



**COUNCIL OF
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NOTE

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

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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) - Questionnaire on delegated/implementing acts

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

2. A large number of delegations have replied to the part of the Presidency questionnaire on the case-by-case revision of the Commission proposals for delegated (24 MS) and implementing acts (22 MS). **DELETED**

3. For ease of reference, the entry into force of delegated acts is subject to the following horizontal conditions :
 - a) no objection has been expressed either by the Council or the European Parliament within two months after the notification of the acts by the Commission; or
 - b) if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. The two months period may be prolonged with another two months.
 - c) The delegation of power may be revoked at any time by the European Parliament or by the Council.

4. Recital 129 of the Commission proposal for a Regulation states the power to adopted delegated acts should be given to the Commission in accordance with Article 290 TFEU in order to protect the fundamental right to data protection and to ensure the free movement of personal data within the Union. As far as implementing acts are concerned, Recital 130 states these are required in order to ensure uniform conditions for the implementation of the Regulation. Neither delegated nor implementing acts are a precondition for the application of the Regulation.

5. **DELETED**

6. Both at expert and at political level (Council meeting of 26 October), the Commission has indicated its willingness to engage in a discussion on alternatives to the use of delegated or implementing acts. It has also indicated that where a delegated or implementing act was proposed, the exercise of this power could be further qualified in three ways:

- 1) by inserting in a recital specific consultation arrangements (e.g. involving SME representatives) regarding the empowerment;
- 2) by putting substantive conditions on the empowerment; or
- 3) by limiting the scope of the empowerment.

7. **DELETED**

8. In the questionnaire Member States were invited to indicate which alternatives they would prefer in case a Commission proposal for a delegated act or implementing act could not be accepted. Other than a blanket deletion of a proposed empowerment to the Commission, different alternatives could be envisaged, such as a providing more details in the Regulation itself or leaving these rules to be worked out in codes of conduct. Other alternatives have been mentioned in the course of the technical discussions, such as guidance by the national data protection authorities and/or the European Data Protection Board, possibly via the consistency mechanism proposed by the Commission in the Regulation.

9. An important question at the outset of this exercise was whether the possible deletion of a delegated or implementing act necessitated the replacement of that proposed act by an alternative solution. **DELETED**

10. **DELETED**

11. The Presidency stressed on a number of occasions that the positions expressed in this exercise were expressed *ad referendum*, i.e. subject to a final agreement on the entire text and subject to the finalisation of all details. Annex I of this paper tabulates the written contributions of delegations as these were submitted to the Presidency.

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