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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 at 11 November 2013.

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## BELGIUM

### GENERAL REMARKS

BE have not analyse the proposed recitals.

BE have a scrutiny reservation on the whole text.

#### *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 data are not processed for any other purposes and the interests or the fundamental rights or freedoms of the data subject do not override the interests pursued by the controller which** 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.~~

BE considers that archives deserve a separate article. The purposes of archives aren't only historical.

Moreover BE believes that archives are not always kept by public authorities. BE proposes a definition of archive service for the new article 83 d) (to be added in article 4) See below.

The last part of the paragraph (specification of access to the data) was dedicated to archive and has no interest for pure historical purposes. Moreover, it is contradictory with the last paragraph of this article which regulate the conditions of exemption to access right. Indeed, the last § provides an exemption to the right of access (art. 15) BUT the §1 says that the controller ensures specifications on the conditions for access to the data.

=> BE proposes a new article 83.d) to cover the processing for archives purposes. See below.

As the adequate safeguards are no more provided by MS law since is it a proposed regulation, there is a need to insert in the regulation a harmonised system based on existing MS law implementing Directive 95/46/EC. BE propose to add the balance of interest since this assessment of no detrimental consequences for the DS in the framework of the non-incompatibility rule is provided, unless we are mistaken, in the legislations of IE, SK, PL, UK, DE.

BE propose also to keep the purpose limitation condition (also existing in legislations from BG and DK) but not as a duty for the controller but as a condition to enjoy the privilege of the non-incompatibility rule.

BE believes that an assessment should be conducted to list the safeguards put in place in the different MS in the context of exemption for historical, statistical and scientific purposes. This could allow to list common safeguards that could be included in the Regulation to ensure an harmonization. BE already provide for proposal for harmonised safeguards based on his analysis of different MS laws in the context of research.

The BE proposal will include additional conditions which does not have to be considered as heavy additional conditions but as an integration of existing MS practices in order to maintain the existing level of protection and to include proposals based on MS laws in order to ensure an harmonisation of the rules for statistical, scientific or historical purposes in order to allow pan-european activities with harmonised conditions.

~~2. — 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.~~

**Bodies conducting historical purpose may publish or otherwise publicly disclose personal data only if the publication of personal data is necessary to present research findings or to facilitate historical purpose and:**

**(a) the data subject has given consent, subject to the conditions laid down in Article 7;**

**or**

**(b) insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or**

**(c) the data subject has made the data public.**

BE considers that this paragraph was too restricted. The principle of purpose limitation is already covered in paragraph 1 and the paragraph 2 should address the question relating to the publication of the results as it is the main meaning of “exploitation” for historical research results

1. Article 14a shall not apply where and insofar as, **the data are processed only** for processing for historical purposes **and**, 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 **taking into account the risks for the rights and freedoms of data subjects in particular to ensure that the data are not used in support of measures or decisions regarding any particular individual.**

BE considers that the safeguards provided in MS laws needs to be inserted in the regulation and it is not a good idea to let the controller to freely decide on the safeguards without any harmonisation of the rules. We propose to re-use the condition of purpose limitation and no individual decisions/measures used in §1 (to ensure that those safeguards will also be applicable when the processing for historical research is initial and not further.

2. **Articles 14 and 14a shall not apply where and insofar as, the data are processed only for historical purposes and the provision of such information is likely to render impossible or to seriously impair the achievement of the historical purposes. In these cases, the controller shall provide for 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 in support of measures or decisions regarding any particular individual. From the moment that the information is not any more likely to render impossible or seriously impair the achievement of the objectives of the historical purposes, the data subject shall be informed without delay.**

BE considers that an exemption should be also provided, for direct and indirect collection of data when the provision of information would endanger the success of research. Unless mistake from our analysis, an example of such exemption (possibility to endanger the success) could be found in the data protection law from Poland and the possibility to allow exemption also for direct collection of data could be found in LU and DE data protection laws.

We propose to re-use the harmonized safeguards of purpose limitation and no individual measures/decisions.

3. Articles 15, 16, 17, 17a, ~~and~~ 18 and 19 shall not apply when personal data are kept for a period which does not exceed the period necessary for **processed only for** the sole purpose of processing for the historical purposes **and the exercise of those rights proves impossible or would involve a disproportionate effort or is likely to render impossible or seriously impair the achievement of the objectives of the historical purposes, unless the interests pursued are overridden by the interests or the fundamental rights and freedoms of the data subject**, 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. **From the moment that the exercise of those rights is not any more likely to render impossible or seriously impair the achievement of the objectives of the historical purposes, the controller shall grant those rights to the data subject without delay.**

The first safeguards: to not process too long the data seems contradictory with art. 5.1.e and seems particularly irrelevant in the context of history... Moreover, based on the existing implementation law of EU Directive 95/46, unless we are mistaken, no MS law provides such safeguard.

BE proposes to include the condition of purpose limitation which is coherent with the other §§ of this article and could be also found, unless we are mistaken, in the context of exemption to access right in existing data protection legislations of NL, IE, FR, SE.

Concerning the right of access and other “active rights” (which require an action from the Data subject), BE thinks that rather than an general exemption, it should be better framed and the regulation should provide for the conditions for the exemption to the exercise of those rights.

BE propose several cases such as the material impossibility to provide those rights; based on, unless we are mistaken, IT and PL legislations, but also the case where the provision of such rights will compromise the objectives of the historical purposes and the rights of DS does not in practice override the exemption. The conditions relating to the possible hurt to DS rights and liberties (in the context of access right exemption) could be found, unless we are mistaken, in laws from PT, LU, UK.

BE consider that a concrete assessment of the respecting interests (controller vs. data subject) is important in the context of the exercise of “active” rights. In other words, when a data subject actively requires access to his data, data portability or object to the processing, the condition to allow the controller to be exempted to accept it should be more restricted that what is foreseen for simple information duty (“passive” right).

BE wants to add articles 16 and 19 in the list of exemptions not only for article 83.a but also for 83.b and 83.c.

### *Article 83b*

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

**1. 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;**

**(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.**

BE believes that the original proposal of the COM is a good one for the data processed for statistical purposes. The controller should try to use first anonymous data. If it's impossible, he may use pseudonymous data. And if it's impossible, it may use personal data.

The use of anonymous data should be promoted.

2. Processing of personal data for statistical purposes shall not be considered incompatible with the purpose for which the data are initially collected, provided **that paragraph 1 of this article is respected, the data are not processed for any other purposes and the interests or the fundamental rights or freedoms of the data subject do not override the interests pursued by** that the controller **which** 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.~~

BE considers that the paragraph 1 is a condition to be respected in order to enjoy the non-incompatibility rules. Moreover, as for 83.A we propose to add the balance of interest (since this assessment of no detrimental consequences for the DS in the framework of the non-incompatibility rule is provided, unless we are mistaken, in the legislations of IE, SK, PL, UK, DE) and BE propose also to keep the purpose limitation but not as a duty for the controller but as a condition to enjoy the privilege of the non-incompatibility rule (as for 83.A)

BE proposes to delete the reference to pseudonymous data as the reference to §1 is better (check first if possible with anonymous data)

Moreover, BE considers that the conditions of paragraph 1, no individual measures/decisions and the respect of the statistical purposes should be cumulative.

*[Comment:*

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

**BE: Scrutiny reservation on the deletion – want to ensure that every case of art. 5.1.b will be covered by the different articles 83.**



3. Article 14a shall not apply where and insofar as, **the data are processed only** for processing for statistical purposes **and paragraph 1 of this article is respected and** 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, **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.**

BE considers that the safeguards provided in MS laws needs to be inserted in the regulation and it is not a good idea to let the controller to freely decide on the safeguards without any harmonisation of the rules. We propose to re-use the condition of purpose limitation and no individual decisions/measures used in §2 that we propose (to ensure that those safeguards will also be applicable when the processing for statistical research is initial and not further)

4. **Article 14 and 14a shall not apply where and insofar as, the data are processed only for statistical purposes and paragraph 1 of this article is respected and the provision of such information is likely to render impossible or to seriously impair the achievement of the statistical purposes. In these cases, the controller shall provide for appropriate safeguards in particular to ensure that the data are not used in support of measures or decisions regarding any particular individual. From the moment that the information is not any more likely to render impossible or seriously impair the achievement of the objectives of the statistical purposes, the data subject shall be informed without delay.**

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

***BE: Scrutiny reservation on the deletion***

*- 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]*

BE thinks that a criterion should be added in the §4: “or is likely to render impossible or to seriously impair the achievement of such purposes”.

BE considers that the article 14 may also be added in §4 in such case. (see argumentation under 83.A)

BE thinks also that it’s not a good thing to give the power only to the controller to decide which safeguards are appropriate.

In this regard, BE believes that an assessment should be conducted to list the safeguards put in place in the different MS. This could allow to list common safeguards that could be included in the Regulation to ensure an harmonization. BE already provide for proposal for harmonised safeguards based on his analysis of different MS laws in the context of research.

BE is in favour to add the condition of no individual measures as a prerequisite in paragraphs 2, 3 and 4. This is an important safeguard, especially in the context of statistical purpose which aim is to allow only general decisions and not individual decisions/measures.

4. 5. Articles 15, **16**, 17, 17a, ~~and~~ **18 and 19** shall not apply when personal data are **processed only for** kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics **statistical purposes and paragraph 1 of this article is respected and the exercise of those rights proves impossible or would involve a disproportionate effort or is likely to render impossible or seriously impair the achievement of the objectives of the statistical purposes, unless the interests pursued are overridden by the interests or the fundamental rights and freedoms of the data subject,** 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. **From the moment that the exercise of those rights is not any more likely to render impossible or seriously impair the achievement of the objectives of the historical purposes, the controller shall grant those rights to the data subject without delay.**

*[Comment:*

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

BE : see the explanation for the same article under 83.A. The only difference relates to the respect of §1 which is clearly more relevant for statistical purposes than for historical purposes.

*Article 83c*  
*Processing for scientific purposes*

**BE is against the deletion of Article 9(2)(i) in 11013/13.**

**BE have a scrutiny reservation on the deletion of Article 19(4) in 11013/13**

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 **paragraph 1 of this article is respected and the publication of personal data is necessary to present scientific findings or to facilitate scientific purposes and:**
  - (a) insofar as the interests or the rights or freedoms of the data subject do not override these interests or**
  - ~~(a)~~**(b)** the data subject has given explicit consent; or
  - ~~(b)~~**(c)** the data were made public by the data subject.

BE considers that the balance of interest may not be a supplementary condition. It should only be one of the conditions (it will allow for instance the publication of results when data were already made public, not by the data subject, but without any objection/problem for him/her: in this case, it is a non-sense to ask the consent of the DS to re-publish public data). The current proposal is too restrictive.

For scientific purposes, the publication of the results is an important activity. The objective is to advance the science/worldwide knowledge.

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 **paragraph 1 of this article is respected, the data are not processed for any other purposes and the interests or the fundamental rights or freedoms of the data subject do not override the interests pursued by** the controller **which provides** 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~~ and decisions regarding any particular individual **unless for the vital interest of the data subject** and by the use of pseudonymous data ~~or by use of pseudonymous data.~~

BE considers that the safeguards in the end of §3 should be cumulative (respect of §1 : promotion of anonymous and if not possible pseudo and if not possible directly personal data + purpose limitation to conduct scientific purposes + no individual decisions/measures).

The safeguards concerning the use of pseudonymous data are already in the first § of article 83.c  
A simple reference to the first § should be envisaged.

As a difference from statistical purpose, BE proposes an exemption to the prohibition to take individual measures/decisions. Indeed, as it is true that in general, science is to increase global knowledge and no to take individual decisions, we cannot exclude it in the scientific context. Indeed some medical scientific research in the framework of rare disease are made to save individuals. And it would not be deontological to not allow those patient to benefit from the medical research made on their personal data. Even more, those data subjects take part to medical research hoping to directly benefit from the results.

The BE proposal is based on the SE legislation which foreseen for such exemption.

4. Article 14a shall not apply where and insofar as, **the data are processed only** ~~for processing~~ for scientific purposes **and paragraph 1 of this article is respected and** 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 **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, unless for the vital interest of the data subject.**

BE : see proposal for statistical purpose. Here, no reason to include an exemption to the duty to not take individual measures on the basis of consent, since to be valid consent should always be clearly informed.

As already said, BE thinks that it's not a good thing to give the power to the controller to decide which safeguards are appropriate.

In this regard, BE believes that an assessment should be conducted to list the safeguards put in place in the different MS. This could allow to list common safeguards that could be included in the Regulation to ensure an harmonization. The BE proposals are based on a comparative analysis of MS laws.

5. **Article 14 and 14a shall not apply where and insofar as, the data are processed only for scientific purposes and paragraph 1 of this article is respected and the provision of such information is likely to render impossible or to seriously impair the achievement of the scientific purposes. In these cases, the controller shall provide for appropriate safeguards in particular to ensure that the data are not used in support of measures or decisions regarding any particular individual, unless for the vital interest of the data subject. From the moment that the information is not any more likely to render impossible or seriously impair the achievement of the objectives of the scientific purposes, the data subject shall be informed without delay.**

~~6.5~~ Articles 15, 16, 17, 17a, ~~and~~ 18 and 19 shall not apply when personal data **processed only** ~~are kept~~ ~~are kept~~ for a period which does not exceed the period necessary for solely for scientific purposes **and paragraph 1 of this article is respected and, the exercise of those rights proves impossible or would involve a disproportionate effort or is likely to render impossible or seriously impair the achievement of the objectives of the scientific purposes, unless the interests pursued are overridden by the interests or the fundamental rights and freedoms of the data subject,** 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 **unless for the vital interest of the data subject. From the moment that the exercise of those rights is not any more likely to render impossible or seriously impair the achievement of the objectives of the scientific purposes, the controller shall grant those rights to the data subject without delay.**

BE thinks that the condition of no individual measures may not be totally excluded for scientific purposes. BE proposes to add some safeguards in that respect.

*Article 83.d*

*Processing for Archives purposes*

- 1. After the initial purposes for which they have been collected have expired, personal data can be processed by archive services, which have for main mission or legal obligation to collect, preserve, classify, communicate, enlight and disseminate for public interest in particular for the justification of the rights of the people or for historical, statistical and scientific purposes. These missions of communication and dissemination are fulfilled in respect of the rules provided by the State Members for access, communication and dissemination of public information or archives.**
- 2. For the purposes stated in 1., State Members can provide exceptions to articles 5 point d), 9, 14 bis, 15, 16, 17, 17 bis, 17 ter, 18, 19, 23, 32 et 38.**
- 3. The State members, in particular through the European Archive Group, encourage the writing of codes of conduct, intended to facilitate the implementation for archives of rules for personal data protection, in order to ensure in particular :**
  - a) privacy of the data regarding a third person ;**
  - b) authenticity, integrity and good keeping of the data ;**
  - c) accessibility to archives in the light of rules for access to administrative documents or archives set by State members.**

BE also proposes a definition of archive services and some changes in article 5 to be consistent with the new article 83d:

Proposal for definition (to add in article 4):

*« Archive services » : public authorities, public services or legal persons who, following Union or State member law, have for main mission or legal obligation to collect, keep, classify, communicate, promote and disseminate archives for general interest, in particular for justification of the rights of the people, or for historical, statistical and scientific purposes. Missions of communication and dissemination are done in respect of regimes provided by the State members for access to administrative documents, disclosure and dissemination of archives.*

Proposal for modification in article 5.1 b):

*b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes<sup>98</sup>; further processing of data for historical, statistical or scientific purposes, **or those done for archivistic purposes according to the legislation of a State member**, shall not be considered as incompatible subject to the conditions and safeguards referred to in Article 83a, 83b, 83c **and 83d** ;*

Proposal for modification in article 5.1 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 Article 83a, 83b, 83c and until it becomes apparent that continued storage is no longer necessary ; **or when they are being processed by archive services in accordance with the legislation of State members in accordance with the conditions of Article 83d.***

## 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.

## GERMANY

At the meeting of the Council's DAPIX working party on 22-23 July 2013, the Presidency invited Member States to submit their comments on the proposed additions to Chapter IX (Articles 83a to 83c) of the Commission proposal for a General Data Protection Regulation (12384/13).

### A. Preliminary remarks

Germany wishes to thank the Presidency for this opportunity to state its position. We will comment on the recitals separately. General scrutiny reservations and reservations on individual provisions, as submitted in DAPIX, remain. Germany still needs to further examine and discuss the entire area of "data processing for historical, statistical and scientific purposes" (Articles 83 to 83c) further.

### B. Comments on Articles 83a to 83c

Due to the close links between the extended set of provisions and Article 83, the following comments must be read in conjunction with our comments on Article 83.

In principle, we welcome the Presidency's proposal to ensure appropriate use of data for historical, statistical and scientific purposes. However, the text now put forward is not sufficient to accommodate the specific needs associated with those categories of use. In addition, the relationship between Article 83 and the new Articles 83a to 83c is unclear.

The rules set out in Articles 83 to 83c are closely connected to those in the preceding chapters of the draft Regulation. Articles 83 to 83c and the provisions that refer to Article 83 must complement and be coherent with each other. The same applies to Articles 83 to 83c and the provisions relating to statistics or research in the preceding articles. For example, the way Articles 83 to 83c apply to health data can only be considered in conjunction with Article 81. With that in mind, it would also seem necessary to review various provisions of the preceding chapters that relate to these specific forms of data processing.

It remains unclear what effects the strict separation of the rules on data processing for historical, statistical and scientific purposes may have. For example, processing of data for scientific purposes often includes some statistical processing.

The question also arises as to why, unlike the current Directive's treatment of scientific and historical uses, which consists exclusively of special privileges for those purposes, Articles 83 to 83c impose limits on data processing which would restrict scientific freedom in particular.

#### 1. General comments on Article 83a

- Germany welcomes the fact that the Presidency has added a provision specifically on archives. Article 83 alone does not take sufficient account of the specific concerns associated with archives.
- That being said, the wording of Article 83a suggests an underlying logic focused on creating exceptions ("processing of personal data ... shall not be considered incompatible...") and does not seem sufficient to cater for the particular needs of archives. Limiting use of the data to historical purposes seems problematic. Public archives are not given a legal mandate solely for historical purposes; their task is broader. The rules should therefore not be limited to analysis of data for historical purposes, but should cover the full range of archives' duties.
- Archives are fundamentally important for the process of addressing past injustices, such as the regime of terror under the Nazis or communist dictatorships. We must ensure that archives can still perform the tasks involved in meeting that need. Articles 83 to 83c are not well suited to the purpose of addressing the past. The proposed exceptions are too limited.
  - Germany's Stasi Records Act, for example, has specific legislative provisions that strike a balance between the need to protect privacy and the considerable public interest in studying the apparatus of power that existed in the German Democratic Republic. It lays down definitive rules on how personal data contained in the files of the former State Security Service may be used. The law provides for:
    - data subjects to have access to their files,
    - documents to be used for official purposes (e.g. carrying out checks on the civil service, public officials and holders of an elected office; conducting criminal investigations; clearing individuals' names; applying the Security Clearance Check Act),



- information to be accessible for academic and media purposes, as well as for political education.
- Even with the exceptions proposed in the current version, Germany's Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic would no longer be able to fulfil his legal duties unimpeded.
- The prohibition on unfavourable treatment in Article 83a(4) ("...to ensure that the data are not used for taking measures or decisions regarding particular individual") conflicts with checks on the civil service, public officials and holders of an elected office, as well as criminal investigations and the Security Clearance Check Act.
  - The obligation to use the data for historical purposes set out in Article 83a(2) ("recipients ....after having demonstrated that the data will be used only for historical purposes") runs contrary to the arrangements provided in German law, some of which make far more specific distinctions; for example, researchers who enter into a special commitment are allowed considerable access even to personal data. Furthermore, it would no longer be possible to use the files for the media and political education.
- Creating a separate exemption for this area would allow those tasked by law with addressing injustice under the Communist regime to continue their work. (As far as we are aware, there are institutions comparable to the office of the Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic in the following countries: Bulgaria (The Committee on Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army), the Czech Republic (Institute for the Study of Totalitarian Regimes and Security Services Archive), Hungary (Historical Archive of the Hungarian State Security), Poland (The Institute of National Remembrance Commission for the Prosecution of Crimes against the Polish Nation), Romania (The National Council for the Study of the Securitate Archives), and the Slovak Republic (Nation's Memory Institute)).

- The rules should have a stronger focus on the "public interest" in the release of archive material containing personal information, and should leave it to national law to regulate the practical details.
- The rules should also cover the right of individual data subjects to be informed about data concerning them.
- Alongside the exceptions to Articles 14a, 15, 17, 17a and 18, the applicability of Article 16, too, should at least be limited. Any possibility of the original content of a document being distorted or even destroyed must be ruled out.
- It is not clear how the period mentioned in paragraph 4 is to be determined ("for a period that does not exceed the period necessary for the sole purpose of processing for historical purposes"). The historical value of documents often cannot be ascertained in advance. For historical purposes, many documents must therefore be kept indefinitely by way of precaution.
- Article 83a(1) only covers archives run by "public authorities or public bodies". The question of how to deal with private archives (e.g. those belonging to political foundations, parties and companies) remains unanswered.

## 2. General comments on Article 83b

- The logic of Articles 83 and 83b is unclear. In particular, the question arises as to whether Article 83b is intended to constitute a legal basis in its own right for data processing.
- The relationship with other legal acts is not clear, particularly in the area of official statistics. We need to ensure that both the Regulation on European statistics and national statistics laws, which are much more detailed, continue to apply.
- It remains unclear which data must be deleted at which stage (for example, deletion of the identifying indications after the verification phase). The inclusion of explicit rules on deletion should therefore be considered.
- It is questionable whether Article 83c(2) allows the publication of personal data in the form of individual statistics if the data subject gives consent, or whether such publication is not possible at all.

- The way Article 83b(1) is worded leaves it unclear whether the use of pseudonymous data is intended to be one of three safeguards which, if applied, make it legal to process the data. If so, its suitability is doubtful because, as a rule, the separation of identifying indications from the other data collected (cf. point (b) of Article 83(1)) already makes the data pseudonymous in a certain manner. It would be preferable to have a rule akin to that in point (b) of Article 83c(1), which provides for the data to be made pseudonymous in principle.
- We suggest that, as in Article 83c(1)(a), it should be explicitly stated that processing of personal data for statistical purposes shall be permitted only where it is necessary and in particular where the use of data rendered anonymous is not possible.
- We welcome in principle the explicit inclusion in paragraph 1 of the prohibition on using statistical data against the data subject ("used in support of measures or decisions regarding any particular individual"). However, the coverage would appear somewhat too extensive if any merely indirect circumstance already fits that description. It must for example continue to be possible both for information obtained from statistical evaluation and that from research results to be used also to the advantage of individuals (excluding only uses detrimental to the data subject, if appropriate).
- Regarding the exclusion of the rights of the data subject in paragraph 3: while the appropriateness of the exercise of the data subject's rights in the field of statistics in Articles 17 and 17a (logically, Articles 16 and 17b ought then also to be included in paragraph 3) is certainly questionable, the reason for a general exclusion also of the right of access under Article 15 is not clear. As long as the identifying indications are not erased and the data are therefore available in personalised form, it is possible to satisfy the demand for access. In the context of secondary statistics in particular the demand for access is relevant, as the data subject is not informed of the data collection and the indications collected.
- It is not clear what period is referred to in paragraph 3 ("for a period that does not exceed the period necessary for the sole purpose of compiling statistics"). If the verification phase is meant, the meaning of this provision is not evident. After the end of the verification phase there is as a rule no further need to maintain the identifying indications, so they would be erased.
- What is stated in new recital 126a has no clear equivalent in the text of Article 83b.

- It is not clear why Article 9(2)(i) is to be deleted. The argument that there is no equivalent derogating provision in Directive 95/46/EC either does not hold up, as according to Article 8(4) of the Directive the Member States may lay down exemptions in addition to those laid down in paragraph 2 for reasons of substantial public interest, either by national law or by decision of the supervisory authority. Article 9(1) contains a general prohibition on the processing of special data categories. Without the exception in paragraph 2(i), some areas of research - such as biomedical research - could not continue.

### 3. General comments on Article 83c

- The provisions relevant to research should as a whole be worded to take sufficient account of the basic right of freedom of research.
- Regarding the proposed deletion of Article 9(2)(i): The exemption provision in Article 9(2)(i) should also be maintained in the context of research (cf. comments in the last indent of section 2 above). It is not clear from the wordings of Article 6(1)(a) and Article 7 how far consent provisions are covered generally and also for particular groups of people by the regulation. For example, supplementary provisions on informed consent will have to be enacted for the following groups of individuals in particular: processing of the data of adults who are incapable of giving their consent after the consent of the legal representatives, and the processing of data during clinical testing in emergencies, where consent cannot immediately be obtained because of an emergency situation and will only be obtained as soon as this is possible and reasonable.
- It is not clear whether Article 83c represents a conclusive settlement or whether special national legislation will still apply (e.g. in the area of research with social data). For cases in which the subject-related specificities in handling research data cannot be fully covered by the abstract and general provisions of the regulation, specific provisions may in some cases be required so that the Member States will at least be granted the possibility of recourse to corresponding provisions which provide clarification or which offer exceptions, by means of a corresponding authorisation. The highly divergent national legislation (e.g. that on social data protection) should still be applicable.

- Paragraph 1: the restricting phrase "within the limits of this Regulation" should be left out. This restriction was also deleted from the current version of Article 83 (11013/13). The aim must be to establish the link between Article 83 et seq. and the provisions referring to Article 83, not adopt additional restrictions.
- Paragraph 2: The provision in Article 83c(2), laying down that the two prior conditions of balance of interests and consent, for the publication of personal data in cases of scientific interest, must both apply rather than only one or other of them, is too restrictive. Furthermore, the relationship to Article 83(2) is not clear.
- Paragraph 3: In principle, we welcome the provision for further processing of data for scientific purposes, subject to more detailed examination and clarification of the wording as regards the "appropriate safeguards". However, apart from the provision on further processing of data, it also needs to be clarified for the scientific community, with regard to the collection of data, that the purpose of collecting data for research purposes in any given case only needs to be specified in detail to the extent the research context permits. Furthermore, it is not clear whether paragraph 3 applies only to cases of further processing for research purposes of data previously collected for a completely different purpose, or to the further processing also of data previously collected for another research purpose, or only to the further processing of data collected for other purposes. To take sufficient account of the basic right of freedom of research, it must be ensured that the provision also permits further processing by researchers of data previously collected and used for another research purpose. Regarding the wording "or used in support of measures or decisions regarding any particular individual" (similarly in paragraph 5) we refer to our comments on Article 83b.
- It is not clear how the period mentioned in paragraph 5 is to be determined ("for a period that does not exceed the period necessary for solely for scientific purposes"). To allow exceptions to be made also for medium- and long-term research data collection, it should also be possible for the period of storage for scientific purposes to be of indeterminate length. Germany asks the Presidency to explain the exclusion of the data subject's right of access in paragraph 5 and tables a scrutiny reservation.

## ESTONIA

### Processing personal data for statistical purposes

Regulation 223/2009 art 3 p 7 stipulates the definition of confidential data. Confidential data means data which allow statistical units to be identified, either directly or indirectly, thereby disclosing individual information. To determine whether a statistical unit is identifiable, account shall be taken of all relevant means that might reasonably be used by a third party to identify the statistical unit. In addition, art 3 p 9 and 10 provide notions of direct identification and indirect identification.

However, the general data protection regulation art 83b uses wording pseudonymous data. The general data protection regulation states that pseudonymous data means personal data processed in such a way that the data cannot be attributed to a specific data subject without the use of additional information /-/.

We would like to point out that regulation 223/2009 art 24 allows the use of identifiable data (administrative data) in order to reduce administrative burden, since Statistics Office do not have to collect same data again for every research. The Statistics Office has possibility to use public registers to collect statistical data. To use those registers, they need to connect data in different registers. In order to do that, they need to use identifiable data.

Therefore, we would like to make proposal that based on regulation 223/2009 the use of identifiable data is allowed in extent provided in regulation 223/2009.

Recital 126 a should clearly state that for protection of statistical data, the means provided in regulation 223/2009 are used.

More, recital 126 a should clearly state the relations between different notions – direct identification and indirect identification and pseudonymous data.

## Processing data for scientific purposes

In regard the scientific activities, we welcome bringing the issues concerning research into new article 83c instead of reiterating specific measures in several articles.

However, the phrase „2. ... (a) the data subject has given explicit consent“ may cause undesired effects: on one hand the consent should be explicit, but it does not clarify the extent of the explicitness, e.g. in case of biological samples, it is possible to obtain genetic, histological or metabolic data; moreover, samples of a biobank may become after emerging of new technologies a subject of analysis not available at the moment of giving said explicit consent.

Thus, we consider it reasonable to append 2. (a) the data subject has given explicit consent for use in specific field of science. This wording would avoid the requirement of undesired details in the consent while still maintaining understanding of the purposes of use of the data.

In point 5, the following phrase: „... in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals“ restricts the data subject from the possibility, that if new information revealed by processing of the data would allow avoiding undesired consequences (e.g. avoiding progress of yet undiagnosed health condition), decision of informing (i.e. taking a measure to inform the subject or the subject’s physician) the data subject is not allowed. Thus, introducing a wording that enables feedback of the information obtained in the course of processing the data, if revealing of said information might reduce potential hazard to data subject, would be welcome.

## 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**

- 5. 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 (...).**

6. 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.
7. 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 Articles 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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<sup>1</sup> Declaration approved in November 2011 by the 36<sup>th</sup> session of the General Conference of the UNESCO.

<sup>2</sup> 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***

4. 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.

5. 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.
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 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*

8. 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.
9. 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.
10. 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.
11. 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 ~~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.

**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.



## SLOVENIA

### 1. General comment

Slovenia supports the decision to have several Articles with respect to former Article 83.

2. Concerning Article 80 Slovenia is of the opinion that it cannot be simply stated that protection of personal data and freedom of expression shall be reconciled by national law. "Reconciliation" is most probably not an adequate solution, it would be better to state, that Member States shall apply their national law to guarantee both freedom of expression as well as data protection. The recent Judgment of the European Court of Human Rights in the case of *ELFI AS v. Estonia*, No. 64569/09, 10 October 2013 is a good example that we need to have a wider balance determined in the Draft Regulation (see especially paras. 87.to 94. of that Judgment, especially para. 91), especially since this case seems to show a conflict between the Council of Europe law with the European Union law.

3. Slovenia is of the opinion that new Article 83.a on processing of personal data for historical purposes should also explicitly cover private bodies that are recognised by public law as "archives" or "historical institutions" (like private faculties and institutes in the area of social sciences). Secondly, historical purposes should be primarily mentioned, then archives and other institutions should follow, and also genealogical research as defined by Member States legislation. Thirdly, it is definitely not a permanent or convincing (legitimate) solution to state that personal data from archives cannot be "processed for any other purposes or used in support of measures or decisions regarding any particular individual" - because they definitely can be re-processed (such as for retirement purposes, re-opening of some proceedings). Therefore it would be better to leave this solution on re-use of personal data in archives to national law (as is stated in Article 80).

4. Slovenia opines that provisions of new Article 83.b should start from the viewpoint that statistics procedures (researches) are completely compatible with data protection rules on purpose processing (so it should be stated in affirmative manner - "is compatible"), similar to the situation with respect to Article 80. We reserve the right of further comments until this issue is resolved.

5. Slovenia opines that provisions of new Article 83.c on scientific purposes seem to go in the right direction, but it is premature to comment upon them. However, exceptionally, paragraph 2 should probably have an additional legal ground - "if the law requires this in the public interest"?

## 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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