



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 November 2013

**Interinstitutional File:
2012/0010 (COD)**

**14901/13
ADD 3**

LIMITE

**DATAPROTECT 146
JAI 903
DAPIX 129
FREMP 153
COMIX 564
CODEC 2287**

ADDENDUM TO NOTE

from: Portuguese delegation
to: Working Party on Information Exchange and Data Protection

No. prev. doc.: 11624/1/13 DATAPROTECT 83 JAI 570 DAPIX 90 FREMP 96 COMIX 403
CODEC 1618

No. Cion prop.: 5833/12 DATAPROTECT 6 JAI 41 DAPIX 9 FREMP 8 COMIX 59 CODEC 217

Subject: Proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data
- Chapters I-IV

Delegations will find below comments from the Portuguese delegation on the above proposal.

General comments pertaining to this Proposal as whole

As an initial remark, we consider to be essential that in everything that is not specific to the police and judicial personal data processing the best possible similarity exists between the proposed Directive and the proposed Regulation.

Generally speaking, we consider that the degree of protection conferred to by this proposal of Directive is, within the framework of the reinforcement of police and judicial cooperation, clearly behind what is desirable.

In our opinion the proposed Directive should aim to a high level of protection of personal data. That does not seem to be the case if compared with Directive 95/46/EC, other EU instruments and even the Council of Europe Convention.

Chapter I – General Provisions (Articles 1 to 3)

Article 1

Par. 1 – The text within square brackets should be deleted or fully modified. “Public order” is a too wide expression to be acceptable as such; examples were put forward at the DAPIX meeting. The disturbance of the public order caused by criminal actions, such as drug trafficking, physical offences or terrorist attacks provoking a sense of danger and insecurity, is not the same as a disturbance caused, for instance, by the high noise inside a residence that disturbs neighbors or other behaviors different criminal actions, even funny ones that nevertheless disturb public order. One must not mistake correct considerations of public security strictly connected, for instance with crime prevention, with the collection of personal data concerning any other aspects of private life, even if those acts take place in a public place and even if one considers, as a matter of personal opinion, those acts to be morally or ethically censurable.

Therefore if the majority of Member States favor keeping the text between square brackets, we would like to refer our sympathy for the Belgian suggestion made during the discussion of the 5th October DAPIX meeting. If we correctly understood, Belgian colleagues suggested adding the word “danger” to public order. We support as well the reference to **“acts that disturb public order by potentially causing immediate or probable danger or constituting a criminal action”**.

Chapter II – Principles (Articles 4 to 9)

Chapter III – Rights of the data subject (articles 10 to 17)

Article 10

Par. 2 - The last sentence is not clear, and should be drafted as follow: “The information shall be provided in writing and transmitted electronically or by other means.”

It is not acceptable the information to be provided just orally. The information is to be provided in writing and to be transmitted electronically unless that is not possible, in such situations other means of transmission are to be used if necessary.

Par. 5 – In our opinion, this provision should begin by indicating that this type of information could be rendered in exchange of an administrative tariff. This provision should be clear as to the non rendering of this information in case of continued abusing behavior.

Article 11a

For the sake of clarification, we understand that the controller, as referred to in sub-paragraph a), is not the controller referred in paragraph one, but to the original controller, the source of the information not obtained directly from the data subject.

Article 12

Footnote 87 – The reference to Portugal is not correct. In fact what we said is that the judiciary cannot suffer interferences when acting in its own capacity. In that capacity the judge is the maximum authority in his own Court. His/her decisions can only be challenged according to the rules of Procedure, by appealing to a superior court.

Chapter IV – Obligations of the controller (articles 18 to 32)

Article 19

No. 1 – We propose to replace “cost of implementation” by “costs involved”.

The reason is that when a business or the Administration decides to implement privacy by design and by default a full impact assessment should be conducted. There are implementation costs (strictu sensu) and there are operational costs.”
