical purposes". For example, the public archives do not process data for historical purposes only. One of their main tasks is to be able to make records available to other authorities for administrative purposes.

Denmark therefore takes the view that a clearer distinction should be drawn between archiving for historical purposes - which is covered by Article 83a - and the processing of data for other purposes, including administrative purposes, in archives.

It is therefore very important that this provision does not restrict the work of the public archives.

### Article 83a(2)

It is unclear how a recipient can demonstrate that he will use data only for historical purposes. It is also uncertain how the controller can ensure this. This provision is not found in Article 83b or Article 83c.

Denmark takes the view that this provision does not offer any added value and should be deleted.

### Article 83a(4)

According to this provision, Articles 15, 17, 17a and 18 apply only when personal data are kept longer than is necessary. Such a reference to a specific time period is inappropriate. In terms of historical, statistical and scientific purposes, this period can in principle be indefinite. Theoretically, processing in the form of storage, for example (as is the case in libraries, museums and archives) has no time limit.

It should be added in a recital that the necessary period (cf. Article 83a(4), Article 83b(3) and Article 83c(5)) could be indefinite. Alternatively, a provision could be added similar to that contained in Article 6(1)(e) of the current 1995 Directive.

Furthermore, this provision - together with Article 83b(3) and Article 83c(5) - ought to contain a reference to the provisions of Article 16 (on the right to rectification) and Article 19 (on the right to object). Consequently, those rights will also not apply when the data are being used solely for historical, statistical or scientific purposes in accordance with the provisions of Articles 83a to 83c.

### **Article 83b and recital 126a**

Denmark can support Article 83b in its current form (see, however, the comments above concerning Article 83a(4)).

It is very important that this provision should not impose any further restrictions on statistical work with respect to the 1995 Directive, as constant and effective statistical production must be ensured.

### **Article 83c**

It is unclear why the Presidency has opted for an approach to Article 83c which differs from that adopted in respect of Articles 83a and 83b. For example, no new recital has been added, and the introductory words closely mirror the original provision in the Commission proposal.

Denmark considers it very important to maintain access to the unique opportunities for health research which currently exist thanks to well-developed Danish registers and biobanks, and which have made Denmark a world leader in register-based scientific research. In Denmark's opinion, it is therefore also essential that new EU rules on personal data should strike the right balance between ensuring data protection on the one hand and safeguarding opportunities for carrying out health research on the other. This applies in respect of both unnecessary legal constraints on and unnecessary administrative or economic consequences for research, including health research, in both the private and public spheres.

At present, for example, under the current 1995 Directive, it is possible (subject to the prior approval of the relevant authority) to use, for the purposes of research, and without the patient's consent, human biological tissue removed during treatment or in the course of another health research project and stored in a biobank.

Denmark has laid down more detailed rules on this subject in the Danish Health Act, the Tissue Use Act and the Act on Research Ethics Review of Health Research Projects, in conjunction with the Danish Act on Processing of Personal Data, all of which implement the current 1995 Directive. The Act on Processing of Personal Data currently facilitates access to the processing of data concerning health, for example, without the data subject's consent in order to carry out statistical or scientific investigations of major importance for society if such processing is necessary for the performance of such investigations.

It is essential for Denmark that this possibility be maintained.

#### *Article 9(2)(i)*

Under Article 9(2)(i) of the proposal for a Regulation, the data referred to in Article 9(1) may be processed if such processing is necessary for historical, statistical or scientific purposes, subject to compliance with the conditions laid down in Article 83.

It is essential for register-based research that this provision be maintained. This will allow research, including register-based research, to be conducted without the need to obtain consent in each individual case (cf. Article 9(2)(a)).

Requiring consent in such situations would mean that the research results which can be achieved at present - and which benefit all of us - would no longer be achievable in future.

The reference in Article 9(2)(i) to the principle that processing should take place only on the basis of the conditions and safeguards laid down in Article 83 is therefore essential. This provision helps guarantee a satisfactory framework for future research, and also ensures adequate personal data protection for the data subject.

## Article 83c(1)

Denmark has repeatedly pointed out in a number of different contexts that it is unclear what is meant by the words "within the limits of this Regulation", which appear solely in Article 83c on the processing of data for scientific purposes. Recitals 125 and 126, which refer to research, do not provide any further clarification.

Denmark takes the view that those words are closely linked to the discussion of the possibilities for special national rules and the question of how Member States can be provided with the necessary degree of flexibility in respect of the public sector.

Denmark understands that DAPIX has yet to clarify the extent to which it will be possible to lay down special national rules. In that connection, reference may also be made to the discussions held by the Working Party regarding Article 6(3) of the proposal.

The Commission has previously stated at DAPIX meetings that the wording used ("within the limits of this Regulation"), while authorising the Member States to lay down more detailed rules in their national legislation (e.g. specifying how long data may be stored in a specific situation), does not allow such legislation to prescribe a higher or lower level of protection.

Denmark would take this opportunity to stress once again its scepticism about such an interpretation, as the setting of a time limit for data storage, for example, would in our opinion always reflect a certain level of protection (e.g. a decision as to whether information obtained from TV monitoring should be erased within 24 hours or 24 months).

It is therefore unclear how the wording used ("within the limits of this Regulation") should be interpreted in relation to Article 83c.

Denmark requests that this very important issue be discussed in detail at a forthcoming DAPIX meeting.

It takes the view that this area too ought to be governed by national legislation, and proposes that the provision be worded as set out below.

#### Article 83c(2)

Denmark takes the view that Article 83c(2) of the Presidency's proposal should be deleted as the relevant rules ought to be a matter for national legislation.

Alternatively, we would support a wording as proposed below in paragraph 3(a), as in our view it should not be possible to publish research results containing personal data insofar as such data are covered by Article 9 of the proposal.

#### **It is hereby proposed that Article 83c be worded as follows:**

1. Member States shall provide by law the conditions and the appropriate safeguards for the processing of personal data for scientific purposes.
2. Personal data should to the extent possible be processed for scientific purposes only if
  - a. These purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject **or**
  - b. These purposes cannot be fulfilled by keeping data enabling the attribution of information to an identified or identifiable data subject separate from other information.
- [3. Personal data processed for scientific purposes may be published or otherwise publicly disclosed only if*
  - a. the data subject has given consent; **or***
  - b. the data were made public by the data subject.*



*3a. Personal data covered by article 9 of this Regulation which is processed for scientific purposes may only be published or otherwise publicly disclosed if the data no longer permits the identification of the data subject.]*

4. Processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.
5. Article 14a shall not apply where and insofar as, for processing for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards.
6. Articles 15, 16, 17, 17a, 18 and 19 shall not apply when personal data are kept for a period which does not exceed the period necessary for solely scientific purposes, provided that the controller implements appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

## SPAIN

### General comments

1- We do not really see the need to approach these rules from the perspective of whether or not the further processing is incompatible.

We believe it is essential that the final text maintains a clear distinction between the legal basis and the purpose. Any data processing operation must have a legal basis as provided for in Article 6 of the proposal for a Regulation. As is clear from the latest draft of the article, there is a link between each legal basis and one or more of the purposes of the processing. Article 6(3a) provides for the possibility that, when certain objective criteria are met, further processing whose purpose differs from the original purpose can be considered compatible with the original processing, and will therefore have the same legal basis as the original processing. The new processing operation, which has a different purpose, will not require a new legal basis of its own (which does not mean that it does not need a legal basis, but simply that the legal basis will be the same as for the original processing operation).

The proposed text of Articles 83a, 83b and 83c lays down rules on processing for archival, statistical and scientific research purposes based on that premise: the purpose of these types of processing is not in itself considered incompatible with the original processing of the corresponding personal data, and therefore this type of processing will have the same legal basis as the first or original processing.

The problem is that while the premise of "further processing" will apply in many cases, this is not necessarily a given. Although it seems unlikely, data could be processed for archival, statistical and scientific research purposes without having been processed previously, in which case the reference in the first paragraphs of Articles 83a, 83b and 83c would not apply. The question then arises of what happens with such processing: is it governed by Articles 83a, 83b or 83c, or by the "ordinary" rules?

In short, we believe we should take the opportunity provided by these articles to regulate the truly relevant aspects of such processing, irrespective of whether it constitutes original or further processing.

2- Our second comment relates to terminology, but its scope goes beyond the merely semantic. It concerns the need to clearly define what we wish to regulate. As we will indicate in our comments on each of the provisions in question, we believe that the essential points here are: a) archives, b) public statistics, and c) scientific research.

3- Lastly, our third general comment is especially relevant to Article 83c. Not everything worth regulating in the three areas mentioned necessarily has to be systematically included within the general scope of the instrument. It is important to determine to what extent we need special rules for every case, or whether it is in fact sufficient to include some additional rules in Chapter III. With regard to processing for scientific research purposes, we believe that the latter option is the most appropriate. In effect, there is not a great deal new to add here.

### **Comments on Article 83a: processing for historical purposes**

Recital 125a associates processing for historical purposes with processing in archives. We understand and support the proposed approach, but perhaps it would be useful to make it more explicit for the sake of greater clarity.

The processing of personal data for historical research purposes is a type of processing that will come under the more general concept of "processing for scientific research purposes" in Article 83c. Thus Article 83a will apply exclusively to data processing in archives. We therefore suggest that the title of Article 83a should refer specifically and expressly to archives. The clarification in the first two lines of recital 125a would not then be as necessary, since it would be clear from the article itself that it refers to data processing in archives.

### **Article 83a(1):**

We believe that the point of this paragraph is to make the legal basis clear and, specifically, to make it clear that this article DOES NOT CREATE new legal bases in addition to those in Article 6. We would not want a general regulation to end up containing a variety of individual provisions, especially if there is no need for it. The legal basis for the processing of data in archives must be one of those provided for in Article 6. However, given the special nature of this type of processing, data processed in archives will often have been originally processed for other purposes.

Even so, we are not satisfied with an approach based on "further processing". We assume that any data processing must have a legal basis from among those provided for in Article 6. There may or may not be "further processing" in the strictest sense, under the circumstances laid down in Article 6(3a).

It is essential, therefore, to focus on the potential specificities of processing for archival purposes and on the necessary safeguards and exceptions, in order to achieve the desired public interest objectives. Two options come to mind:

- Either no specific reference is made, and as a result this type of processing must automatically be interpreted as governed by the provisions of Article 6;
- Or a direct and explicit reference is made to Article 6. In this case, for the purposes of clarification a first paragraph could be included, identifying the legal basis with reference to Article 6(1). The second paragraph could then establish the general principle that, as regards the purposes of further processing under Article 6(3a), the purpose of this type of processing is considered to be compatible with that of the original processing and therefore the same legal basis applies.

We consider that the first option is the most appropriate. According to the principle of judicial economy, specific provision should be made only for exceptions to the general rule. Any other reference is redundant and will only create confusion.

### **Article 83b(1):**

Same comments as for Article 83a.

In addition, we feel Article 83b lacks a reference, similar to that in Article 83a(1), which stresses the public nature of the data processing for statistical purposes covered by this provision. We believe that an exemption from applying certain rights of the data subject cannot be justified unless there is a public interest. We consider that mention should be made of the need for public interest, which would include any statistical activity covered by the relevant legislation, whether carried out by public or private entities (because of the outsourcing of public services).

It would also be important to define, even if only in a recital, what is meant by "public interest" for the purposes of statistics.

### **Article 83b(2) and (3):**

With regard to the right of rectification, we would point out that it is one of the reasons behind our current scrutiny reservation. More specifically, we are analysing public statistical legislation and ascertaining to what extent the aims of the right of rectification could somehow be provided for in that legislation, bearing in mind the particular specialties and requirements of statistical activity. Unfortunately, we have not yet reached any clear conclusions on this point. We are carrying out consultations with the relevant authorities and require a little more time.

**In any case, it seems that there will need to be a carefully balanced assessment of the various interests at play. On the one hand we have the protection of a basic right and on the other the important role of public statistics as a service.**

**We therefore suggest that the Presidency contact the Working Party on Statistics in order to better assess the situation, since we have noted that a number of delegations in that working party have concerns about this subject.**

With regard to Article 19, although we understand the reason for not including this rule, which according to the current version applies only to legitimate interests, we would propose including a reference to Article 19 in this provision and/or in the recitals in order to avoid unforeseen situations that could result in this right being used in a way that hinders normal statistical activities.

Recital 126a is dependent on our comments on Article 83b. In particular, the scope of the expression "within the limits of this regulation" will need to be determined when the Working Party has decided which solutions to implement for public statistics. In the meantime, we are not in favour of including this expression in recital 126a.

### **Comments on Article 83c: processing for scientific research purposes**

#### **Article 83c(1)**

Although we understand the reasoning behind the approach to this provision, we believe the proposed wording entails the risk that paragraphs 1 and 2 could be interpreted as creating a new legal basis. We consider that such an option would complicate the system unnecessarily. Processing for scientific research purposes (let us clarify that we think this term is more appropriate) must be subject to the normal rules on legal bases laid down in Article 6. In fact, at this stage we are inclined towards a different approach to regulating this subject. The rules could be based on the following principles:

- The legal basis for this type of processing is governed by the general rules in Article 6. On the basis of the principle of judicial economy, only exceptions to the rule should be regulated. Given the lack of specific provisions, it is clear that this type of processing is subject to the general rules.
- This type of processing has particular features which preclude certain rights from being exercised. Specifically, the rights provided for in Article 83c(4) and (5).
- Given that, in our view, the content of this provision concerns an exemption from applying certain rights when data is processed for scientific purposes, we believe that the appropriate place for this provision would be Chapter III.

## FRANCE

As an introductory remark on the three articles proposed by the Presidency, the French authorities welcome the decision to make a distinction between the different purposes of data processing, rather than having a single article applicable to all purposes, as was the case in the initial Commission proposal. Nevertheless, we believe that the scope of each of the proposed categories should be amended in order to cover all types of data processing within each category. Thus, Article 83a should be extended to also cover archiving purposes (broader than historical purposes), the scope of Article 83b should be specified more clearly (does it only apply to official statistics or also to private statistics?), and Article 83c should be extended to include public health studies conducted in the public interest.

### **Derogations for data processing for archiving purposes**

- Regarding the new Article 83a on **processing for historical purposes**, and new recital 125a

We thank the Presidency for having taken the specific nature of archives into account. However, we would point out that implementation of the proposal as it stands would prevent national authorities responsible for the storage and communication of archives from fulfilling their tasks in the general interest and for historical, statistical and scientific purposes.

We believe that the Presidency text does not go far enough to actually allow archives to continue to exist, or to permit archive services to operate and fulfil their tasks in the general interest and for historical, statistical and scientific purposes.

We are therefore opposed to the Presidency's proposed text and ask for the insertion of the French proposals made in **note ST 8667/13, sent to members of the DAPIX Working Party on 19 April 2013**, which suggest amendments to the draft Regulation aimed at taking full account of the specific nature of archives. In particular, we repeat the fact that all Member States have national provisions on archives, and that this concept is distinct from and much broader than that of processing for historical purposes.

The storage of personal data in archives beyond the usual period of use makes it possible to guarantee rights for individuals which can only be exercised through access to those archives. The principle of the right to be forgotten must therefore be adapted in such a way as to prevent the destruction of personal data which would have the effect of depriving individuals of the possibility of exercising those rights.

In addition to this administrative purpose of serving the needs of individuals, archives also fulfil the important task, crucial for any society, of safeguarding memory. The destruction of personal data contained in archives would mean that this requirement could no longer be met.

However, not all personal data contained in archives are stored – only those which are of public interest and/or of interest for historical, statistical or scientific purposes. Moreover, such data are not communicated without prior checks or without measures being taken for the protection of privacy. Instead, archives services ensure that the rules on access and communicability laid down by national laws are complied with.

It is therefore crucial to ensure that the proposal for a Regulation on the protection of personal data fits in with existing national provisions on archives, in order that they can be preserved. We therefore proposed drafting changes (8667/13) with the aim of preserving the tasks and functioning of archives, inter alia through exemptions from those provisions which are incompatible with such tasks.



- We highlight the fact that the Presidency proposal does not offer any solution to the issues encountered in the initial proposal, either in terms of scope or applicable regime.

Indeed, the text proposed by the Presidency does not suggest specific arrangements for archives, but rather for the processing for historical purposes of personal data held in archives (Article 83a and recital 125a). "Archiving activities" can certainly not be treated in the same way as processing purely for historical purposes. Historical purposes are indeed one element of archiving purposes, but not the only element.

For example, the storage of personal data in archives ensures that citizens have a reliable, authentic source of data which they can use as a basis for exercising their rights.

This applies to:

- **documents connected to individuals' personal situations** (censuses, civil status, electoral roll, etc., which allow genealogists to trace heirs; documents relating to births, registers of hospital visits, etc., which may provide information on an individual's origins), **documents connected to property** (mortgages, registration, etc., which allow property rights or the existence of an easement to be proven),
- but also to **documents allowing compensation for damages and/or financial assistance** (files relating to taxation, land registration, etc., used in compensation claims),
- and to **documents allowing an individual to be released from the obligation to make undue payments** (divorce settlements, files relating to abandonment or ill treatment, etc., which allow an adult to prove that as a child he/she was not under the care of his/her parents, and therefore that as an adult he/she is not legally obliged to maintain them).

Similarly, the phrase "*in particular, to ensure that the data are not used for taking measures or decisions regarding particular individuals*" in paragraphs 1 and 4 of Article 83a as proposed by the Presidency impinges upon an aspect of the role of archives which is essential for citizens - that of providing the proof needed to be able to exercise an individual right, for example.

Another problem connected to the excessively restrictive scope in the Presidency's proposal is that this scope only envisages processing carried out by public authorities or public bodies and leaves aside any possibility of processing for archiving purposes by other bodies. The Regulation would thus introduce a different regime for archives held by public authorities or public bodies than for those held, for example, by churches or political parties, making it impossible to protect the latter and thus leading to the loss of an important section of the national memory. For this reason, we propose a definition of archive services which takes account of the diversity of legal entities carrying out the same tasks (collecting, classifying, storing and communicating data and maximising the potential of archives for justifying the rights of individuals, or their use for historical, statistical or scientific purposes).

The Presidency's wording allows limited processing of personal data by archive services, without any particular justification. It also considerably limits the conditions for accessing archives, which clearly goes beyond the framework of the Regulation and impinges upon the very essence of archives, i.e. their accessibility. In fact, paragraph 2, which requires justification of a historical purpose to be given before access to the data can be granted, goes against Recommendation No R (2000) 13 of the Council of Europe on a European policy on access to archives, which was reaffirmed by Recommendation Rec (2002) 2 on access to official documents. Point 5 of the appendix to Recommendation No R (2000) 13 specifies the following: "*Access to public archives is a right. In a political system which respects democratic values, this right should apply to all users regardless of their nationality, status or function.*" The French authorities therefore ask for the deletion of this provision proposed by the Presidency according to which it would be necessary to require that those requesting access to data justify their status as researchers and the purpose of their studies before being granted access.

In addition to its overly restricted and inadequate scope, and excessively restrictive conditions, the regime proposed by the Presidency does not, in any case, address the concerns regarding to archives. It does not establish derogations which would actually allow archives to continue to exist, or to permit archive services to operate and fulfil their tasks in the general interest and for historical, statistical and scientific purposes. For the reasons given in our proposal, and since the various Presidency compromises have failed to address the basic problems in the initial Commission proposal, we reiterate the need to provide for a reference to the following articles (in addition to those mentioned in the proposed compromise): Articles 5(d), 9, 14, 16, 17b, 19, 23, 32, 33, 38 and 53 of the proposal for a Regulation. The restriction imposed by the phrase "*shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of processing for historical purposes*" is not acceptable in the context of archiving purposes in which the data are stored definitively, even for the small number of articles mentioned in the compromise text.

We stress once again that archive services are responsible for safeguarding personal data, in the collective and individual interest of citizens, in the framework of processing operations for which they are the controllers. The current proposal for a Regulation must therefore fit in with national rules on the safeguarding, storage and functioning of archives.

Accordingly the French authorities have proposed a new Article 83a, aimed in particular at exempting archive services from the obligations to rectify and erase data defined in Articles 16, 17 and 17a, in order to allow them to fulfil their role of safeguarding individual and collective memory and be able to guarantee the reliability and authenticity of the data entrusted to them. It is essential, particularly for a Regulation having a direct effect, that the proposed arrangements dovetail with national rules governing archives.

Finally, although we welcome recital 125a, with the proviso that for the reasons given above it should not, in substance, be limited to historical purposes, **a recital is not sufficient in any case and changes to the enacting terms are still required.** In substance, we deplore the absence of any reference to access to administrative documents (the idea of democratic transparency), which is an essential part of archive-related processing, the absence of the evidential value of archives, and the absence of specific information on how these provisions will fit in with the rules applicable to national treasures which, under French law, also concern public archives. All the necessary explanations can be found in the French proposal (8667/13).

### **Derogations for data processing for statistical purposes**

- Regarding the new Article 83b and corresponding recitals, on **data processing for statistical purposes**

We would like the scope of the derogation for statistical data established in Article 83b to be specified more clearly: does it only apply to official statistics or also to private statistics?

In any case, we support the most recent Presidency proposal, which uses the derogations proposed by the chair of the Working Party on Statistics, **with two reservations**:

- The first reservation relates to the **right to object**. Although the proposal by the chair of the Working Party on Statistics granted a general derogation to the right to object (Article 19(4) in 11013/13), the Presidency proposal does not include this derogation. Consequently it is Article 19 (without paragraph 4) which would apply, and therefore also the exception provided for in Article 19(1) "*unless the controller demonstrates (...) legitimate grounds for the processing which override the interests or (...) rights and freedoms of the data subject*". In the context of official statistics, it seems that these "*legitimate grounds*" could allow any type of situation to be covered by the exception. Nevertheless, the same would not necessarily apply in the context of private statistics.

- Our second reservation relates to the new recital 126a, added by the Presidency. Although the title of the new Article 83b ("Processing of personal data for statistical purposes") seems to imply a wish to deal with all processing for statistics, whether official or private, this recital significantly restricts that article's scope. It is therefore probable that only Union statistics, as referred to in Article 338(2) TFEU, would be covered. While the Presidency seems to wish to limit these derogations to official statistics, it is preferable to grant them also for national statistics processed in Member States, and not exclusively for Union statistics. We therefore propose that **the list of all relevant Union texts should be removed from the end of the amendment and the first sentence of the recital's second paragraph should be reworded** as follows: "*The confidential information which the Union and national statistical authorities collect for the production of **European and official national** statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union, **while national statistics should comply with national statistical law***". This change is indispensable and would allow the scope of the derogations to be extended to cover all official statistics processing in every Member State.

We also repeat our support for the proposals made by the chair of the Working Party on Statistics in his letter.

Moreover, we confirm our **general reservation on the concept of "pseudonymous" data** which appears in Article 83b(1).

**Regarding the processing of "sensitive" data for statistical purposes**, we believe that Article 9(2)(i) of the version of the text given in 11013/13 constitutes a derogation from the general ban on processing "sensitive" data (data revealing racial or ethnic origin, political opinions, religion or philosophical beliefs, or genetic data or data concerning health or sex life) for statistical purposes. This provision, which was included in the previous proposal, has now been deleted by the Presidency. **We would like this provision to be reinserted into Article 9.**

## **Derogations for data processing for scientific purposes**

- Regarding the new Article 83c on **processing for scientific purposes**

We strongly uphold our **reservation on this article**. The main issue for us is that reference to "*studies conducted in the public interest in the area of public health*" should be expressly added to the new article, and indeed to Article 9(2)(i) and recitals 40, 42, 122, 124a, 125 and 126. We therefore propose a new wording for Article 83c in the annex to this note.

Regarding the Presidency's proposed wording of Article 83c, the combination of recital 123 ("*The processing of personal data concerning health may be necessary for reasons of public interest in the areas of public health, without consent of the data subject.*") and Articles 6(1)(e), 9(2)(i) and 83c leads us to understand that the processing of personal data, including data concerning health, may be exempt from the principle of gaining the consent of the person concerned when the processing is carried out in the public interest, including in statistical or research activities.

Subject to confirmation of this interpretation, we would prefer the principle established to be that of the necessity of collecting consent, without exception, along the lines of what Article 83c(4) provides for with regard to the obligation to inform the person concerned. We therefore propose the following wording for Article 83c(4):

"4. *Articles 6, paragraph 1, point a), 9, paragraph 2, point a) and 14a shall not apply where and insofar as, for processing for scientific purposes and for studies conducted in the public interest in the area of public health, providing such information and collecting the subjects' consent proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards."*

Still with reference to Article 83c, we would like the phrase "*within the limits of this Regulation*" to be deleted from the first paragraph.

Regarding paragraph 3, we recall our **general reservation on the concept of "pseudonymous" data**.

In recital 40, we would like the word "unless" to be added before "in particular". Otherwise the current wording appears to contradict the principle that data can be used for purposes other than those for which they were collected in relation to archiving, statistics or research.

**As a whole, the above changes proposed by the French authorities relating to the articles and recitals concerning data processing for archiving, statistical or scientific purposes mean that the wording of recitals 40, 42, 122, 124a, 125 and 126 and Articles 5, 9, 19, 83a, 83b and 83c should also be changed in order to maintain coherence. The necessary drafting changes are shown in the annex.**

## ANNEX - Drafting changes proposed by the French authorities

### Recitals

- 40) The processing of personal data for other purposes should only be allowed where the processing is compatible with those purposes for which the data have been initially collected, **unless** in particular where the processing is necessary for (...) (...), statistical or scientific research purposes **or studies conducted in the public interest in the area of public health.** (*rest unchanged*)
- 42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where important grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of healthcare services, especially in order to ensure the quality (...), **efficiency and accuracy** of the procedures used for settling claims for benefits and services in the health insurance system, or for historical, statistical, (...), scientific (...) purposes **or studies conducted in the public interest in the area of public health.** A derogation should also allow processing of such data where necessary for the establishment, exercise or defence of legal claims, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure.
- 122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare **or a health alert or health security, or for historical, statistical (...) or scientific purposes or studies conducted in the public interest in the area of public health.** Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.



123) The processing of personal data concerning health may be necessary for reasons of public interest in the areas of public health, without consent of the data subject. In that context, "public health" should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work, meaning all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of personal data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers, insurance and banking companies.

124a) As regards **European** statistics, Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities, provides further specifications on statistical confidentiality for European statistics.

125) The processing of personal data for the purposes of historical, statistical or scientific (...) purposes **or studies conducted in the public interest in the area of public health** should, in order to be lawful, also respect other relevant legislation such as on clinical trials.

**Recital 125a (new) With regard to archives, the right to protection of personal data must take into account the right of peoples to know their history and the principle of citizens' access to administrative information. Having regard to the Universal Declaration on Archives, which states that archives are "authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory"; the Council Recommendation of 14 November 2005 on priority actions to increase cooperation in the field of archives in Europe; and the Council Resolution of 6 May 2003 on archives in the Member States, which stressed "the importance of archives for the understanding of the history and culture of Europe and for the democratic functioning of society within the framework of the enlargement of the Union on 1 May 2004"<sup>1</sup>, this Regulation must tie in with the specific national provisions governing archives, in particular those concerning the storage period, the processing of certain categories of personal data, the right to information, the right of access, the right to be forgotten, the right to rectification, the right to restriction of processing, the right to erasure, the right to data portability, the right to object, data protection by design and data protection by default, the communication of a personal data breach to the data subject, the data protection impact assessment, codes of conduct and the powers of the supervisory authorities. International transfers of personal data must be carried out without prejudice to the rules applicable to the movement of cultural goods and to national treasures.**

- 126) For the purposes of this Regulation, processing of personal data for scientific purposes should include fundamental research, applied research, and privately funded research **in the public interest** and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area.

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<sup>1</sup> [Translator's note: the second part of this quotation is in fact from the second recital of the 2005 Council Recommendation and not from the 2003 Council Resolution.]

## **Recital 126a (new)**

The processing of personal data for statistical purposes should not be considered incompatible with the purposes for which the data are initially collected provided that the controller provides appropriate safeguards; these safeguards must in particular rule out the use of the data in support of measures or decisions regarding any particular individual. Restrictions on the rights of information, access, erasure, restriction or on the right to data portability should apply only under specific conditions. In these cases, the controller should provide for appropriate safeguards for the rights and freedoms of the data subject.

The confidential information which the Union and national statistical authorities collect for the production of **European and official national** statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union, **while national statistics should comply with national statistical law**. Union law or national law should, within the limits of this Regulation, determine specifications for the processing of personal data for statistical purposes and for guaranteeing statistical confidentiality. (...)

## **Articles of the proposed Regulation**

### *Article 5(b)*

- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing of data for historical, statistical or scientific purposes, **or for archiving purposes as defined by Member States' national laws**, shall not be considered as incompatible subject to the conditions and safeguards referred to in Articles **83a, 83b and 83c** respectively;

*Article 5(e)*

- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific purposes in accordance with the conditions set out in **Articles 83b and 83c** and until it is no longer deemed necessary to continue the storage, or **where the data are processed by archives services in accordance with the laws of the Member States, under the conditions set out in Article 83a.**

*Article 9*

*Processing of special categories of personal data*

- (2) (i) processing is necessary for historical, statistical or scientific (...) purposes, **or studies conducted in the public interest in the area of public health** subject to the conditions and safeguards referred to in Articles **83a, 83b and 83c.**

*Article 19*

*Right to object*

- (4) **The rights provided for in this Article do not apply to personal data which are processed only for historical, statistical, or scientific purposes or studies conducted in the public interest in the area of public health subject to the conditions and safeguards referred to in Articles 83a, 83b and 83c.**

**Article 83a (new)**  
**Processing for archiving purposes**

- 1. Beyond the period that is necessary for the initial processing purposes for which the data were collected, personal data may be processed by archives services whose main task or legal obligation is to collect, store, classify, communicate, highlight and disseminate archives in the general interest, inter alia to provide proof of the rights of individuals or for historical, statistical or scientific purposes.**

**The tasks of communication and dissemination shall be carried out in accordance with the rules established by the Member States concerning access to and communicability and dissemination of administrative or archived documents.**
- 2. For the purposes referred to in paragraph 1, Member States may provide for derogations from Articles 5(d), 9, 14a, 15, 16, 17, 17a, 17b, 18, 19, 23, 32, 33, 38 and 53(1)(f) and (g).**
- 3. Member States shall encourage the establishment, in particular by the European Archives Group, of codes of conduct designed to facilitate the implementation by archives of rules relating to personal data, with a view to ensuring:**

  - (a) the confidentiality of data vis-à-vis third parties;**
  - (b) the authenticity, integrity and proper storage of data;**
  - (c) accessibility to archives in the framework of Member States' rules on access to administrative or archived documents.**

**Article 83b**

**Processing of personal data for statistical purposes**

- 1. Processing of personal data for statistical purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual (...).**

2. Articles **6, paragraph 1, point a), 9, paragraph 2, point a) and** 14a shall not apply where and insofar as, for processing for **statistical** purposes, **providing** such information **and collecting the subjects' consent** proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards.
  
3. Articles 15, 17, 17a, 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

#### **Article 83c**

#### **Processing of personal data for scientific purposes and studies conducted in the public interest**

1. **(...)** Personal data may be processed for scientific purposes, **and for studies conducted in the public interest in the area of public health** only if:
  - (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject;
  - (b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner.
  
2. Personal data processed for **scientific purposes, and for studies** conducted in the public interest **in the area of public health** may be published or otherwise publicly disclosed by the controller only if the publication of personal data is necessary to present **(...)** the findings or to facilitate **(...)** the purposes **of these studies** insofar as the interests or the rights or freedoms of the data subject do not override these interests and:
  - (a) the data subject has given explicit consent; or
  - (b) the data were made public by the data subject.

3. Processing of personal data for **scientific purposes, and for studies** conducted in the public interest **in the area of public health** shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual (...).
  
4. Articles **6, paragraph 1, point a), 9, paragraph 2, point a) and** 14a shall not apply where and insofar as, for processing for scientific purposes **and for studies conducted in the public interest in the area of public health, providing** such information **and collecting the subjects' consent** proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards.
  
5. Articles 15, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for solely for scientific **purposes and for studies conducted in the public interest in the area of public health,** provided that the controller implements appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

## IRELAND

### General

1. Articles 5.1 (b) (second phrase), 5.1(e) (second phrase) and 9.2(i) should be retained. The text of paragraph 1 of articles 83a, 83b and 83c should be adapted accordingly.

### Article 83a – Processing of personal data for historical purposes

2. This article should apply to the processing of personal data for historical purposes, including archives and genealogical research as defined by Union or Member State law. Processing of personal data for such purposes undertaken by institutions other than public authorities and public bodies should be facilitated, while guarding against potential abuses.
3. The processing of personal data under this heading may also be necessary for the purpose of proof of ownership of land, compensating victims of abuse, etc. The scope of this provision should be sufficiently broad to permit processing for such purposes.
4. The text at the end of paragraph 1 ('and specifications on the conditions for access to data') needs to be clarified.
5. Paragraph 2 gives rise to a number of questions; for example how would this restriction be implemented and monitored?
6. The reference to article 15 should be deleted from paragraph 4. A reference to article 19 should be included in this paragraph.

### Article 83b - Processing of personal data for statistical purposes

7. It should be made clear that this article applies to personal data collected specifically for statistical purposes as well as to data collected for other purposes but subsequently processed for statistical purposes.
8. Paragraph 3 should include references to articles 16 and 19.

### Article 83c - Processing of personal data for scientific purposes

9. Paragraph 2(b) of the original Commission text should be retained.

The wording of paragraph 4 should reflect article 14a.4(b) of Document 11013/13.



## ITALY

The Lithuanian Presidency proposal envisages introducing three separate articles to replace Article 83 of the original proposal, dealing with processing for historical (83a), statistical (83b) and scientific (83c) purposes. This meets the need to give more emphasis to the particularities of individual processing operations, as requested by Italy; however, the proposals do not take due account of other contributions already received on this point, in particular a proposal from the French delegation (8667/13) on archiving, which was supported by the European Archives Group and which better reflected the specificities of processing for archiving with respect inter alia to access to and use of data contained in archives.

All three articles start from the assumption, which is acceptable in principle, of a need to provide for derogations from some requirements for owners (information, access, rectification, right to object, right to be forgotten/to erasure) given the purposes, of high public value and interest, of such processing (as already envisaged in a generic way in the current Directive 95/46/EC), and also from the assumption that such processing is compatible with the purposes for which the data was initially collected (in the case of secondary processing), under certain conditions.

However, rather than laying down that principle of incompatibility in the articles specifically devoted to the processing in question, removing the reference in Article 5(1)(b) of the proposal (11013/13), we would prefer to keep that principle in the general part of the Regulation and then lay down the further safeguards, or at least the essential criteria for such safeguards, in the specific articles of this Chapter.

Italy's comments on the Lithuanian Presidency document therefore focus on:

- (a) the addition of a new recital, a specific definition of "*archive services*", amending the text of Article 5(1) of the proposal (11013/13) to clarify the general principle of the compatibility of processing for archiving purposes with the initial purposes, and a specific article on processing for archiving purposes and associated safeguards;
- (b) changes to recital 125a and to Article 83a (processing for historical purposes) to clarify the compatibility of such processing with the initial purposes of the processing and to exclude conditions for such processing that would violate freedom of expression or limit its scope solely to processing by public authorities or bodies;

- (c) amendments to recital 126a and to Article 83b (processing for statistical purposes) concerning inter alia the promotion of sectoral codes of conduct;
- (d) amendments to Article 83c (processing for scientific purposes) concerning in particular the use of pseudonymous data and intended to harmonise cross-references with other provisions of the Regulation, as well as to promote the use of sectoral codes of conduct.

**(a) Processing for archiving purposes**

The text of recital 125a refers to processing for historical purposes but in fact concerns processing for purposes of archiving. There is therefore a risk of confusing the two types of processing, which in fact have different purposes; archival storage does not necessarily share the same aims as are pursued in a historical context.

We therefore propose replacing the text of that recital with that of recital 125a in the French proposal (8667/13) (here identified as Recital 125x), which emphasises the value of archives as historical memory (recognised by several international conventions and recommendations) and mentions the need for current national rules to be borne in mind in the regulation of this sector<sup>1</sup>. The addition of this recital is linked to the addition of a specific new article (referred to as 83x) devoted to processing for archiving purposes, and partly modelled on the French proposal.

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<sup>1</sup> Italy has specific rules in the Data Protection Code (196/2003) and, in particular, in the Code of Ethics regarding Processing for Historical Purposes, approved by the EDPS in 2002 and appended to the Code itself.

New recital 125x

"With regard to archives, the right to protection of personal data must take into account the right of peoples to know their history and the principle of citizens' access to administrative information. Having regard to the Universal Declaration on Archives, which states that archives are "authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory"; the Council Recommendation of 14 November 2005 on priority actions to increase cooperation in the field of archives in Europe; and the Council Resolution of 6 May 2003 on archives in the Member States, which stressed "the importance of archives for the understanding of the history and culture of Europe and for the democratic functioning of society within the framework of the enlargement of the Union on 1 May 2004", this Regulation must tie in with the specific national provisions governing archives, in particular those concerning the storage period, the processing of certain categories of personal data, the right to information, the right of access, the right to be forgotten, the right to rectification, the right to restriction of processing, the right to erasure, the right to data portability, the right to object, data protection by design and data protection by default, the communication of a personal data breach to the data subject, the data protection impact assessment, codes of conduct and the powers of the supervisory authorities. International transfers of personal data must be carried out without prejudice to the rules applicable to the movement of cultural goods and to national treasures."

#### **New definition of "archive services"**

We propose adding a definition to Article 4 that refers to the specific purposes of archive services, whether managed by public or private bodies, as indicated in the new recital 125x above:

**Article 4(19) (new):**

**"Archive services": public authorities or public services or legal persons that hold records of public interest and who, following Union or Member States' law, have for main mission or legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general interest, in particular for justification of the rights of the people, or for historical, statistical or scientific purposes;"**

**Compatibility of processing for archive purposes:**

In the text of Article 5(1)(b) we propose to retain the general principle of compatibility of processing for historical, scientific or statistical purposes or processing by archive services, in a different way from that proposed in the Lithuanian Presidency document, with the following amendments:

Art. 5(1)(b): "*collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; **further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible subject to the conditions and safeguards referred to in Article 83a, 83b, and 8 c, respectively; further processing of data by archive services shall not be considered as incompatible subject to the conditions and safeguards referred to in Article 83x**";*

We also propose amending the text of Article 5(1)(e) regarding the principle of processing for a limited time related to the specific purposes of the processing:

Art. 5(1)(e): "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed (...) for historical, statistical or scientific (...) purposes **or by archive services pursuant to the conditions set forth in Article 83 a, 83b, 83c or 83 x, respectively** (...);"*

We also propose to add a new Article 83x on processing for archive purposes, with the appropriate amendment (not set out here) to the text of Articles 14a(4)(b), 15, 16, 17, 17a and 18 by means of an express reference to archive purposes, which is absent at present, and, more generally, the statement that the principles set out therein may be derogated from but may not be simply abandoned:

**Article 83x: Processing for archiving purposes**

**1. Beyond the period that is necessary for the initial processing purposes for which the data were collected, personal data may be processed by archives services whose main task or legal obligation is to collect, store, classify, communicate, highlight and disseminate archives in the general interest, inter alia to provide proof of the rights of individuals or for historical, statistical or scientific purposes.**

**The tasks of communication and dissemination shall be carried out in accordance with the rules established by the Member States concerning access to and communicability and dissemination of administrative or archived documents.**

**2. For the purposes referred to in paragraph 1, Member States may provide for derogations from Article 14a, if the provision of the information mentioned therein proves impossible or would involve a disproportionate effort compared to the right to be protected in the specific case. In those cases, Member States shall require the controller to provide for appropriate safeguards.**

**3. For the purposes referred to in paragraph 1, Member States may provide for derogations from Articles 15, 16, 17, 17a and 18 if personal data are kept for a period which does not exceed what is necessary for the sole purpose of processing for archival purposes, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions affecting particular individuals.**

**4. Member States shall encourage the establishment of codes of conduct in accordance with Article 38 designed to facilitate the implementation by archives of rules relating to personal data, with a view to ensuring inter alia:**

**(a) the confidentiality of data vis-à-vis third parties;**

**(b) the authenticity, integrity and proper storage of data;**

**(c) accessibility to archives in the framework of Member States' rules on access to administrative or archived documents.**

- (b) **Amendments to recital 125a and to Article 83a (processing for historical purposes)** to clarify the compatibility of that processing with the initial purposes of processing and to exclude conditions for such processing that would violate freedom of expression or restrict their scope exclusively to processing by public authorities or public bodies:

#### **Recital 125a**

**Processing of personal data for historical purposes should not be considered incompatible with the purpose for which the data are initially collected, subject to appropriate safeguards as set forth in national law pursuant to the principles set forth in this Regulation.**

#### **Article 83a - Processing of personal data for historical purposes**

Article 83a of the new proposal refers generically to processing for "historical" purposes, but in fact it conflates processing from archives (storage and distribution of data and documents, some containing personal data) with the use of such data for "historical" purposes; it also contains many debatable points, such as the restriction of the use of archive data to bodies that can demonstrate the historical purposes of such use or the fact that the protection provided extends only to "public" archives. We therefore propose the following amendments, with the warning that it will also be necessary to amend the text of Articles 14a(4)(b), 15, 16, 17, 17a and 18 as previously indicated with reference to Article 83x (in particular specifying that the principles set out therein may be derogated from but may not be simply abandoned):

*Article 83a Processing of personal data for historical purposes*

1. Processing of personal data for historical purposes ~~*in archives carried out by public authorities or public bodies pursuant to Union or Member State law*~~ shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual, and specifications on the conditions for access to the data.
2. ~~*[Former paragraph 2 to be deleted]*~~
3. ~~*Member States may provide for derogations from Articles 14a*~~ where and insofar as, for processing for historical purposes, the provision of such information proves impossible or would involve a disproportionate effort ~~*compared to the right to be protected in the specific case*~~, or if recording or disclosure is expressly laid down by Union law or Member State law. In those cases, the controller shall provide for appropriate safeguards.
4. ~~*Member States may provide for derogations from Articles 15, 16, 17, 17a and 18*~~ when personal data are kept for a period which does not exceed the period necessary for the sole purpose of processing for historical purposes, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions ~~*affecting*~~ any particular individual.
5. ~~*Member States shall encourage the establishment of codes of conduct in accordance with Article 38 designed to facilitate the implementation of rules relating to the processing of personal data for historical purposes, with a view to ensuring inter alia:*~~
  - ~~*(a) the confidentiality of data vis-à-vis third parties;*~~
  - ~~*(b) the authenticity, integrity and proper storage of data;*~~
  - ~~*(c) accessibility to data in the framework of Member States' rules on access to administrative or archived documents.*~~

### **(c) Processing for statistical purposes**

#### **Recital 126a**

We approve of the text of this recital, to which we would suggest a few changes to better identify the types of processing in question, with respect inter alia to the principles that govern statistical processing regulated at EU level:

#### **Recital 126a:**

The processing of personal data for statistical purposes should not be considered incompatible with the purposes for which the data are initially collected provided that the controller provides appropriate safeguards; these safeguards must in particular rule out the use of the data in support of measures or decisions *affecting* any particular individual. Restrictions on the rights of information, access, erasure, restriction or on the right to data portability should apply only under specific conditions. In these cases, the controller should provide for appropriate safeguards for the rights and freedoms of the data subject.

#### **Recital 126b (new):**

The confidential information which the Union and national statistical authorities collect for the production of statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union. Union law or national law should, within the limits of this Regulation, determine specifications for the processing of personal data for statistical purposes and for guaranteeing statistical confidentiality.



Therefore this Regulation should not preclude the application of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164–173), Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8), and Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council of 22 October 2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L 304, 14.11.2008, p. 70–74).

#### **Article 83b - Processing for statistical purposes**

We propose the following amendments, with the warning that it will also be necessary to amend the text of Articles 14a(4)(b), 15, 16, 17, 17a and 18 as previously indicated with reference to Article 83x (in particular specifying that the principles set out therein may be derogated from but may not be simply abandoned):

- We do not agree with the proposal to remove the text of Article 9(2)(i) (11013/13), for the reasons mentioned above in relation to processing for archiving purposes. The principle involved is a general one which should be established in the general part of the Regulation; the text of Article (9)(2)(i) will have to be amended to contain the correct references to the specific articles.

*Article 83b Processing of personal data for statistical purposes*

**0. Within the limits of this Regulation, personal data may be processed for statistical purposes only if:**

**(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject; and**

**(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner.**

1. Processing of personal data for statistical purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual **or by the use of pseudonymous data.**

2. **Member States may provide for derogations from Articles 14a** where and insofar as, for processing for statistical purposes, the provision of such information proves impossible or would involve a disproportionate effort **compared to the right to be protected in the specific case** or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.

3. **Member States may provide for derogations from Articles 15, 16, 17, 17a and 18** when personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

4. **Member States shall encourage the establishment of codes of conduct in accordance with Article 38 designed to facilitate the implementation of rules relating to the processing of personal data for statistical purposes, with a view to ensuring inter alia:**

**(a) the confidentiality of data vis-à-vis third parties;**

**(b) the authenticity, integrity and proper storage of data;**

(c) the safeguards applying to the processing with particular regard to duration of data storage, the criteria for enabling attribution of statistical information to an identified or identifiable data subject, security measures.

**(d) Processing for scientific purposes**

**Article 83c**

We propose the following amendments, with the warning that it will also be necessary to amend the text of Articles 14a(4)(b), 15, 16, 17, 17a and 18 as previously indicated with reference to Article 83x (in particular specifying that the principles set out therein may be derogated from but may not be simply abandoned):

***Article 83c Processing for scientific purposes***

1. Within the limits of this Regulation, personal data may be processed for scientific purposes only if:
  - (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject; ***and***
  - (b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner.
2. Personal data processed for scientific purposes may be published or otherwise publicly disclosed by the controller only if the publication of personal data is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests and:
  - (a) the data subject has given explicit consent; or
  - (b) the data were made public by the data subject.
3. Processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions ***affecting*** any particular individual ***or by the use of pseudonymous data***.

4. **Member States may provide for derogations from Articles 14a** where and insofar as, for processing for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort **compared to the right to be protected in the specific case** or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller **referred to in paragraph 1** shall provide for appropriate safeguards.
5. **Member States may provide for derogations from Articles 15, 16, 17, 17a and 18** when personal data are kept for a period which does not exceed the period necessary for solely for scientific purposes, provided that the controller implements appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions **affecting** particular individuals.
6. **Member States shall encourage the establishment of codes of conduct in accordance with Article 38 designed to facilitate the implementation of rules relating to the processing of personal data for scientific purposes, with a view to ensuring inter alia:**
- (a) the confidentiality of data vis-à-vis third parties;**
  - (b) the authenticity, integrity and proper storage of data;**
  - (c) the safeguards applying to the processing with particular regard to duration of data storage, the criteria for enabling attribution of information to an identified or identifiable data subject, security measures.**

## THE NETHERLANDS

### New recital 125a

Regarding the archive sector, the right to the protection of personal data must take into account the right of the people to know their history and the principles of access to records of enduring value for general interest.

Regarding the Universal Declaration on Archives<sup>1</sup>, which stresses that : "[Archives] are authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory"; the Recommendation of the European Union Council for prior action for reinforced cooperation for archives in Europe<sup>2</sup>; and the Council Resolution of May 6th, 2003 on Archives in the State Members which stresses the "importance of archives for the understanding of the history and culture of Europe and for the democratic functioning of society within the framework of the enlargement of the Union on 1 May 2004", this Regulation must provide articulation with the national specific dispositions regarding archives regulation, in particular for the time limits for erasure, processing of special categories of personal data, the right to information, the right of access to public information, the right to be forgotten, the right of rectification and erasure, the right to restriction, the right to portability, the right of blocking of processing, the data protection by design and by default, the communication to the data subject of a breach of security of their personal data, the impact assessment on data security, codes of conduct and the powers of the supervisory authority.

Regarding international transfers of personal data, these must take place without prejudice of the applying rules for the circulation of cultural goods and national treasures.

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1 Declaration approved in November 2011 by the 36<sup>th</sup> session of the General Conference of the UNESCO.

2 2005/835/CE

#### **Article 4, point 19 bis)**

"archive services" : public authorities or, public services or legal persons that hold records of general and/or public interest and who, following Union or State member law and/or a social responsibility, have for main mission or legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide a trusted (digital) repository for and access to records of enduring value for general interest, in particular for justification of the rights of the people, or for historical, statistical and scientific purposes;

#### **Article 5, point (b)**

b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing of data for historical, statistical or scientific purposes, shall not be considered as incompatible subject to the conditions and safeguards referred to in Articles 83a, 83b and 83c; further processing of data by archive services, shall not be considered as incompatible subject to the conditions and safeguards referred to in Article 83a.

#### **Article 5, point (e)**

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed ; personal data may be stored for longer periods insofar as the data will be processed (...) for historical, statistical or scientific (...) purposes in accordance with the (...) conditions of Articles 83a, 83b and 83c until it becomes apparent that continued storage is no longer necessary; or when they are being processed by archive services in accordance with Union or Member State law referred to in Article 83bis.

#### ***Article 83a***

#### ***Processing of personal data for historical purposes***

1. After the initial purposes for which they have been collected have expired, personal data can be processed by archive services, or for other archival purposes.

2. Processing of personal data for historical purposes in archives carried out by archive services pursuant to Union or Member State law, shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual, and specifications on the conditions for access to the data.
3. The controller shall ensure that personal data which are processed for the purposes referred to in paragraph 1 may be made accessible only to recipients after having demonstrated that the data will be used only for historical purposes.
4. Article 14a shall not apply where and insofar as, for processing for historical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.
5. Articles 15, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of processing for historical purposes, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individual.

### *Article 83b*

#### *Processing of personal data for statistical purposes*

1. Processing of personal data for statistical purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.

*[Comment:*

*- replaces wording in Art. 5(1)(b) of 11013/13 (to be deleted)*

*- reflects Art. 6(1)(b) of Directive 95/46/EC;*

*- reflects Art. 4(1) (b) of Regulation (EC) No 45/2001]*

2. Article 14a shall not apply where and insofar as, for processing for statistical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.

*[Comment:*

*- replaces wording in Art. 14a(4)(b) of 11013/13 (to be deleted);*

*- reflected in recital 50 of 11013/13;*

*- reflects Article 11(2) of Directive 95/46/EC);*

*- reflects Art. 12(2) of Regulation (EC) No 45/2001]*

3. Articles 15, 16, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*[Comment:*

*- replaces wording in Art. 15(2), 16(2), 17(3)(d), 17a(5)(a), 18(4) of 11013/13 (to be deleted)*

*- reflects Art. 13(2) of Directive 95/46/EC) which mentions access only;*

*- reflects Art. 20(2) (e) of Regulation (EC) No 45/2001]*

#### **Recital 126a (new):**

The processing of personal data for statistical purposes should not be considered incompatible with the purposes for which the data are initially collected provided that the controller provides appropriate safeguards; these safeguards must in particular rule out the use of the data in support of measures or decisions regarding any particular individual. Restrictions on the rights of information, access, erasure, restriction or on the right to data portability should apply only under specific conditions. In these cases, the controller should provide for appropriate safeguards for the rights and freedoms of the data subject.

*[Comment: reflects recitals 29, 34 of Directive 95/46/EC]*



The confidential information which the Union and national statistical authorities collect for the production of statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union. Union law or national law should, within the limits of this Regulation, determine specifications for the processing of personal data for statistical purposes and for guaranteeing statistical confidentiality. Therefore this Regulation should not preclude the application of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164–173), Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8), and Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council of 22 October 2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L 304, 14.11.2008, p. 70–74).

*[Comment: reflects recitals 33, 34, 35 of Regulation (EC) No 45/2001*

*Other statistical recitals in 11013/13: 23, 40, 42, 50, 53]*

**- Article 9(2)(i) in 11013/13 (to be deleted)**

**- corresponding wording in recital 42 (to be deleted)**

*[Comment:*

*- no corresponding provision in Directive 95/46/EC]*

**- Article 19(4) in 11013/13 (to be deleted)**

*[Comment:*

*- no corresponding provision in Directive 95/46/EC]*

*[Comment: reflects recitals 29, 34 of Directive 95/46/EC]*

The confidential information which the Union and national statistical authorities collect for the production of statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union. Union law or national law should, within the limits of this Regulation, determine specifications for the processing of personal data for statistical purposes and for guaranteeing statistical confidentiality. Therefore this Regulation should not preclude the application of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164–173), Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8), and Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council of 22 October 2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L 304, 14.11.2008, p. 70–74).

*[Comment: reflects recitals 33, 34, 35 of Regulation (EC) No 45/2001]*

Other statistical recitals in 11013/13: **23, 40, 42, 50, 53**

**- Article 9(2)(i) in 11013/13 (to be deleted)**

**- corresponding wording in recital 42 (to be deleted)**

*[Comment:*

*- no corresponding provision in Directive 95/46/EC]*

- **Article 19(4) in 11013/13 (to be deleted)**

[Comment:

- no corresponding provision in Directive 95/46/EC)]

**Article 83c**  
**Processing for scientific purposes**

1. Within the limits of this Regulation, personal data may be processed for scientific purposes only if:
  - (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject;
  - (b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner.
2. Personal data processed for scientific purposes may be published or otherwise publicly disclosed by the controller only if the publication of personal data is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests and:
  - (a) the data subject has given explicit consent; or
  - (b) the data were made public by the data subject.
3. Processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.
4. Article 14a shall not apply where and insofar as, for processing for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards.

5. Articles 15, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for solely for scientific purposes, provided that that the controller implements appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

## POLAND

Proposed changes are marked in bold (underline in headings)

### **New recital 125a**

Processing of personal data for historical **and archival** purposes should not be considered incompatible with the purpose for which the data are initially collected, where the processing, ~~in archives,~~ subject to appropriate safeguards, is carried out by public authorities or public bodies pursuant to Union or Member State law. Such public authorities or public bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have as their main mission a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general **or individual** interest.

Union or Member State law should determine archival content, control of access and appropriate safeguards, such as restricted access in cases where such access would or might affect the rights and freedoms of natural persons.

### **Comment:**

For the sake of clarity Poland wishes to add the archival purposes as it is not certain whether these are covered by the term "historical purposes". This is justified by the fact, that in our opinion not all public archives are necessarily devoted to preserving records for historic purposes – some have current administrative applications and these should also be covered by the scope of these provisions.

Consequently a reference to the use by individuals in their own personal interest (beside a general public interest) of these kinds of archives should be added. Personal data collection in archives for administrative purposes (collecting documentation concerning individual persons) in order to help the individuals to exercise their rights (for example right to pension or right to access files of secret police of the communist regimes) should therefore also be covered.

If it is however determined and properly explained in the recitals that the notion of "historical purposes" includes in its scope the notion of "archival purposes" Poland agrees to withdraw the above proposal (this applies *mutatis mutandis* to art. 83a).

## *Article 83a*

### *Processing of personal data for historical and archival purposes*

5. Processing of personal data for historical **and archival** purposes ~~in archives~~ carried out by public authorities or public bodies pursuant to Union or Member State law, shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes ~~or used in support of measures or decisions regarding any particular individual~~, and specifications on the conditions for access to the data.
6. The controller shall ensure that personal data which are processed for the purposes referred to in paragraph 1 may be made accessible only to recipients after having demonstrated that the data will be used only for historical purposes.
7. Article 14a shall not apply where and insofar as, for processing for historical **and archival** purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.
8. Articles ~~15~~, **16**, 17, 17a, and 18 shall not apply ~~when personal data are kept for a period which does not exceed the period necessary for the sole purpose of processing for historical **and archival** purposes~~, provided that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, ~~in particular to ensure that the data are not used for taking measures or decisions regarding particular individual~~.

#### **Comments:**

Ad. Par. 1 – The term "*used in support of measures or decisions regarding any particular individual*" should be deleted in order to allow the citizens to exercise their administrative rights by using the documentation stored in archives (see also comments to recital 125a). Consequently the same deletion must be performed in para. 4.

Ad. Par. 4 - In Poland's opinion the right of access (art. 15) is one of the basic rights of the data subjects enabling them to better control the processing of their personal data. This right should not be denied to the data subject, especially since in this case the data will be processed for the purpose incompatible with the purpose for which the data were initially collected. We are aware of the potential burden that may arise in this respect for public institutions that process the data for these purposes on a large scale, it should be noted however that the possibility of exercising this right is already limited (data subject can exercise this right "*at reasonable intervals*"). Poland is ready to further limit this right in the case of processing the data for statistical and archive purposes statistics (due to the effect of scale) by adding: "when it proves impossible or involves disproportionate effort". However, we are against the general exclusion from the right of access for data processed for statistical, scientific and historical purposes as it would deprive the data subject of control over their data.

- The term "*the period necessary for the sole purpose of processing for historical purposes*" seems to be problematic and vague. It can be difficult for the controller to assess when the period necessary for the purpose of processing for historical purposes expired as it can be difficult to define "*sole*" historical purpose. Moreover it should be noted that by definition the period necessary for processing data for historical (and archival) purposes cannot in most cases be exceeded, as the purpose of archives is to store data indefinitely or at least for very long periods of time.

Poland would also like to suggest the need to exclude the use of art. 16 (*right to rectification*) in relation to data processed by archiving institutions for historical and archival purposes This is justified by primary the function of archives as a reliable repository safeguarding historical memory. The right to change records stored in archives would defeat this function by allowing data subjects to interfere with a the original historic records. This derogation seems to be essential in order to guarantee the historical reliability and authenticity of the data collected in archives. What we feel would be possible is an addition of a specific right of data subjects to submit further material, that would supplement or even contradict the archival records, yet leaving the original information intact. This right may be guaranteed in Member State law.

## **New recital 125b**

**Processing of personal data for official statistics' purposes should not be considered incompatible with the purpose for which the data are initially collected, where the processing, subject to appropriate safeguards, is carried out by public authorities or public bodies performing tasks of official statistics pursuant to Union or Member State law. Such public authorities or public bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have as their ~~main mission~~-task a legal obligation to develop, produce and disseminate of official statistics. Union or Member State law should determine statistical content, control of access and appropriate safeguards, such as restricted access in cases where such access would or might affect the rights and freedoms of natural persons.**

### **Comment:**

Poland sees the need to clearly define the notion of "statistical purpose", which should be understood only as referring to the development, production and dissemination of official statistics pursued in the public interest by authorities or bodies entrusted with this task by Member State law. This is necessary in order to exclude from the scope of this provision cases of application of the methods and statistical techniques for commercial purposes by private organisations and undertakings. In our opinion such a wide application of art. 83b would pose a serious threat to the rights of data subjects and could serve as a circumvention of the provisions of the Regulation.

As a consequence we propose to substitute the, somewhat vague, term 'statistical purposes', which could be understood as any sort of processing employing statistical methods, with the unambiguous term "official statistics' purposes".



*Article 83b*

*Processing of personal data for official statistics' purposes*

**1a. Personal data may be processed for official statistics' purposes only if:**

**(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject;**

**(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner**

**(c) data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual**

**(d) the data are not processed for any other purposes**

~~1. Processing of personal data for statistical purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller provides appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.~~

*[Comment:*

*- replaces wording in Art. 5(1)(b) of 11013/13 (to be deleted)*

*- reflects Art. 6(1)(b) of Directive 95/46/EC;*

*- reflects Art. 4(1) (b) of Regulation (EC) No 45/2001]*

2. Article 14a shall not apply where and insofar as, for processing for statistical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate safeguards.

*[Comment:*

*- replaces wording in Art. 14a(4)(b) of 11013/13 (to be deleted);*

*- reflected in recital 50 of 11013/13;*

- reflects Article 11(2) of Directive 95/46/EC);
- reflects Art. 12(2) of Regulation (EC) No 45/2001]

**2a. Articles 15 and 16 shall not apply where and insofar as, for processing for official statistics' purposes, it proves impossible or involves a disproportionate effort to guarantee the right of access or the right to rectification.**

3. Articles ~~15~~, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for the ~~sole~~ **official statistics'** purposes of ~~compiling statistics~~, provided that that the controller provides appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*[Comment:*

- *replaces wording in Art. 15(2), 16(2), 17(3)(d), 17a(5)(a), 18(4) of 11013/13 (to be deleted)*
- *reflects Art. 13(2) of Directive 95/46/EC) which mentions access only;*
- *reflects Art. 20(2) (e) of Regulation (EC) No 45/2001]*

**Recital 126a (new):**

The processing of personal data for ~~statistical purposes~~ **official statistics' purposes** should not be considered incompatible with the purposes for which the data are initially collected provided that the controller provides appropriate safeguards; these safeguards must in particular rule out the use of the data in support of measures or decisions regarding any particular individual. Restrictions on the rights of information, **access**, erasure, restriction or on the right to data portability should apply only under specific conditions. In these cases, the controller should provide for appropriate safeguards for the rights and freedoms of the data subject.

*[Comment: reflects recitals 29, 34 of Directive 95/46/EC]*

The confidential information which the Union and national statistical authorities collect for the production of statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union. Union law or national law should, within the limits of this Regulation, determine specifications for the processing of personal data for statistical purposes and for guaranteeing statistical confidentiality. ~~Therefore this Regulation should not preclude the application of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164–173), Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8), and Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council of 22 October 2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L 304, 14.11.2008, p. 70–74).~~

**As regards statistics, Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities<sup>1</sup> and Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8) provides further specifications on statistical confidentiality for European statistics.**

*[Comment: reflects recitals 33, 34, 35 of Regulation (EC) No 45/2001*

*Other statistical recitals in 11013/13: 23, 40, 42, 50, 53]*

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<sup>1</sup> OJ L 87, 31.3.2009, p. 164–173.

Comment:

Poland finds the term "should not preclude" too vague and unclear. The relation between the General Regulation on data protection and other legislative acts listed in the recital is not clearly defined and creates risks that provisions of these other legislative acts will hinder the implementation of rights of data subjects provided in this regulation. Therefore Poland prefers the formulation of recital 124a (in document 11013/13) and proposes merging these two recitals (126a and 124a) and consequently deleting recital 124a.

- **Article 9(2)(i) in 11013/13 (to be deleted)**

- **corresponding wording in recital 42 (to be deleted)**

[*Comment:*

- *no corresponding provision in Directive 95/46/EC*]

- **Article 19(4) in 11013/13 (to be deleted)**

[*Comment:*

- *no corresponding provision in Directive 95/46/EC*]

[*Comment: reflects recitals 29, 34 of Directive 95/46/EC*]

The confidential information which the Union and national statistical authorities collect for the production of statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union. Union law or national law should, within the limits of this Regulation, determine specifications for the processing of personal data for statistical purposes and for guaranteeing statistical confidentiality. ~~Therefore this Regulation should not preclude the application of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164–173), Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8), and Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council of 22 October 2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L 304, 14.11.2008, p. 70–74).~~

**As regards statistics, Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities<sup>1</sup> and Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8) provides further specifications on statistical confidentiality for European statistics.**

*[Comment: reflects recitals 33, 34, 35 of Regulation (EC) No 45/2001]*

Comment:

As above. It is also not understood why the same text appears twice – also in the recital 126a.

Other statistical recitals in 11013/13: **23, 40, 42, 50, 53**

**- Article 9(2)(i) in 11013/13 (to be deleted)**

**Comment:**

PL would like Article 9(2)(i) to be reinstated. In PL's opinion the processing of sensitive data for historical, archival, official statistics' and scientific purposes should be allowed under the conditions provided in art. 9 and when safeguards for the rights and freedoms of data subjects are ensured.

**- corresponding wording in recital 42 (to be deleted)**

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<sup>1</sup> OJ L 87, 31.3.2009, p. 164–173.

**Comment:**

PL wishes the wording relating to historical, statistical and scientific purposes to be reinstated.

*[Comment: - no corresponding provision in Directive 95/46/EC]*

**- Article 19(4) in 11013/13 (to be deleted)**

*[Comment:*

*- no corresponding provision in Directive 95/46/EC]*

**Article 83c**

**Processing for scientific purposes**

1. Within the limits of this Regulation, personal data may be processed for scientific purposes only if:
  - (a) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject;
  - (b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, as long as these purposes can be fulfilled in this manner.
  
2. Personal data processed for scientific purposes may be published or otherwise publicly disclosed by the controller only if ~~the publication of personal data is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests and:~~
  - (a) the data subject has given explicit consent **or**
  - (ab) the publication of personal data is necessary to present scientific findings or to facilitate scientific purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests or**
  - (b) the data were made public by the data subject.

3. Processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual or by the use of pseudonymous data.
4. Article 14a shall not apply where and insofar as, for processing for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller referred to in paragraph 1 shall provide for appropriate safeguards.
5. Articles ~~45~~, 17, 17a, and 18 shall not apply when personal data are kept for a period which does not exceed the period necessary for solely for scientific purposes, provided that that the controller implements appropriate safeguards, taking into account the risks for the rights and freedoms of data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

**Comment:**

Poland is of the opinion that the grounds for publishing scientific research were too narrowly defined. In particular there is no justification for requiring the publication to be necessary where the data subject has given consent (it may even be desired by the data subject) or where the data was already made public. Necessity should form a separate ground for publication. The text proposed by the Presidency ran the risk of hindering scientific research and unduly undermining the right to impart and receive information.

## ROMANIA

### Art. 83a Processing of personal data for historical purposes

#### Art. 83a paragraph 1

- RO proposes to redraft Article 83a paragraph 1 – *Processing of personal data for historical purposes* - by adding the wording "*or other public interests*", as following: "*Processing of personal data for historical purposes **or other public interests** in archives carried out by public authorities or public bodies pursuant to Union Member State law, shall not be considered incompatible with the purpose for which the data are initially collected ....etc.*"

We make this proposal having in mind also the French proposal regarding this issue as expressed in document no. 8667/13 (page 2 paragraph 3): "*However, not all personal data contained in archives are stored – only **those which are of public interest** and / or of interest for historical, statistical or scientific purposes.*"

We also want to highlight the issue regarding the revealing of the former secret services.

The right of citizens to consult the documents created by the former secret police agencies, for exercising the right of access to information regarding their own person, as well as for revealing and sanctioning the abuses and violation of human rights committed in totalitarian regimes<sup>1</sup> is regulated by the national legislation of the Member States, which ensures the use of such data for the benefit of victims and the public interest.

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<sup>1</sup> We use the wording "*totalitarian regimes*" in order to comprise not only the communism but also the Communist and Nazi regimes.



To avoid iteration of traumatic episodes or public debates with long term implications, the authorities in Central and Eastern Europe, decided after 1990 that victims of totalitarian regimes, as well as their survivors, such as citizens who have suffered from a moral or material point of view, should be able to document their memory by ensuring direct access to the former secret service archives. In this respect, all the archives were transferred to public institutions, under the authority of the national parliaments. These institutions are providing to stakeholders (including researchers and historians) all the documentation created by the former political police, in order to publicize abuses of totalitarian regimes that have produced serious violations of fundamental human rights and freedoms. At the same time, this activity is carried on the basis of the national legislation and respecting the European legal framework regarding the processing of personal data.

- At the same time RO seeks clarification regarding the content of Article 83a paragraph 1 - Processing of personal data for historical purposes. We want to know to which category of controllers this paragraph makes reference, because we can notice the restriction of these stipulations to the public authorities and institutions in contradiction with the stipulation of art. 6 (1) from the current 95/46/EC Directive.
- Regarding recital 125a- Processing of personal data for historical purposes - RO seeks clarifications regarding the category of controllers this paragraph refers to, because we can notice the restriction of these stipulations to the public authorities and institutions. At the same time, we suggest replacing the wording "*acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value*" with the wording "*processing personal data for historical purposes*".

### **Art. 83a paragraph 2**

We propose to replace the wording "*demonstrated*" with the wording "*declared*" in order to avoid the problems of how to perform evidence, as well as in order to avoid using the term "only for historical.....", because in practice situations may arise in which data are further processed for scientific and statistic purposes, compatible with the initial purpose.

**Art. 83b - processing of personal data for statistic purposes**

**Art. 83b paragraph 1**

We propose to replace the wording "*any other purposes*" with the wording "*incompatible*" in order to allow the further use of the initial collected data also for historical and scientific purposes, having in mind the stipulations of art. 6 (1) point b) of the current 95/46/EC Directive.

## NORWAY

### 1. GENERAL COMMENTS

We support the inclusion of specific provisions on processing of personal data for historical, statistical and scientific purposes in the proposed regulation, allowing more specific national legislation. A well-functioning legislative framework in these fields, both at European and national level, is crucial in order to ensure the preservation of cultural heritage as well as development within the field of for instance medical research. In our view, it is of great importance that the regulation provides the necessary flexibility for maintaining national sectorial legislation regarding archives and scientific research. We would therefore ask that it is clarified, for instance in the relevant preambles, that national legislation may differ from the solutions foreseen in article 83a, 83b and 83c, for instance by providing stricter rules.

Furthermore, we would like to stress the importance of seeing archives in conjunction with processing of personal data for scientific purposes. Scientific work may often rely on public archives, and the two fields are therefore closely linked. We are concerned that the requirement not to use historical data for other purposes might hinder scientific research. Therefore, we believe it should be clarified in the legal text that data stored for historical purposes may later be used for both scientific and statistical purposes.

On a more technical note, we believe the connection between articles 6 and 9 and articles 83a, 83b and 83c is somewhat unclear. We believe it should be clarified whether processing of personal data, for instance for scientific purposes, must meet the requirements both in article 6 or 9 *and* article 83c. In our view, the preferable solution would be to allow the legal basis for processing for these specific purposes to be regulated in national law, alternatively that article 6 and 9 apply if there is no such national law in place.

We are also questioning whether article 16 should be added to the exceptions made in the proposed article 83a number 4, 83b number 3 and 83c number 5. When data is already used for historical or scientific purposes, it will be of importance to maintain the data in its original form.

## **2. HISTORICAL DATA - ARTICLE 83A**

It is of great importance that data is not deleted from public archives before it is transmitted to the National Archive in order to be stored for historical purposes. It must therefore be clarified in article 17 that data, as the general rule, should not be deleted when it is later to be stored for historical purposes, even if it is processed for other purposes at the time. There could however be provided for exemptions, for instance if deletion of data is decided by the national supervisory authority.

We also believe that the reference in article 83a to a limited time period, "a period which does not exceed the period necessary for the sole purpose of processing for historical purposes", is problematic. Historical data will typically be stored for a very long time, since the sole purpose is to maintain the data for the future. Consequently, the text should not refer to a limited period of time.

Furthermore, we believe that the requirements in article 83a not to use personal data stored for historic purposes for any other purposes, are too strict. We see the need for a limitation in the use of personal data stored for historical purposes. We do however believe the provision should ensure that data may be used also for other purposes, when such use is of a clear individual or public interest. There could for example be a need to use the data in a criminal investigation concerning a crime committed some time before the investigation is initiated or when re-opening a court case. As mentioned, there may also be a need to use historical data for scientific purposes.

## **3. SCIENTIFIC DATA – ARTICLE 83C**

In our view the relationship between article 83 c number 1 a) and b) should be clarified. In our understanding, letter b) is meant to be a subsidiary requirement which will apply if the primary requirement in a) to use unidentifiable data, cannot be met. We do however believe this should be clarified.

We agree that research in general should be carried out by the use of data which does not permit the identification of the data subject, and that data enabling the attribution of information to an identified or identifiable data subject should be kept separately from other data, where the use of unidentifiable data is not possible in practice. We are however wondering if article 83c nr. 1 should permit some additional flexibility, for instance by adding the word "reasonably", so that little a) reads: "these purposes cannot reasonably be otherwise fulfilled by...". A corresponding amendment could be made in little b).

In addition, we believe article 83c number 2 should be deleted. Researchers do normally not publish personal data they have used as part of the research material, and the provision might therefore cause confusion.

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