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- Comments on Chapters IX - XI

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Delegations will find below comments on Chapters IX - XI, received at 10 February 2014.

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## CZECH REPUBLIC

### **CZ proposals regarding draft General Regulation on Data Protection – Articles 80 to 85**

*The comments are made in relation to document (17831/13).*

#### **In general**

CZ wishes to point out that comments given below are without prejudice to horizontal questions and issues, such as delegated and implementing acts or legal form of the proposal. Given the fact that these horizontal issues are being discussed separately, CZ did not specifically comment e.g. on provisions establishing implementing or delegated powers.

#### **Article 80b**

The text should read:

~~**Within the limits of this Regulation,** Member States may determine the conditions for the processing of a national identification number or any other identifier of general application. **The national identification number or any other identifier of general application shall be used only under specific and suitable measures to safeguard the rights and freedoms of the data subject. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.**~~

*The initial phrase has unclear content and does not provide for the same level of flexibility as the current directive, which may be necessary for unique official identifiers.*

*The second sentence is reworded in a more precise way that conforms to the nature of regulation better.*

## Article 81

- Paragraph 1(b) should be amended to read:

“reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety **of health care and services and of medicinal products or medical devices**, ~~inter alia of medicinal products or medical devices; or~~”

*The text should be more specific and health-oriented as regards the safety purpose.*

## Article 82

Paragraph 2 is probably not necessary and should be deleted.

## Articles 83a, 83c

*The comments are made in relation to documents 5331/14 and 17831/13.*

## In general

CZ wishes to point out that comments given below are without prejudice to horizontal questions and issues, such as delegated and implementing acts or legal form of the proposal. Given the fact that these horizontal issues are being discussed separately, CZ did not specifically comment e.g. on provisions establishing implementing or delegated powers.

## Recital 125a)

In the text of the recital, the fifth sentence should read:

Public authorities or public **or private** 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 **public** interest.

*CZ believes that focus should be on public interest and on the nature of archiving duties rather than on existence or predominance of formalized tasks or mission or explicit special legal rules and obligations.*

In the seventh sentence, words “in exceptional cases” should be deleted:

**Member States should also have the possibility to provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest, such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.**

*CZ believes that “exceptional cases” is a misleading wording as it may indicate both “exceptional rules” and “exceptional particular cases”. Rule of law, naturally, requires the MS to establish such further processing in laws. Therefore, the cases that follow such law are “special” or “particular” or “limited” rather than “exceptional”.*

<b>Recital 111)</b>
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In the text of the recital, the last sentence should read:

**If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of that processing those measures.**

*To make it clear that general rules of this Regulation apply to further processing of personal data which is part of further measures taken in the interest of the data subject, rather than to original scientific research data processing.*

The text of paragraph 1 should read:

Where personal data are processed for archiving purposes carried out in the public interest pursuant to Union or Member State law, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:

- a) Article 14a(1) and (2) ~~where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;~~
- b) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;
- c) Articles 17, 17a, and 18 ~~insofar as such restriction is necessary for the fulfilment for the archiving purposes.~~

*CZ is not convinced that 1(a) should be worded the same way as Article 14a(4)(b) which already provides for such exception.*

*The administrative burden on archiving should be lessened in (a) and (c). It is enough that EU or MS law must provide for appropriate safeguards (paragraph 1) after obligatory consultations with the DPA (Article 34 paragraph 7).*

Paragraph 2 should read:

By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for archiving purposes (...) carried out in the public interest shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary subject to appropriate safeguards for the rights and freedoms of the data subject, ~~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, and subject to specifications on the conditions for access to the data.~~

*CZ believes that data in the archive may be used in many unforeseen circumstances for perfectly legitimate purposes that have not been foreseeable at the time of archiving the data (personal status disputes, property disputes, official security and reliability screenings etc.). Therefore CZ supports the last part of recital 125b) in recognizing such occasions. The last part of the paragraph 2 must therefore be deleted. The mere fact that some data are further used should not change the “legal regime” of the archive as such. It goes without saying that any future further processing would not enjoy the benefits of “archiving exceptions”, of course.*

### **Article 83c**

Paragraph 1 and 3 should be more strongly linked together.

*Paragraph 1 is too restrictive and does, in fact, provide for much stricter “legal regime” than the rest of the Regulation. One may conduct scientific research on the basis of volunteers’ consent with processing pursuant to Article 6(1)(a) and never worry about conditions in Article 83c(1)(a)-(c) or in Article 83c(2). Such conditions are not “definition” of “scientific or historical” processing. Conditions in paragraph (1) should be seen as necessary balancing measure for derogations in paragraph (3), nothing more and nothing less.*

Paragraph 1 should be simplified as follows:

**Paragraphs 2 – 4 apply when personal data are** processed for scientific *and historical* purposes, including for scientific or historical research, according to following conditions:

- (a) 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; and
- (b) the personal data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions which may affect that individual; and
- (c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.

*Paragraph 1 repeats principle 5(1)(e) unnecessarily.*

*The entire paragraph is phrased more clearly to establish “legal regime” for scientific or historical processing. Recital 111 then helps to understand that when particular processing (such as using health research to improve medical care for data subject) ceases to conform to these conditions, standard rules of Regulation should apply to such further processing.*

Paragraph 2 should be broadened to read as follows:

Personal data processed for scientific or historical 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 or historical 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 manifestly public by the data subject, or
- (c) the publication of personal data is necessary to present scientific findings or to facilitate scientific or historical purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests.**

*All alternatives should be meaningful – it makes no sense to prohibit publication of scientific results due to overriding interests of data subject, when data subject agrees with it or makes personal data public on his/her own, and vice versa.*

Paragraph 3 should read:

Where personal data are processed for scientific or historical purposes, Member State law may, ~~subject to appropriate measures to safeguard the rights and freedoms of the data subject,~~ provide for derogations from:

- a) ~~Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;~~
- b) ~~Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;~~

- c) Articles **16**, 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for scientific or historical purposes.

*Part of paragraph 3 is deleted in view of paragraph 1(c).*

*CZ is not convinced that 1(a) should be worded the same way as Article 14a(4)(b) which already provides for such exception.*

*The administrative burden on archiving should be lessened in (a) and (c). It is enough that EU or MS law must provide for appropriate safeguards after obligatory consultations with the DPA (Article 34 paragraph 7).*

*There is no reason for special treatment of Article 16.*

Paragraph 4 should omit repetition of the conditions provided for in paragraph 1:

By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific or historical purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, ~~provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual and by pseudonymisation of personal data.~~

*All of the necessary conditions are already stated more precisely in paragraph 1(a)(c)*

## DENMARK

### **Independent legal basis**

According to article 83c (1) in the latest Presidency proposal, personal data may be processed for scientific purposes, including scientific research, “in accordance with this Regulation and in particular with article 6 (1)”.

The underlined text, especially the reference to article 6 (1), implies that the general rules on the processing of personal data apply in case of processing personal data for scientific purposes, including scientific research. This means that consent – or another legal basis in article 6 – is a precondition for processing personal data for scientific purposes.

It is however Denmark’s position that article 83c must be an independent legal basis for scientific purposes and not be subject to consent or other conditions in article 6. Therefore, “in accordance with” and especially the reference to article 6 must be deleted.

It is very important that processing of personal data for scientific purposes is not subject to consent as it would be *impossible* to utilize existing population-based registries or large population-based cohorts for research, since it is not feasible to obtain informed consent from each individual for every study. Furthermore it would cause disproportionate administrative and economic consequences compared to the clear public interests in a modern, efficient and world class research environment.

In light of this, Denmark finds it very important that both Article 6 and Article 9 refer to Article 83c as an independent legal basis.

Furthermore it should be stated clearly in the recitals that consent is not a precondition when processing personal data for scientific purposes. Denmark suggests adding a new recital 31a.

## Derogations

In accordance with article 83c (3), (a)-(c), Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from certain rights and duties.

In order to provide for progressive innovation and to protect industrial and scientific studies, inventions and findings, it is Denmark's position that the article should also provide for derogation from Article 15 on the data subject's right of access to data. Article 15 would cause disproportionate administrative and economic efforts for researchers.

Furthermore, the data subject does not have the same interest in this right in connection with scientific studies compared to other processing purposes.

The derogations should be mandatory and not subject to Member State law.

## Recital 126

Denmark suggests that that the wording in recital 126 "fundamental research, applied research, and privately funded" be replaced by "**public and private research**". Furthermore the phrase "Scientific purposes should also include studies conducted in the public interest in the area of public health" indicates that Article 83c does not cover all areas of research. Therefore the wording should be deleted.

Lastly the new text in the recital (**bold text in document 5331/13**) should be deleted.

In light of the above, Denmark puts the following proposal forward:

## **Recital 31a**

By coupling information from registries, researchers can obtain new knowledge of great value when it comes to e.g. widespread diseases as cardiovascular disease, cancer, depression etc. On the basis of registries, research results will be much more valid, as they draw on a larger population, whereas research results obtained with other means lack the same solidity.

Within social science, research on the basis of registries enables researchers to obtain essential knowledge about long-term impact of a number of social conditions e.g. unemployment, education, and the coupling of this information to other life conditions. Research results obtained on the basis of registries provide solid, high quality knowledge, which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people, and improve the efficiency of social services etc.

Therefore as an independent legitimate legal basis and in order to facilitate scientific research, personal data can be processed subject to appropriate conditions and safeguards. Hence consent from the data subject should not be necessary in each case.

### *Article 6*

#### *Lawfulness of processing*

1. [...]
2. Processing of personal data which is necessary for historical, statistical or scientific purposes shall be lawful subject to the conditions and safeguards referred to in Article 83a-c.

*Article 9*  
***Processing of special categories of data***

1. [...]

2. Paragraph 1 shall not apply if one of the following applies:

(a) – (h) [...]

(i) processing is necessary for historical, statistical or scientific purposes subject to the conditions and safeguards referred to in Article 83a-c.

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

1. Personal data may be processed for scientific purposes, including scientific research, without consent from the data subject, if

(a) the processing of data is necessary for scientific purposes, including scientific research and this purpose cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject; *or*

(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; *and*

(c) the conditions and appropriate safeguards for the rights and freedoms of the data subject are provided for in Member State law.

[2. 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.

2a. 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.]<sup>1</sup>

3. The following articles shall not apply for the processing of personal data processes for scientific purposes:

(a) Article 14a where and insofar the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law.

(b) Article 15 and 16 where and insofar necessary in order to protect scientific findings or it would cause disproportionate economic or administrative efforts for the controller.

(c) Article 17, 17a and 18 where and insofar such restriction is necessary for the fulfilment of scientific purposes.

4. The personal data processed for scientific purposes should not be processed for any other purpose, in particular not for the purpose of supporting measures or decisions which may affect that individual, unless processing is necessary in order to protect vital interests of the data subject.

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<sup>1</sup> See written comments dated 1 October 2013. Denmark would prefer that this is regulated in Member State law.

5. By derogation from points (b) and (e) of Article 5 (1) and from Article 6 (3a) further processing of personal data for scientific purposes shall not be considered as incompatible with the purpose for which the data are initially collected. Further processing should be subject to the conditions and safeguards referred to in paragraph 1.

### **Recital 126**

Processing of personal data for scientific purposes is an independent legal basis.

Processing of personal data for scientific purposes should include public and private research 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.

The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject put forward in Member State law.

### **General remarks**

A requirement of consent from the data subject when processing personal data for scientific purpose will render it virtually impossible to utilize existing population-based registries or large population-based cohorts for research, since it is not feasible to obtain informed consent from each individual for every study utilizing public registries or large cohorts containing information on tens of thousands to millions of individuals. All areas of Danish research that rely on public registries or large population-based cohorts would be affected by the current proposal, including - and most severely - Denmark's world-class epidemiological research. It would be impossible to obtain consent from every individual, thus making it impossible to continue and to utilize the world renowned Danish population-based registers and cohort bases studies, eg. The Danish National Birth Cohort, The Danish Register of Causes of Death and The Danish Cancer Registry, which are appreciated not only by Danish researchers but also in the EU in general.

A requirement of consent when processing personal data for scientific purposes will also mean that significant investments in research based on registries will be lost and will impede responding to the Horizon 2020 challenge on *Health; Demographic, and Well-being*.

Furthermore, the following issues/negative consequences of a requirement of consent when processing data for scientific purposes can be highlighted:

**Linking data:** It is crucial to maintain data with intact individual-level identification, in order to link large-scale quantitative correlation analyses to qualitative studies on such factors as genetics, clinical interventions, medication use, risk factors, and exposures for a targeted group of individuals, including linking data for scientific purposes without consent from the data subject.

**Social bias:** It is clear that the need for informed consent will create a strong social bias in the data available for researchers, because some social groups will have a disproportionate tendency to refuse use of their data for research.

**Open society:** Public registries containing individual-level data are used on a daily basis to monitor public service provision and to implement public policy and legislation. The ability of scientists to use the same data for research, without getting consent from the data subject to this purpose, is a cornerstone of an open and democratic society, in which political leaders are held accountable by the public, and where difficult policy choices are informed by facts and evidence-based research.

**High quality and solid research results:** Using registries as the basis for scientific results provide the basis for solid and high quality results. Conclusions drawn on the basis of e.g. 40.000 counts are more valid than conclusions drawn on the basis of e.g. a survey of 1000 people. Solid research results provide a basis for higher quality policy decisions in society and especially with regard to prevention and treatment of diseases. A requirement of consent within the area of research based on public registries can therefore also have negative effects in terms of "Quality and solidity of research results".

## GERMANY

### **Comments of the Federal Government on Chapters IX to XI of the Commission proposal for a General Data Protection Regulation (COM(2012) 11 final)**

Germany hereby submits its proposed amendments and additions for Chapters IX to XI of the Commission proposal for a General Data Protection Regulation, based on the version of the draft Regulation of 16 December 2013 (17831/13).

#### A. Preliminary remarks

Germany wishes to thank the Presidency for this opportunity to submit comments. Given the state of play in the discussions, Germany reserves the right to submit further comments, including with regard to fundamental issues that go beyond individual articles. Germany will comment on the recitals separately. General scrutiny reservations and reservations on individual provisions, as declared in DAPIX, remain in place unless explicitly withdrawn. We need to conduct further discussions and a more detailed examination of Chapters IX to XI. Germany requests that its scrutiny reservation be included in the Presidency's current text (17831/13).

#### B. Comments concerning Articles 80 to 91

Preliminary comments concerning Chapter IX:

The provisions of Chapter IX are to be seen particularly in the context of the German call for more flexibility in the public sector and with regard to national law concerning specific sectors. It must be ensured that the Member States retain the possibility not only of establishing the precise details and form of the rules, but also of making derogations by issuing stricter rules or rules concerning specific sectors. The primary objective should however be to seek solutions when re-examining and further refining the overall approach of the instrument that will guarantee the preservation of existing national data protection law, as well as the potential for its further development, in all sectors where citizens' data is processed within the scope of Union law by State bodies or for the purpose of exercising public authority.

It may be necessary to include further provisions in Chapter IX, as in other Chapters, depending on which solutions are chosen.

*Article 80*

*Processing of personal data and freedom of expression*

*Article 80*

*Processing of personal data and freedom of expression*

*Comment: Article 80 is of great importance for Germany.*

*As Advocate -General Jääskinen of the Court of Justice stated in his conclusions of 25 June 2013 in Case C-131/12 (paragraph 128), Germany also considers that a person's right to protection of his private life must be balanced with other fundamental rights — including those enshrined in national law — especially with freedom of expression and freedom of information. The relationship of the Regulation to freedom of expression and to the right of public access to official documents should be put in clearer terms. It should be clearly stated which articles may be derogated from (in this regard we would ask the Presidency and/or the Legal Service to set out the reasons for the deletion). Germany is, however, of the opinion — as already stated in respect of Article 2(2)(d) — that private communication should be completely excluded from the scope of the Regulation. If necessary, the Regulation itself should provide for exceptions to protect freedom of expression.*

<p>1. Member State law shall (...) reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression, including the processing of personal data for journalistic purposes and the purposes of artistic or literary expression.</p>	<p><i>Moreover, where exceptions or restrictions are permitted, this should be stated clearly. Any analogous application to new forms of journalism should be provided for in a separate sentence. There is also a need for detailed discussion of how to deal with circumstances which come within both the scope of protection of the right to determine the use of one's data and that of freedom of expression. Given the unresolved issues, Germany needs to conduct a further examination.</i></p> <p><u>In the application and interpretation of this Regulation, the principle of freedom of expression, including the processing of personal data for journalistic purposes and the purposes of artistic or literary expression, shall be taken into account in accordance with the law of the respective Member State. Member States shall provide for derogations from or exceptions to Chapter II (general principles), Chapter III (rights of the data subject), Chapter IV (provisions on controller and processor), Chapter V (provisions on the transfer of personal data to third countries and international organisations), Chapter VI (independent supervisory authorities), Chapter VII (co-operation and consistency) and from Articles 73, 74, 76 and 79 to 79b of Chapter VIII (remedies, liability and sanctions) for the processing of personal data carried out for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.</u></p>
<p>2. (...)</p>	<p>(...)</p>

<p style="text-align: center;"><i>Article 80a</i></p> <p style="text-align: center;"><b><i>Processing of personal data and public access to official documents</i></b></p> <p>Personal data in official documents held by a public authority <u>or a public body</u> may be disclosed by the authority <u>or body</u> in accordance with Union law or Member State law to which the public authority <u>or body</u> is subject in order to reconcile public access to such official documents with the right to the protection of personal data pursuant to this Regulation.</p>	<p style="text-align: center;"><i>Article 80a</i></p> <p style="text-align: center;"><b><i>Processing of personal data and public access to official documents</i></b></p> <p>Personal data in official documents held by a public authority or a public body may be disclosed by the authority or body in accordance with Union law or Member State law to which the public authority or body is subject in order to reconcile public access to such official documents with the right to the protection of personal data pursuant to this Regulation.</p>
<p style="text-align: center;"><i>Article 80b</i></p> <p style="text-align: center;"><b><u><i>Processing of national identification number</i></u></b></p> <p><b><u>Within the limits of this Regulation, Member States may determine the conditions for the processing of a national identification number or any other identifier of general application. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></b></p>	<p style="text-align: center;"><i>Article 80b</i></p> <p style="text-align: center;"><b><u><i>Processing of national identification number</i></u></b></p> <p><b><i>Comment: The concept of a "national identification number" does not exist under German national law. Therefore, Germany sees no need for this rule. Germany would be able to support such a rule if other Member States consider there to be a need for it.</i></b></p>

Article 80c

**Processing of personal data in public registers**

In respect of the processing of personal data in public registers, Member States may provide for stricter or more specific rules concerning the rights of the data subject under Chapter III and the provisions on controller and processor under Chapter IV, in order to take account of the specific requirements of public registers and to ensure that they function effectively. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.

*Article 81*

***Processing of personal data for health-related purposes***

1. Within the limits of this Regulation and in accordance with points **(g) and** (h) of Article 9(2), (...) personal data **referred to in Article 9(1) may be processed** on the basis of Union law or Member State law which (...) provides for suitable and specific measures to safeguard the data subject's legitimate interests **when** necessary for:

Article 81

**Processing of personal data concerning health**

*Comment: Germany needs to further scrutinise Article 81 in its entirety.*

1. (...) In accordance with point (h) of Article 9(2), the processing of personal data concerning health must be carried out on the basis of Union law or Member State law which shall provide for suitable and specific measures to safeguard the data subject's legitimate interests; it is permissible for:

*Comment: It is not possible to evaluate whether extending the reference to include point (g) of Article 9(2) is appropriate until there has been thorough clarification of the relationship between Article 81 and the justifications listed in Article 9(2). Only then will it be possible to safely assess whether the reference to point (g) of Article 9(2) potentially weakens or undermines the requirements of point (h).*

<p>(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy; under Member State law or rules established by national competent bodies; or</p> <p>(b) reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety, inter alia of medicinal products or medical devices; or</p>	<p>a) the purposes of preventive (...) medicine, medical diagnosis, the provision of care or treatment, vocational rehabilitation or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by a member of a health profession requiring qualification or another person also subject to an equivalent obligation of confidentiality under the law of the Member State or rules established by national competent bodies; or</p> <p>b) reasons of public interest in the area of public health, such as the prevention or control of communicable diseases and other threats to health or ensuring high standards of quality and safety, inter alia for medicinal products or medical devices; or</p>
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<p>(c) (...)</p>	<p>Comment: The wording "protecting against serious cross-border threats to health" seems inappropriate for exemplifying what is, by necessity, a broad sphere of action by the EU Member States in the field of protection and control of communicable diseases (and the prevention and control of dangerous diseases). It has clearly been adapted from the second subparagraph of Article 168(1) TFEU and thus does not describe Member States' tasks but merely one part of the Union's sphere of competence to provide supportive activities (which is in any case limited). Member States must however still be in a position in future to take public health measures in far less serious circumstances.</p> <p>c) other reasons of public interest in areas such as social protection in order to ensure that Member States can perform tasks in these areas as provided for in their respective national law.</p> <p>Comment: To avoid ambiguity in interpretation and thus prevent any areas that should in fact be covered by this rule not being subsumed thereunder, it should not contain any examples; instead, general wording should be used.</p>
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d) the purposes of insurance and reinsurance, in particular the conclusion and performance of insurance contracts, the processing of statutory claims, the evaluation of risks, the establishment of tariffs, compliance with legal obligations and the combating of insurance fraud.

Comment: This new point (d) is by necessity linked to the follow-up amendment to Article 9(2)(h), since it is a punishable offence in Germany under Section 18 of the German Act on Genetic Testing in Humans to request, take or use genetic data in connection with the conclusion of an insurance contract:

"processing of data concerning health, provided the data are not genetic data, is carried out in accordance with legislative provisions adopted on the basis of Article 81(1) and Article 82a"

The processing of data concerning health may however also be necessary within the framework of insurance contracts (in particular for the conclusion and performance of insurance contracts, the processing of statutory claims, the evaluation of risks, the establishment of tariffs, compliance with legal obligations and the combating of insurance fraud). A rule should therefore be included which permits processing for insurance and reinsurance purposes.

2. Processing of personal data concerning health in the area of social protection shall be carried out in accordance with Article 82a.

Comment: It is essential that this new paragraph 2 be accompanied by a follow-up amendment to point (h) of Article 9(2):

"the processing relates to data concerning health, provided they are not genetic data, and is carried out in accordance with legislative provisions adopted on the basis of the first paragraph of Article 81 and Article 82a"

<p>2. Processing of personal data concerning health which is necessary for historical, statistical or scientific (...) purposes, such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is subject to the conditions and safeguards referred to in <u>Articles 83a to 83c</u>.</p>	<p>3. Processing of personal data concerning health which is necessary for historical, statistical or scientific purposes (...) shall be subject to the conditions and safeguards referred to in Articles 83a to 83c.</p> <p><i>Comment: The examples of scientific research should be deleted, as they narrow down the reference unnecessarily and are of little use in legal terms. One alternative might be to transfer them to the recitals.</i></p>
<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.</p>	<p>4. (...)</p> <p><i>Comment: The delegation of powers allowing the Commission to adopt delegated legal acts should be deleted here.</i></p>

*Article 81a*

***Processing of genetic data***

Member States may adopt more stringent or more specific rules on the processing of genetic data for genetic testing for medical purposes, in order to establish parentage, or in the area of insurance and worker protection, in accordance with point (k) of Article 9(2); this shall also apply to genetic data which are processed for genetic analyses carried out as part of genetic testing. Processing for scientific purposes shall be subject to the conditions and safeguards referred to in Article 83c. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.

***Article 81a is by necessity linked to the following amendments to Article 9(2) (amendment to point (h) and a new point (k)):***

	<p><i>Article 9(2)(h)</i></p> <p><i>"the processing relates to data concerning health, provided they are not genetic data, and is carried out in accordance with legislative provisions adopted on the basis of Article 81(1) and Article 82a"</i></p> <p><i>A new point (k) on genetic data should be inserted in Article 9(2):</i></p> <p><i>Article 9(2)(k)</i></p> <p><i>"the processing relates to genetic data and is carried out on the basis of Member State law which provides adequate safeguards to protect the data subject's legitimate interests. Point (i) shall apply to scientific research."</i></p>
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*Article 82*

*Processing in the employment context*

*Article 82*

*Processing in the employment context*

*Comment:*

*As regards rules on data processing in an employment context, Germany's aim is to preserve our national level of employee data protection (even for cross-border data processing) and make it possible to have standards which are above the European level.*

*We feel that the whole of Article 82 still needs extensive review.*

*To begin with, its content and scope, particularly its legal nature, are not clear. The aim seems to be a saving clause, but "within the limits of this Regulation" leaves Member States little room for manoeuvre. The saving clause must allow Member States the necessary flexibility as regards the processing of employee data in an employment context (maintaining existing national levels of protection, flexibility as to a higher level of protection, no departure from the protection in the*

*Data Protection Regulation that would operate against data subjects' interests). It is also unclear how it relates to Article 6 (paragraph 1(f) and paragraph 3).*

*As regards employee data protection, there are a number of issues to be considered which are not adequately addressed in the current version of the Regulation, in particular:*

- *problems of consent to data processing*
- *instruments laid down by collective agreement as a legal basis for data processing; Member States should be able to permit the processing of employees' personal data under collective agreements, without lowering the level of protection*
- *surveillance (video or acoustic) at the workplace*
- *processing of contract data*
- *processing of corporate data*
- *processing of health and social data*

1. Within the limits of this Regulation, Member States may adopt by law specific rules regulating the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.</p>	
<p style="text-align: center;"><i><u>Article 82a</u></i></p> <p style="text-align: center;"><b><u>Processing for purposes of social protection</u></b></p> <p><b><u>Within the limits of this Regulation, Member States may adopt specific rules for the processing of personal data in the public interest for the purpose of social protection, carried out by public authorities or by bodies or associations. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></b></p>	<p style="text-align: center;"><i><u>Article 82a</u></i></p> <p style="text-align: center;"><b><u>Data processing in the area of social protection</u></b></p> <p><u>Member States may adopt more stringent or more specific provisions establishing the conditions and procedures for and the rights of data subjects in respect of the processing, in the public interest, of personal data in the area of social protection, including data concerning health. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p> <p><i>Comment: Article 82a takes account of the special characteristics of social protection. This is a field dealt with and supervised predominantly by public-law bodies.</i></p> <p><i>Their structures, which are mainly laid down by law, are tailored to the needs of mass administration. National regulations, including derogations, must therefore continue to be possible in this area.</i></p>

*To clarify that this saving clause covers the processing of health data at service providers' establishments in the context of care provision, the following should be included in a recital:*

*"The processing of data concerning health in the context of medical care in the social protection system is in the public interest."*

*If there is consensus on Article 82a, we may wish to submit follow-up amendments to Article 81 to clarify how it relates to Article 82a.*

Article 82b

**Processing in the context of taxation**

Member States may adopt more stringent or more specific provisions establishing the conditions and procedures for the processing, in the public interest, of personal data in the context of taxation, and the rights of data subjects in respect thereof. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.

*Article 82c*

**Data processing in the context of public order and safety**

Member States may adopt more stringent or more specific provisions governing the processing of personal data for the purpose of maintaining and restoring public order and safety. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.

***Comment: Where it is not possible to shift the boundary between the General Data Protection Regulation and the Police and Criminal Justice Data Protection Directive in such a way as to cover the entire area of police emergency management or "administrative police", the Regulation should provide for a corresponding saving clause.***

Article 82d

**Processing for the purpose of law enforcement**

The processing of personal data by the courts, the bodies acting on their behalf and enforcement agents shall be subject to Member States' procedural law insofar as there are no prior-ranking procedural rules at European Union level. Consequently, in terms of law enforcement, an appropriate balance shall be struck between, in particular, the requirement for respect for the rights of the defence, personal data protection and the obligation to ensure effective legal protection.

*Comment: A provision should be added to cover processing by courts and bailiffs. Specifically, the respective rules of procedure, which are likewise harmonised in part by Union law, contain more detailed provisions concerning data protection matters, such as those relating to the requirements for granting access to files. Those provisions take account of the conflict which exists in the field of law enforcement between personal data protection, the requirement for respect for the rights of the defence and the obligation to ensure effective legal protection. They should therefore be maintained as prior-ranking special provisions.*

Article 82e

**Processing of personal data in the context of schools**

*Comment: Further peculiarities (i.e. aspects which are not covered by the possibilities for exemptions already requested) exist in respect of schools, which are characterised by both public and private boards; consequently, the special provisions laid down in the Regulation for processing in the public sector do not apply on a universal basis to all schools, although the special relationship between school and pupils calls for modifications irrespective of the legal form of the school board.*

*In the event that no provision is made for a corresponding categorical exemption, special arrangements/exemptions for schools ought to be laid down in individual provisions of the Regulation (and in particular in Articles 6 to 9).*

	<p><u>1. Member States may adopt more stringent or more specific provisions governing the processing of personal data in the context of schools with reference to the general principles laid down in Chapter II, the rights of the data subject enshrined in Chapter III and the provisions concerning the controller and processor contained in Chapter IV. Member State law shall provide for specific and suitable measures to safeguard the rights and freedoms of the data subject.</u></p>
	<p><u>2. Each Member State shall notify the Commission at the latest by the date specified in Article 91(2) of the legislative provisions within the meaning of paragraph 1 above, and shall inform it immediately of any further amending legislation or amendments concerning these provisions.</u></p>

*General comments concerning the group of provisions on "Processing for historical, statistical or scientific purposes" (Articles 83a to 83c):*

*Germany still needs to review the entire group of provisions concerning "Processing for historical, statistical or scientific purposes" (Articles 83a to 83c).*

*The rules set out in Articles 83a to 83c are closely connected to those contained in the preceding chapters of the draft Regulation. In any case, it is essential that Articles 83a to 83c be properly coordinated with the provisions of the preceding articles which are of relevance to statistics and research. Germany therefore reserves the right to carry out an in-depth examination of the various provisions in the preceding chapters of the Presidency draft which are both specific and relevant to research. Moreover, reference is made to Germany's previous comments. The rules set out in Chapter IX also need to be coordinated with one another.*

*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 83a to 83c impose limits on data processing which would restrict scientific freedom in particular. This relates in particular to the introductory words "within the limits of this Regulation".*

*In addition, Germany still needs to examine in detail whether these provisions are compatible with freedom of opinion and scientific freedom.*

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

*In view of the outstanding issues, inter alia as regards practical repercussions, Germany hereby enters a scrutiny reservation in respect of Articles 83a to 83c.*

<p style="text-align: center;"><i>Article 83a</i></p> <p style="text-align: center;"><i>Processing of personal data for historical purposes</i></p> <p>1. <u>Within the limits of this Regulation, 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 and may be processed for those purposes for a longer period than necessary for that initial purpose which does not exceed the period necessary for the sole purpose of processing for historical purposes, 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.</u></p>	<p style="text-align: center;"><i>Article 83a</i></p> <p style="text-align: center;"><i>Processing of personal data for historical purposes</i></p> <p><i>Comment:</i></p> <p><i>The fundamental question arises as to whether the term "historical purposes" can really cover all use of archives. Public archives are not given a legal mandate solely for historical purposes; their task is broader. Since Article 83a explicitly prohibits use in archives for "any other purposes", a comprehensive definition of the term "historical purposes" is required here.</i></p>
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*The phrase "... which does not exceed the period necessary for the sole purpose of processing for historical purposes ..." should be deleted. Such wording fails to take account of archiving practices. It is precisely the purpose of archives to safeguard documents and make them available on a permanent basis, rather than for a specified period only. With regard to historical research in particular, it is impossible to predict whether information will become important, and if so, at what point and for how long.*

*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 continue to perform the tasks involved in meeting that need. In particular, Article 83a is not well suited to the purpose of addressing the past. The proposed exemptions ("within the limits of this Regulation") do not go far enough. In addition to "historical purposes", the concept of addressing the past extends to historical and political education and rights of access for media and public authorities. Autonomous categorical exemptions are necessary if archives are to continue to perform their legal mandate of addressing past injustices. In that connection, reference is made to Germany's comments of 31 October 2013 concerning Articles 83a to 83c.*

*Proposed wording for an exemption for the archives responsible for addressing past injustices under the communist dictatorships:  
"Establishments which are legally responsible for the documents of the secret police services of the former communist dictatorships may keep, process, publish and provide access to personal data insofar as the interests or fundamental rights and freedoms of the data subject do not outweigh the interests of processing, publishing and disclosing such documents."*

<p><b><u>2. By derogation from paragraph 1 and without prejudice to Article 80a, the controller shall take appropriate measures to ensure that personal data which are processed for the purposes referred to in paragraph 1 may be made accessible to recipients only for reasons of public interest or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law to which the controller is subject.</u></b></p>	
<p><b><u>3. Article 14a shall not apply where and insofar as, the data are processed only for historical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate measures to safeguard the rights and freedoms of the data subject</u></b></p>	

4. Articles 15, 17, 17a, and 18 shall not apply **insofar as such restriction is necessary for the fulfilment for the purposes referred to in paragraphs 1 and 2**, provided that the controller provides appropriate **measures to**, 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.

*Alongside the restriction relating to Articles 14a, 15, 17, 17a and 18, the application of Article 16 also should at least be limited. Any possibility of the original content of a document being distorted or even destroyed must be ruled out. Article 16 ("right to rectification") should also be included in the list at the end of recital 125.*

*Article 19 ("right to object") should be included in this list too. As a rule, the right to object encompasses or presupposes the right of access, so the previous exceptions, in particular Article 15, would be cast in a new light.*

*The latter half of Article 83a(4) GDPR, “in particular to ensure that the data are not used for taking measures or decisions regarding particular individual”, should be deleted. Otherwise, many uses of archives currently explicitly permitted by law and intended to address past injustices would no longer be permissible. These include examining, pursuant to the Stasi Records Act, whether members of parliament, civil service employees and other groups of people collaborated with the State Security Service, security checks and criminal investigations.*

*Furthermore, it would not be possible to substantiate grounds for exclusion from particular social benefits because of Stasi collaboration or violation of the principles of the rule of law and humanity. Access for researchers and journalists to files concerning the activities of unofficial Stasi collaborators or to records on figures from contemporary history, office holders and officials might no longer be permissible because of the fear of incriminatory effects.*

Article 83b

Processing of personal data for statistical purposes

1. Within the limits of this Regulation, personal data may be processed for statistical purposes carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit 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) the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and

Article 83b

Processing of personal data for statistical purposes

*Comment:*

*We request clarification from the Presidency regarding the limitation to official statistics.*

*The relationship to Regulation 223/2009 is unclear.*

*In paragraph 1 of Article 83b, the words "within the limits of this Regulation" should be deleted. This wording does not clarify the relationship to other legal acts concerning statistics either. Nor does it follow from recital 124b.*

*It is not clear what period is referred to in paragraph 1 ("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.*

(d) that the controller provides appropriate safeguards for the rights and freedoms of the data subject individual

2. Article 14a shall not apply where and insofar as, the data are processed for statistical purposes, the provision of such information proves impossible or would involve a disproportionate effort or if obtaining or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate measures to safeguard the rights and freedoms of the data subject.

2a. Articles 15 and 16 shall not apply where and insofar as, for processing for statistical purposes, it proves impossible or would involve a disproportionate effort for the controller to grant access to, or rectification of, the personal data.

3. Articles 17, 17a, and 18 shall not apply when and insofar as such restriction is necessary for the fulfilment of statistical purposes and 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 measures to safeguard the rights and freedoms of the data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*It is not clear why the choice has been made to use wording in Article 83b paragraph 2 ("...the data are processed for statistical purposes...") that differs from that in Article 83b paragraph 2a ("...for processing for statistical purposes..."), even though they refer to the same thing, namely the scope.*

*Paragraphs 2, 2a and 3 should be combined and in each case the duplication of paragraph 1 (in particular of points (c) and (d)) should be removed.*

*We support the derogation from Article 14a which in general excludes statistics provided for by law from this requirement (paragraph 4). Such a provision is necessary, because sometimes many millions of administrative data sets are analysed for official statistics (e.g. censuses, income tax statistics) and it would not be practicable to inform the data subjects individually.*

*Article 15 should - as intended - apply only when implementation is actually possible and no disproportionate effort is caused. To avoid unnecessary administrative costs the information mentioned should have to be provided only on request, however. This should be clarified by the addition of "on request" in the first sentence of Article 15 (e.g. after "obtain").*

*A right to rectification generally makes no sense in the context of statistics. The aim of statistical analyses is to record mass phenomena. Individuals' raw data and any inaccuracies are rendered anonymous when they are combined to produce statistics. Insofar as the data are used only for statistical purposes, the data subject therefore has no interest from the protection viewpoint in "his or her" data being corrected. Article 16 should therefore not be applicable in the context of statistics in general.*

*Statistics are already excluded from the scope of Article 17 by the provision in paragraph 3(d). This is to be welcomed. A corresponding reference should also be inserted in the other articles that are not applicable to statistics or applicable only subject to certain restrictions.*

*The restriction on processing pursuant to Article 17a - and correspondingly on Article 17b - makes no sense for processing for statistical purposes, at least not for statistics provided for by law.*

*As in Article 16, the data subject has no recognisable interest warranting protection here either. Along the lines of paragraph 4(c) of Article 14a, processing for statistical purposes required by European or national law should be exempted at least .*

*In addition, we find the wording of Article 83b paragraph 3 ("restriction") unfortunate. This "restriction" refers to the non-application of the provisions mentioned, and Article 17a regulates the right to restriction. This could be misinterpreted as meaning that the word "restriction" in Article 83b(3) relates only to Article 17a. This would not make any sense, however. We would suggest replacing "such restrictions" in Article 83b(3) by "it".*

*With regard to Article 18, it is unclear what provision is intended here and to what extent official statistics are concerned.*

*It is also questionable whether the publication of personal data in the form of individual statistics if the data subject gives consent is possible under Article 83c(2) or not at all.*

Article 83c

Processing for scientific purposes

1. **Within the limits** of this Regulation, personal data may be processed for scientific purposes **and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that:**

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit 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) **the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and**

(d) **In these cases, the controller shall provide for appropriate measures to safeguard the rights and freedoms of the data subject.**

Article 83c

Processing for scientific purposes

*Comment:*

*The phrase "within the limits of this Regulation" should be deleted. It is not a question of the limits of the Regulation, but rather of the interplay between Article 83c and the provisions of the draft Regulation that are specific or relevant to research and explicitly refer to that article.*

*The introductory text of paragraph 1 seems excessive. Some cross-cutting aspects are mentioned several times in that paragraph and in the paragraphs that follow, making inter alia the relationship between the paragraphs unclear. For example, the substance of paragraph 3 is already covered in paragraph 1 and aspects of paragraphs 4 and 5 are already mentioned in paragraph 1. The same applies to paragraph 2(c) and the enumeration which precedes it in the opening to paragraph 2. The substance of paragraph 1(c) is also unclear and our initial assessment is that it should be deleted.*

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 **manifestly** public by the data subject; or
- (c) **the publication or other public disclosure 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.**

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.

*The Regulation also needs to make provision for the requisite authorisation to allow Member States to have more specific or deviating rules. Except for the special case of the obligations to provide information pursuant to Article 14, this is not provided for by the proposal. This is necessary however, as follows from Germany's previous comments. It should be borne in mind that research, for example biomedical research, is constantly evolving, and the legislator must be able to respond to this appropriately where required.*

4. Article 14a shall not apply where and insofar as, **the data are processed only** for scientific purposes, the provision of such information proves impossible or would involve a disproportionate effort or if **obtaining** or disclosure is expressly laid down by Union law or Member State law. In these cases, the controller shall provide for appropriate **measures to safeguard the rights and freedoms of the data subject**.

5. Articles 17, 17a, and 18 shall not apply when **and insofar as such restriction is necessary for the fulfilment of statistical purposes and** 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 **measures to** safeguard the rights and freedoms of **the data** subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

*Article 84*  
*Obligations of secrecy*

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

*Article 84*  
Obligations of secrecy

***Comment: The scope of this provision is unclear. For this reason Germany must enter a scrutiny reservation.***  
***The provision should in any case not only be limited to investigative powers.***

1. Within the limits of this Regulation, Member States may adopt specific rules to set out the (...) powers by the supervisory authorities laid down in Article 53(2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

<p>2. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them<sup>1</sup>.</p>	<p>2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.</p>
<p style="text-align: center;"><i>Article 85</i></p> <p><b><i>Existing data protection rules of churches and religious associations</i></b></p>	<p style="text-align: center;">Article 85</p> <p><b>Existing data protection rules of churches and religious associations or communities</b></p>

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<sup>1</sup> This might need to be moved to Chapter XI on final provision.

<p>1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.</p>	<p><b><i>Comment: The preservation and protection of religious self-determination must be guaranteed - Article 140 of the Basic Law in conjunction with Article 136 of the WRV (Weimar Republic Constitution); Article 17 TFEU ('The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.').</i></b></p> <p>1. <u>On the basis of the right to self-determination guaranteed in Member State law, churches or religious associations or communities may adopt and apply independent and comprehensive rules for the protection of natural persons during the processing of personal data, provided that such rules guarantee a level of data protection equivalent to that set by this Regulation.</u></p>
<p>2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 shall provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation.</p>	<p><u>2. Churches and religious associations or communities which apply comprehensive data protection rules in accordance with paragraph 1, shall establish an independent supervisory authority, unless they are subject to the supervision of a supervisory authority under Chapter VI of this Regulation.</u></p>

<p style="text-align: center;"><i>Article 86</i> <b><i>Exercise of the delegation</i></b></p> <p>1.</p>	<p style="text-align: center;"><i>Article 86</i> <b><i>Exercise of the delegation</i></b></p> <p><b><i>Comment: With reference to the position of the German Bundestag of December 2012, Germany is entering an explicit reservation. Article 86 needs to be adapted after it has been clarified in future discussions which powers to adopt delegated acts are being maintained.</i></b></p>
<p>2. The delegation of power referred to in (...) Article 8(3), Article 9, (...), Article <u>39a(7)</u>, [Article 43(3)], (...), Article <u>79a(4)</u>, Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.</p>	

<p>3. The delegation of power referred to in (...) Article 8(3), (...) Article <u>39a(7)</u>, [Article 43(3)], (...) Article <u>79a(4)</u>, Article 81(3) <b>and</b> Article 82(3) (...) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	
<p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p>	
<p>5. A delegated act adopted pursuant to (...) Article 8(3), Article 9(3), (...) Article <u>39a(7)</u>, [Article 43(3)], (...), Article <u>79a(4)</u>, Article 81(3) <b>and</b> Article 82(3) (...) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.</p>	

<p style="text-align: center;"><i>Article 87</i></p> <p style="text-align: center;"><b><i>Committee procedure</i></b></p> <p>1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</p>	<p style="text-align: center;"><i>Article 87</i></p> <p style="text-align: center;"><b><i>Committee procedure</i></b></p> <p>1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</p>
<p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p>	<p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p>
<p>3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.</p>	<p>3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.</p>

<p style="text-align: center;"><i>Article 88</i></p> <p style="text-align: center;"><b><i>Repeal of Directive 95/46/EC</i></b></p> <p>1. Directive 95/46/EC is repealed.</p>	<p style="text-align: center;"><i>Article 88 Repeal of Directive 95/46/EC</i></p> <p><b><i>Comment: Article 88 cannot be definitively assessed until the Regulation's scope is fixed. In particular, questions regarding the references to Directive 95/46/EC in the Regulation (e.g. Article 41(3)(a) in relation to 'Safe Harbour') require clarification. Germany must therefore maintain a scrutiny reservation.</i></b></p> <p>1. Directive 95/46/EC is repealed.</p>
<p>2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.</p>	<p>2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.</p>

<p style="text-align: center;"><i>Article 89</i></p> <p style="text-align: center;"><b><i>Relationship to and amendment of Directive 2002/58/EC</i></b></p> <p>1. This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.</p>	<p style="text-align: center;"><i>Article 89</i></p> <p style="text-align: center;"><b><i>Relationship to and amendment of Directive 2002/58/EC</i></b></p> <p><b><i>Comment: Since there is still a considerable need to discuss the relationship with other provisions of EU law such as Directive 2002/58/EC, Germany is entering a scrutiny reservation.</i></b></p>
<p>2 Article 1(2) of Directive 2002/58/EC shall be deleted.</p>	

*Article 89a*

***Relationship to previously concluded Agreements***

*International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to the entry into force of this Regulation, and which are in compliance with Directive 95/46/EC, shall remain in force until amended, replaced or revoked<sup>1</sup>.*

*Article 89a*

***Relationship to previously concluded Agreements***

Since the newly added provision raises many questions, in particular those set out below, German is entering a scrutiny reservation:

- in the hierarchy of rules, EU regulations prevail over national agreements. Such a clause would call into question the precedence of EU law and lead to a confusing and bureaucratic patchwork of rules.
- What will the aim of this Regulation be and which specific Member State agreements will be covered (for reasons of transparency and legal clarity, agreements ought to be explicitly mentioned, at least in the annex; e.g. similar lists are included in Article 69 of Regulation (EC) No 44/2001 - "Brussels I Regulation")?
- What is meant by "international agreements"? Does it include only multilateral agreements or also bilateral agreements between Member States and third countries?

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<sup>1</sup> COM reservation based on strong legal doubts on the legality of such proposal. COM refers to recital 79. DK, IT, RO and UK scrutiny reservation.

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|--|--|
|  | <ul style="list-style-type: none"><li>- Should Article 89a also cover the Commission's Safe Harbour Decision?</li><li>- What do parallel regulations in other fields look like? (transitional periods; renegotiation requirement etc.)?</li><li>- Following the Regulation's entry into force, the incompatibility of bilateral arrangements with the Regulation might result in a requirement to terminate bilateral agreements. That is not expressed in this text which suggests rather the opposite.</li></ul> |
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*Article 90*  
***Evaluation***

The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Regulation. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, in particular taking account of developments in information technology and in the light of the state of progress in the information society. The reports shall be made public.

*Article 90*  
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<p style="text-align: center;"><i>Article 91</i></p> <p style="text-align: center;"><b><i>Entry into force and application</i></b></p> <p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	<p style="text-align: center;"><i>Article 91</i></p> <p style="text-align: center;"><b><i>Entry into force and application</i></b></p> <p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>
<p>2. It shall apply from [<i>two years from the date referred to in paragraph 1</i>].</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States</p>	<p>2. It shall apply from [<i>two years from the date referred to in paragraph 1</i>].</p> <p><b><i>Germany cannot assess the suitability of the final provisions until the whole consultation process has been completed. Without amendments to the Commission proposal, it would, for instance, be scarcely feasible in a transitional period of only two years to undertake a complete revision of all sector-specific data protection law in Germany and downgrade it to purely national implementing rules. Similarly, only at the end of the consultations will it be possible to clarify whether specific transitional arrangements are required for private data processors in order to maintain legally protected positions of trust.</i></b></p>

## **IRELAND**

### **Article 80 (Freedom of expression)**

Replace the words "Member State law shall ..." with "The national law of the Member State shall ...".

Firstly, this amendment will bring the text of article 80 into line with the wording of article 6.3(b); secondly, it recognises more clearly the role of case law as well as Member State legislation.

Article 80a (Access to official documents) In order to accommodate UK concerns that access should also be available to documents held by private bodies carrying out public functions, the text of recital 18 (which should probably be relocated to recital 121a) could be amended by inserting the follow before the last sentence: "This may also apply to official documents held by a private body."

### **Article 81 (Health-related data)**

- Delete the reference to point (g) in the introduction to paragraph 1;
- In subparagraph (a), replace "professional secrecy" with "professional confidentiality";
- In subparagraph (a), replace "management of health-care services" with "management of health-care systems and services";
- In subparagraph (a), delete final words "under Member State law ... or";
- In paragraph (b), delete "cross-border";
- Delete paragraph 3.

### **Article 82 (Employment context)**

In paragraph 1, after "organisation of work" insert "equality and diversity in the workplace,".

### **Article 83a (Historical purposes)**

- We favour a separate article to cover archives, as suggested by several delegations;
- In paragraph 1, delete "for a longer period than necessary for that initial purpose which does not exceed the period necessary for the sole purpose of processing for historical purposes";
- In paragraph 2, clarify the scope of the derogation from paragraph 1;
- In paragraph 4, insert 16 and 19.

### **Article 83b (Statistical purposes)**

- In paragraph 1, delete "and may be processed for those purposes for a longer period than necessary for that initial purpose";
- In paragraph 1, delete subparagraph 1(c);
- In paragraph 1, delete "individual" at the end of subparagraph (d);
- In paragraph 3, insert reference to article 19 and delete the words "and personal data are kept for a period which does not exceed the period necessary for the sole purpose of compiling statistics".

### **Article 83c (Scientific purposes)**

- In paragraph 1, delete subparagraph (c).

### **Article 84 (Secrecy obligations)**

We would prefer to refer to "professional confidentiality" rather than "professional secrecy".

## SPAIN

### Articles 83a and c

The Spanish delegation considers that the concerned articles could be simplified:

1. Both articles as currently drafted seem to be intended to create new legal basis for personal data processing in addition to those foreseen in article 6, as well as new principles beyond those already provided in art.5 The Spanish delegation has been further considering the consequences of such an approach and from our perspective this could be quite disrupting and dangerous, and it could lead to undesired consequences. Our conclusion is that there is no need for a new and separated legal basis in order to allow controllers to process personal data for archive or for scientific investigation purposes. If some parts of those articles are to be retained we should find the right wording and clarify in recitals that this is not intended to create new legal basis for personal data processing.
2. In both cases controllers should operate according to one of the legal basis already foreseen in art. 6, and general principles on personal data protection, as foreseen in chapter II as well. The idea of “derogation” as it is shaped in article 83a (2) and article 83c (2), is not necessary and could create a misunderstanding dealing with the general scope of articles 5 and 6.
3. When a controller needs to further process a set of personal data for archive and scientific purposes it must be clear that those purposes are by nature compatible with the ones that justified the primary processing and that the controller must find a legal basis among those listed in art. 6.1

- **Art. 83a Archives**

4. Concerning archives the main point should be deciding if some of the rights shined in chapter III could be restricted or derogated in favour of the public interest that in some cases is behind the archival activity<sup>1</sup>. We anticipate that our opinion is positive on this point.
5. Additionally, another point to be considered when it comes to archival activity should be if a longer or indefinite process should be allowed. Again, we anticipate that our point of view is positive.

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<sup>1</sup> When we refer to archival activity we include both public and private archives, as well as public and non public interest archives. Public interest archival activity could embrace both private and public archives.

6. That being said, the next step should be deciding which rights can be limited, how to limit them and according to which criteria should this limitation operate. And finally we should decide if those issues should or not be regulated by member state law.

7. According to our point of view the issues above mentioned under 4, 5 and 6, could be dealt within chapters II (5) and III (4,6) via an introduction of a new and third paragraph in art. 21. On the basis of this idea, we could go along with the restrictions already foreseen in art. 83a, a to c.

8. Alternatively, if the presidency could not support our position as it is expressed in the previous paragraph, we could accept the following wording:

*Article 83a*

**Derogations for processing of personal data  
for archiving purposes in the public interest**

1. **Where personal data are processed for archiving purposes carried out in the public interest as defined by pursuant to Union or Member State law, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:**
  - d) **Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;**
  - e) **Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement<sup>1</sup>;**
  - f) **Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for the archiving purposes.**

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<sup>1</sup> This provision should be more flexible dealing with the exercise of the rectification. We think that in some cases a supplementary statement could not fulfill the legitimate interest of the data subject.

2. ~~By derogation from points (b) and (c) of Article 5(1) and from Article 6(3a). Processing of personal data for archiving purposes (...) carried out in the public interest shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary subject to appropriate safeguards for the rights and freedoms of the data subject, 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, and s subject to specifications on the conditions for access to the data.~~

3. (...).

4. (...).

5. (...).

9. Finally we consider that data processing for non public interest private archives should be allowed as well, but on the basis of the general rules as provided in chapters II and III. Additionally we should stress the idea that the controller in such cases may proceed on the basis of a legitimate interest and longer processing may be possible as well provided that the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.

- **Art. 83c Processing for scientific and historical purposes**

10. Concerning article 83c we could support paragraphs 1 and 2 with the amendments provided below.

- Concerning paragraph one: As we already have an article on archives we consider that other historical purposes could be easily linked to the idea of scientific research, thus there is no need to make in this article a distinction between historical and scientific purposes.

Moreover the additional safeguards included after the expression “and according to the following conditions” are unnecessary and may give the impression that this article shrines a new and autonomous legal basis for personal data protection. There is no safeguard here that cannot be obtained from a proper interpretation of general principles from art. 5. More specifically and dealing with the safeguard under “a” it has to be taken into account that it could be too prescriptive and lead to legal uncertainty considering the different types of research to which the rule applies.

- Concerning paragraph two: We would very much prefer to replace “and” by “or”, otherwise the model leads to unnecessary and redundant burden.

11. The derogations foreseen in paragraph 3 should be included in a new paragraph in article 21.

12. Paragraph 4 is no needed and the reasons given under paragraphs 1 to 3 of this text should be taken into account.

13 In general, we should take care that article 83c does not put excessive burden for scientific activity.

### Article 83c

#### Processing for scientific and historical purposes

1. In accordance with this Regulation ~~and in particular with Article 6(1)~~, personal data may be processed for scientific *and historical* purposes, ~~including for scientific or historical research~~, provided that (...) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject ~~and according to the following conditions:~~
- ~~(a) 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; and~~
- ~~(b) the personal data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions which may affect that individual; and~~
- ~~(c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.~~

2. Personal data processed for scientific **or historical** 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 **or historical** purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests or:
- (a) the data subject has given explicit consent; or
  - (b) the data were made manifestly public by the data subject.
  - (c) (...)
3. **Where personal data are processed for scientific or historical purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:**
- d) **Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;**
  - e) **Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement<sup>1</sup>;**
  - f) **Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for scientific or historical purposes.**
4. ~~By derogation from points (b) and (c) of Article 5(1) and from Article 6(3a),~~ Processing of personal data for scientific **or historical** purposes **under the conditions referred to in paragraph 1** shall not be considered incompatible with the purpose for which the data are initially collected **and may be processed for those purposes for longer than necessary for the initial purpose.** ~~provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual and by pseudonymisation of personal data.~~
5. (...)

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<sup>1</sup> This provision should be more flexible dealing with the exercise of the rectification. We think that in some cases a supplementary statement could not fulfill the legitimate interest of the data subject.

## FRANCE

### Article 80 – Processing of personal data and freedom of expression

The French authorities are not in favour of the rewording of this Article, which still extends considerably the scope of the derogations to the proposal for a Regulation by referring to freedom of expression in general rather than activities for journalistic purposes or for the purpose of artistic or literary expression, as in the previous version. Moreover, the concepts of "derogation" and of Member States' obligation to provide for such derogations are absent from this rewording.

Moreover, in terms of legislative drafting, the suggested wording is at odds with the very spirit of the proposal insofar as it would pave the way for all kinds of similar derogations intended to safeguard other freedoms (e.g. the freedom to conduct business).

The French authorities therefore propose a return to the previous wording of Article 80, which provided for specific derogations for journalistic activities and activities for the purpose of artistic and literary expression, supplemented by the addition of a reference to Chapter VIII.

### →The French authorities therefore propose the following amendments to the wording of Article 80 (amendments in bold, in italics and underlined):

*Article 80*  
***Processing of personal data and freedom of expression***

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI, ***and*** on cooperation and consistency in Chapter VII ***and on remedies, liability and sanctions in Chapter VIII*** for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.
2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

## **Article 80a – Processing of personal data and public access to official documents**

The French authorities do not consider that this provision would create any added value; moreover, its vague wording raises more problems than it solves. The only clarification which might be made concerning the relationship between the provisions on personal data protection and national legislation in respect of access to administrative documents would be to the effect that EU and Member States' legislation must comply with the proposed Data Protection Regulation.

**→France therefore proposes that Article 80a be deleted and replaced with a new recital 121a stating that access to official documents containing personal data must be effected in compliance with this Regulation. That recital could be worded as follows (amendments in bold, in italics and underlined):**

**(121a) (new) *Personal data in official documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Union law or Member State law and in full compliance with the requirements of this Regulation.***

## **Article 81 – Processing of personal data for health-related purposes)**

On the whole, the French authorities are able to support this provision, subject to the following amendments:

- In paragraph 1, the words "*Within the limits of this Regulation*" should be **deleted**;
- In point (b) of paragraph 1, we wish to **add** a reference to "*health security, monitoring and alerts*" and to **delete** the reference to "*cross-border*" cases, insofar as serious cases which are purely national must also be able to benefit from the same derogations;

- In paragraph 2, we request the **deletion of the reference to registries** and the **addition** of a reference to "*studies conducted in the public interest in the area of public health*". On this last point, we wish to highlight the importance in quantitative terms of studies in the public interest in the area of health, which are neither official statistics nor conventional scientific studies (production of indicators, in particular of activity or quality, carrying-out of simulations, evaluations, etc.), and the implications thereof when reviewing Article 81 and also Article 83c (on this point, we refer to our written comments submitted in September 2013, which are included in particular in ST 14210/4/13 REV 4). On this subject, the French authorities have taken note of the amendment made to recital 126 and have noted the addition of a reference to "*studies conducted in the public interest in the area of public health*". However, although this addition is a step in the right direction, it does not address the problems we have raised. For this reason we uphold our request that these words be added to Article 81.
  
- In paragraph 3, we would like square brackets to be added in order to indicate that this provision is subject to a reservation pending a horizontal discussion on the delegated acts and the implementing acts.

**→The French authorities therefore propose the following amendments to the wording of Article 81 (amendments in bold, in italics and underlined), and to recitals 40, 42 and 122:**

*Article 81*  
*Processing of personal data for health-related purposes*

1. **Within the limits of this Regulation and In** accordance with points (g) and (h) of Article 9(2), (...) personal data referred to in Article 9(1) may be processed on the basis of Union law or Member State law which (...) provides for suitable and specific measures to safeguard the data subject's legitimate interests when necessary for:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy; under Member State law or rules established by national competent bodies; or

(b) reasons of public interest in the area of public health, such as **processing data for health security, monitoring and alert purposes**, protecting against **serious cross-border** threats to health or ensuring high standards of quality and safety, inter alia of medicinal products or medical devices; or **producing quality and activity indicators, or assessing public policies**.

(c) (...)

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific (...) purposes **or for studies conducted in the public interest in the area of public health, such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies**, is subject to the conditions and safeguards referred to in Articles 83a to 83c.

~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying other reasons of public interest in the area of public health as referred to in point (b) of paragraph 1, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1.~~

### **Recitals**

(40) The processing of personal data for other purposes should be allowed only 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.

### **Article 83a – Derogations for processing of personal data for archiving purposes in the public interest**

The French authorities wish to thank the Presidency for its proposed compromise, and in particular for introducing an article devoted to archiving - something on which we have continually insisted.

However, while this text constitutes an improvement in terms of the general approach, we regret the fact that the proposed article fails to address the concerns expressed by France and shared by a large number of delegations.

In the first place, we wish to make the following comments:

- the new version of the article relates solely to archives stored in the public interest, and thereby ignores other tasks such as historical research. According to the proposed wording of this article, it is difficult to know whether archives stored for the purpose of historical research ought to comply with the arrangements laid down in Article 83a or Article 83c. In order to avoid having separate arrangements depending on the archiving tasks concerned, it is proposed that paragraphs 1 and 2 should cover all tasks in unambiguous terms, as suggested by France in the alternative wording proposed in April 2013.
- We are not in favour of the wording used in paragraph 1 ("*subject to appropriate measures to safeguard the rights and freedoms of the data subject*"), which is so wide in scope and - in particular - so lacking in precision that it poses serious problems in terms of implementation, especially in the context of a regulation. This wording could even be interpreted in such a way as to risk nullifying the relationship between the arrangements applicable to archives and the rules relating to personal data - the very thing this article is meant to safeguard.
- Regarding point (a) of paragraph 1, we would point out that archives ought to benefit from a derogation from the whole of Article 14a given the impossibility in practice of contacting the persons whose personal data are stored in archives. Moreover, there are several references which are irrelevant to archives, such as that concerning the rectification or erasure of data. Likewise, we are opposed to limiting the cases in which such a derogation would be permitted. The very principle underlying the collection of archive data, which is not an original collection of data, means that Article 14a would be impossible to implement, or would at least involve a disproportionate effort. We would therefore stress that it would be preferable to state clearly that Article 14a does not apply to all types of processing for archiving purposes.
- With regard to point (b), while we support derogation from Article 16, we are not in favour of the restriction added to this point reintroducing the principle of rectification in certain cases which are, moreover, difficult to understand; such a restriction is directly at odds with one of the main tasks of archives, which is to ensure authenticity.
- Regarding point (c), we support the principle of providing for derogations from Articles 17, 17a and 18. However, we are decidedly against the restriction proposed in the text. Article 17, for example (concerning the right to be forgotten and to erasure) in principle runs counter to the primary role of archiving services, which is to store records.
- We would also point out the need for other derogations in order to ensure proper symmetry between the archiving arrangements and the rules relating to personal data. That is why we had requested derogations for other articles, namely Article 5(1)(d), Article 9, Article 15, Article 17b, Article 19, Article 23, Article 32, Article 33 and Article 53(1b)(d) and (e).
- Regarding Article 38, in our written contribution submitted in April 2013, we had proposed a paragraph dealing with the same subject but tailored more closely to archives. By way of a compromise, and subject to the relevant adjustments being made to Article 38, we could agree to no derogation being accorded in respect of that article.

- As far as paragraph 2 is concerned, we would like to thank the Presidency for proposing that it be dovetailed with Article 5 on "Principles relating to personal data processing".
- However, we wish to draw attention to the following problems:
  - o The notion of derogation does not seem appropriate, particularly for point (b) of Article 5(1), in that the primary task of archives is to store data and hence the notion of storage is not an option but an obligation for archive services. We therefore call for the word "may" to be replaced by the word "shall".
  - o Once again, we would point out that we are opposed to the phrase "*subject to appropriate safeguards for the rights and freedoms of the data subject, 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*", for the reasons already mentioned and also because the tasks of archive services would be unduly circumscribed. With regard to the latter point, one of the purposes of archives is in fact to "provide proof of the rights of natural or legal persons, be they public or private" (Article L 211-2 of the Heritage Code (*Code du Patrimoine*)). This selfsame objective has also been emphasised by other delegations. We welcome the fact that the Presidency has attempted to clarify the rules regarding right of access, but there appears to be some confusion between the notion of processing - which is the subject of the paragraph - and the notion of access to the documents that are stored. On this point we would therefore draw attention once again to our proposal to add a new paragraph 3 specifying that: "*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.*"

### **Regarding new recital 125a**

We wish to reiterate the concerns already expressed in connection with Article 83a. We **therefore enter a reservation** in respect of this recital pending the changes requested for Article 83a.

**→The French authorities therefore propose the following amendments to the wording of Articles 5, 9, 19 and 83a (amendments in bold, in italics and underlined):**

*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, ***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, 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 solely for historical, statistical or scientific purposes in accordance with the conditions of ***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**

**Derogations for 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 point (d) of Article 5, Articles 9, 14a, 15, 16, 17, 17a, 17b, 18, 19, 23, 32, 33 and 38 and points (f) and (g) of Article 53(1).**

**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**

France wishes to thank the Presidency for the clarification provided by the new wording of Article 83b, which makes it clear that the article applies only to public statistics, and for the changes made to recital 124b incorporating the proposals we put forward previously.

We would nevertheless point out that we maintain our **reservation** regarding 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. However, footnote 176 would appear to indicate the opposite and prohibit any derogation for the processing of data for statistical purposes. We would therefore prefer to see this derogation reinstated.

We also wish to stress that we are opposed to the wording of point (b) of Article 83b(1), insofar as the notion of data being "kept separately" is too vague as it currently stands: what kind of separation is entailed? Does this involve another data base or rather a form of physical separation whereby the data must be stored in another place or on another server? Moreover, the notion of data being kept separately does not necessarily mean that a given individual will be unable to access data stored in different places. In any case, this measure already seems to be included in the more general wording of point (d) on appropriate safeguards. We therefore request that point (b) be deleted.

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

**→The French authorities therefore propose the following amendments to the wording of Article 83b (amendments in bold, in italics and underlined) :**

**Article 83b**

**Processing of personal data for statistical purposes**

2. Personal data may be processed for statistical purposes carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law and **such processing** shall not be considered incompatible with the purpose for which the data are initially collected. **These data** may be processed for those purposes for a longer period than necessary for that initial purpose, provided that:
  - (a) **these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit 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) **the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual ;**  
**and**
  - (d) that the controller provides appropriate safeguards for the rights and freedoms of the data subject individual.
3. 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.
4. 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 and historical purposes

### Recital 111

The French authorities are opposed to the new content of this article which now combines processing of data for scientific purposes and processing of data for historical purposes.

We agree with the Presidency's proposal that there should be an article dealing with processing of data for historical purposes in addition to Article 83a on processing of data for archiving purposes. However, we believe that a new article specifically dealing with historical data is needed in order to provide for derogations for the processing of such data. Without such an article, there is a risk that the consultation of archives by, say, readers who have no links with research institutions would not be taken into account. Moreover, the current provisions of Article 83c pose particular difficulties with regard to the processing of data for the purposes of historical research, thereby justifying the creation of a specific article for the processing of such data.

Regarding point (a) of Article 83c(1), it is difficult to see how "identifying" data (name, date of birth, etc.) could be separated in the case of processing for historical purposes; moreover, the French authorities are opposed to the addition of "and by pseudonymisation"in paragraph 4 as this would make contemporary research impossible. More generally, this paragraph is problematic in terms of how it fits in with the rest of the article, since this provision adds a condition that does not apply to, and is inconsistent with, the previous points.

The French authorities therefore take the view that Article 83c should only cover processing of data for scientific purposes and public studies, as we have proposed in our previous contributions, and that a new article dealing specifically with the processing of data for historical purposes should be introduced into Chapter IX. We **therefore enter a reservation** in respect of recital 111 pending drafting changes to the relevant articles, and we refer to the alternative wording we have proposed for Article 83c:

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.

(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.

## ITALY

125a) **The protection of personal data should take into account** 'the importance of archives for the understanding of the history and culture of Europe" and "that well-kept and accessible archives contribute to the democratic function of our societies', **as underlined** by Council Resolution of 6 May 2003 on archives in the Member States<sup>1</sup>. **Where personal data are processed for archiving purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing** ~~bearing in mind that this Regulation should not apply to deceased persons.~~<sup>2</sup> **To meet the specificities of processing personal data for archiving** is carried out by public (...) or **private bodies in the public interest** pursuant to Union or Member State law (...). **Member States should have the possibility to provide for specification of and/or derogations from certain rules of the Regulation.**

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<sup>1</sup> OJ C 113, 13.5.2003, p. 2.

<sup>2</sup> We do not support this exclusion. We would suggest deleting this text here and re-drafting the text of Recital 23 to clarify that whilst deceased persons are not entitled per se to the protection afforded by the Regulation, their rights (including rectification, deletion, etc) may be exercised by entities having vested interests therein or where the processing of their data is necessary to uphold other individuals' interests (in particular family members of the deceased) deserving protection. See a recent judgment by the ECHR: Putistin v. Ukraine, 16882/03.

**Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and ~~on~~ the right to portability, and should have the possibility to determine that rectification may be exercised according to mechanisms that can allow distinguishing between the original data and information added subsequently, for example<sup>1</sup> a supplementary statement. Public authorities or public or private 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 public interest. Where personal data are collected or otherwise processed for other purposes, processing of personal data for archiving purposes in the public interest should not be considered incompatible with the purpose for which the data are initially collected or processed and may be processed for longer than necessary for that initial purpose subject to appropriate safeguards<sup>2</sup>. Member States should also have the possibility to provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest, such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.**

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<sup>1</sup> This text is meant to clarify what is the rationale behind the “supplementary statement”. This section should be postponed, as the principle of non-incompatibility should be laid down first (by departing from the principles set out in Articles 5 and 6) and the rules applying specifically to processing for archiving purposes could then follow. See also comments on Article 83a.

<sup>2</sup> In line with Article 83a, paragraph 2.

**The processing of personal data for archiving purposes in the public interest should be subject to appropriate measures to safeguard the rights and freedoms of the data subject, including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons. Codes of conduct may contribute to the proper application of this Regulation, taking into account the specific features of data processing for archiving purposes in the public interest. Such codes of conducts should in particular specify appropriate safeguards for the rights and freedoms of the data subject.**

- 111) **Where<sup>1</sup> personal data are processed for scientific purposes or historical purposes<sup>2</sup>, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing.** For the purposes of this Regulation, processing of personal data for scientific purposes should include fundamental research, applied research, and privately funded research 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. Scientific purposes should also include studies conducted in the public interest in the area of public health. Historical purposes should also include historical research and research for genealogical purposes bearing in mind that this Regulation should not apply to deceased persons.<sup>3</sup> Codes of conduct may contribute to the proper application of this Regulation taking into account the specific features of data processing for scientific or historical purposes.

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<sup>1</sup> Should not it be Recital 125? As already pointed out, we do not think it appropriate to merge these two types of processing. The processing for historical purposes is inherently different from that for scientific purposes –if nothing, because the data minimization principle cannot be applicable to historical research (historians do need to name people, whether living or deceased), whilst it does apply in full to scientific and statistical research where the use of personal data should be residual. This is why we will propose splitting Article 83 c into two separate Articles.

<sup>2</sup> As already pointed out, we do not think it appropriate to merge these two types of processing. The processing for historical purposes is inherently different from that for scientific purposes –if nothing, because the data minimization principle cannot be applicable to historical research (historians do need to name people, whether living or deceased), whilst it does apply in full to scientific and statistical research where the use of personal data should be residual. This is why we will propose splitting Article 83 c into two separate Articles.

<sup>3</sup> See above comments.

To meet the specificities of processing personal data for scientific purposes or historical purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific or historical purposes. Member States should have the possibility to provide for derogations from certain rules of the Regulation. Where<sup>1</sup> personal data are collected or otherwise processed for other purposes, processing of personal data for scientific purposes or historical purposes should not be considered incompatible with the purpose for which the data are initially collected or processed and may be processed for a longer period than necessary for that initial purpose subject to appropriate safeguards. Member States should have the possibility to provide for derogations from certain rules of the Regulation. Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, and should have the possibility to determine that rectification may be exercised exclusively to the provision of a supplementary statement.<sup>2</sup> The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject. In particular the controller should ensure that the data are not used for taking measures or decisions which might affect particular individuals. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of that processing. To meet the specificities of processing personal data for scientific purposes or historical purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific or historical purposes without prejudice to, in particular, freedom of expression.<sup>3</sup>

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<sup>1</sup> Should not it be Recital 125?

<sup>2</sup> This would seem inappropriate especially in the context of processing for scientific purposes. See above considerations on the advisability of splitting Article 83c into two separate Articles on processing for scientific and historical purposes, respectively.

<sup>3</sup> We think it is appropriate to recall that a balance should be struck (on a case by case basis) between right to data protection and freedom of expression in limiting the right to publish personal information.

*Article 83a*

**~~Derogations for processing~~ Processing of personal data<sup>1</sup>  
for archiving purposes in the public interest<sup>2</sup>**

1. **Where personal data are processed for archiving purposes carried out in the public interest pursuant to Union or Member State law, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:**
  - a) **Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort compared to the data subject's right<sup>3</sup> or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;**
  - b) **Article 16 insofar as rectification may be exercised according to mechanisms that can allow distinguishing between the original data and information added subsequently, for example<sup>4</sup> by including a supplementary statement;**
  - c) **Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment of the archiving purposes.**

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<sup>1</sup> We consider this heading of the Article to more correctly mirror its contents.

<sup>2</sup> We think this article (and all other Articles in this group: 83a b c) should start by first laying down the non-incompatibility of processing for the relevant purposes (by departing from Articles 5 and 6), and then set out the principles applying to processing for the specific purposes. So paragraph 2 should precede paragraph 1 in our view.

<sup>3</sup> We consider it necessary to clarify what is the standard against which the “disproportionateness” of the effort is to be gauged.

<sup>4</sup> See comment on Recital 125a.

2. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for archiving purposes (...) carried out in the public interest pursuant to Union or Member State law<sup>1</sup> shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary for the initial purpose **subject to** appropriate safeguards for the rights and freedoms of **the** data subject, 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, and **subject to** specifications on the conditions for access to the data.
3. (...).
4. (...).
5. (...).

Regarding Article 83c, and as already clarified (see IT delegation's comments sent in early January on these Articles), we think that processing for scientific purposes should be kept separate from processing for historical purposes. Whilst these two types of processing share the circumstance of being non-incompatible with the original processing (in case of second-level processing) and requiring specific safeguards in this regard, the principles applying to scientific processing per se (especially data minimization, as mirrored by the possibility to require the use of pseudonymised data or restrict publication of personal data) do not apply to the same extent (or at all) to processing for historical purposes. Historical research, in particular, does need to name living or deceased individuals and may not be (reasonably) carried out with the help of pseudonymised information. This is why we are proposing to split Article 83 c into two separate Articles that better mirror (in our view) the specificities of the processing operations involved respectively.

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<sup>1</sup> To ensure consistency with paragraph 1.

Article 83c

Processing of personal data for historical purposes

1. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for historical purposes under the conditions shall not be considered incompatible with the purpose for which the data are initially collected and the personal data in question may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions negatively affecting any particular individual.
2. Where personal data are processed for historical purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
  - a) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort compared to the data subject's right or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
  - b) Article 16 insofar as rectification may be exercised according to mechanisms that can allow distinguishing between the original data and information added subsequently, for example by including a supplementary statement;
  - c) Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment of historical purposes.

Article 83d 83e

Processing for scientific and historical purposes

1. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected **and may be processed for those purposes for longer than necessary for the initial purpose**, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions negatively affecting any particular individual; such measures may include, where appropriate under the circumstances of the processing, **pseudonymisation of personal data.**
  
2. In accordance with this Regulation and in particular with Article 6(1), personal data may be processed for scientific and historical purposes, **including for scientific or historical research**, provided that (...) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject **and according to the following conditions:**
  - (a) 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; **and**
  - (b) the **personal** data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions **which may affect** that individual; and
  - (c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.
  
3. Where personal data are processed for scientific purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
  - a) Article 14a(1) and (2) where and insofar as the provision of such information **proves impossible or would involve a disproportionate effort compared to the data subject's right or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;**

**b) Article 16 insofar as rectification may be exercised according to mechanisms that can allow distinguishing between the original data and information added subsequently, for example by including a supplementary statement;**

**c) Articles 15, 16, 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment of scientific purposes.**

4. Personal data processed for scientific ~~or historical~~ 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 ~~or historical~~ 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 manifestly public by the data subject.

(c) (...)

5. (...)

## LATVIA

Latvia would like to include the following changes in wording of Article 83b Paragraph 2a and Article 83b Paragraph 3 to explicitly state that the derogations that are included in the aforementioned paragraphs are applicable to data processing for statistical purposes.

The changes in wording would be as written in bold underlined text:

1) in Article 83b Paragraph 2a:

*„Articles 15 and 16 shall not apply where and insofar as, ~~for processing~~ **the data are processed** for statistical purposes, it proves impossible or would involve a disproportionate effort for the controller to grant access to, or rectification of, the personal data.”*

2) in Article 83b Paragraph 3:

*„Articles 17, 17a, and 18 shall not apply when and insofar as ~~such restriction is necessary for the fulfilment of statistical purposes~~ **the data are processed for statistical purposes** and 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 measures to safeguard the rights and freedoms of the data subjects, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.”*

But still we would like to inform you on our scrutiny process in capital thus we will inform you in the nearest future on the results of possibility to recall our scrutiny reservations.

## THE NETHERLANDS

125a) **The protection of personal data should take into account** 'the importance of archives for the understanding of the history and culture of Europe' and "that well-kept and accessible archives contribute to the democratic function of our societies', **as underlined** by Council Resolution of 6 May 2003 on archives in the Member States<sup>1</sup>. **Where personal data are processed for archiving purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. To meet the specificities of processing personal data for archiving** is carried out by public (...) or private bodies in the public interest pursuant to Union or Member State law (...). **Member States should have the possibility to provide for specification of and/or derogations from certain rules of the Regulation. Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, and should have the possibility to determine that rectification may be exercised exclusively to the provision of a supplementary statement.** Public authorities or public or private 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 public interest. **Where personal data are collected for other purposes, processing of personal data for archiving purposes in the public interest should not be considered incompatible with the purpose for which the data are initially collected and may be processed for longer than necessary for that initial purpose. Member States should also have the possibility to provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest, such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.**

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<sup>1</sup> OJ C 113, 13.5.2003, p. 2.

**The processing of personal data for archiving purposes in the public interest should be subject to appropriate measures to safeguard the rights and freedoms of the data subject, including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons. Codes of conduct may contribute to the proper application of this Regulation, taking into account the specific features of data processing for archiving purposes in the public interest. Such codes of conducts should in particular specify appropriate safeguards for the rights and freedoms of the data subject.**

**(...) 126) Where personal data are processed for scientific purposes or historical purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing.** For the purposes of this Regulation, processing of personal data for **historical and** scientific purposes should include fundamental research, applied research, and privately funded research 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. Scientific purposes should also include studies conducted in the public interest in the area of public health. Historical purposes should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.

**To meet the specificities of processing personal data for scientific purposes or historical purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific or historical purposes. Member States should have the possibility to provide for derogations from certain rules of the Regulation. Where personal data are collected for other purposes, processing of personal data for scientific or historical purposes should not be considered incompatible with the purpose for which the data are initially collected and may be processed for a longer period than necessary for that initial purpose. Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, and should have the possibility to determine that rectification may be exercised exclusively to the provision of a supplementary statement. The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject. In particular the controller should ensure that the data are not used for taking measures or decisions which might affect particular individuals. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of that processing.**

*Article 83a*

***Derogations for processing of personal data  
for archiving purposes in the public interest***

- 1. Where personal data are processed for archiving purposes carried out by public authorities or bodies or private bodies in the public interest pursuant to Union or Member State law, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:**
  - a) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;**

- b) Article 15 where and insofar this is necessary for important reasons of public interest designated by Union or Member State law<sup>1</sup>;
- c) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;
- d) Articles 17, 17a, and 18 and 19 insofar as such restriction is necessary for the fulfilment for the archiving purposes.

2. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for archiving purposes (...) carried out in the public interest shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary<sup>2</sup> subject to appropriate safeguards for the rights and freedoms of the data subject, 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, and s subject to specifications on the conditions for access to the data.

3. (...).

4. (...).

5. (...).

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<sup>1</sup> NL holds that existing limitations of the right of access in national law are fully compliant with Articles 8 and 52 CFR. Member States should be allowed to restrict the right of access in cases important reasons of public interest.

<sup>2</sup> Since archiving for public interests is normally not bound by time limits, the processing of personal data for archiving purposes should not be associated with time limits.

Article 83c

Processing for scientific and historical purposes

1. Where ~~In accordance with this Regulation and in particular with Article 6(1)~~ personal data ~~are~~ may be processed for scientific ~~and or historical~~ purposes, **including for scientific or historical research**, provided that (...) **and, when appropriate for the specific purpose or purposes**<sup>1</sup>, these purposes cannot be **reasonably be** otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject, ~~and~~ **according to the following conditions apply**;

(a) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information, **if this is appropriate for the specific purpose or specific purposes**<sup>2</sup>, and as long as these purposes can be fulfilled in this manner; **and**

(b) the **personal** data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions **which may affect** that individual;

and

(c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.

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<sup>1</sup> NL holds that Art. 83c of the Regulation should be limited to regulating specific conditions for the processing of personal data for historical and scientific purposes instead of limiting the possibility or power to process data for historical and scientific purposes altogether, since this would be problematic in relation to the freedom of expression and the freedom of academic research (art. 13 CFR).

<sup>2</sup> NL thinks suggestion that all processing of personal data for historical or scientific research warrants complete separation between identifying data and aggregated data should be avoided.

2. When ~~Personal~~ personal data processed for scientific or historical purposes are ~~may be~~ published or otherwise publicly disclosed by the controller, the controller shall take into account whether publication or disclosure<sup>1</sup> only if the publication of personal data is necessary to present scientific findings or to facilitate scientific or historical purposes and if so, appropriate safeguards to protect insofar as the interest or the rights or freedoms of the data subject are met ~~do not override these interests and unless:~~
- (a) the data subject has given explicit consent; or
  - (b) the data were made manifestly public by the data subject.
  - (c) (...)
3. Where personal data are processed for scientific or historical purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
- a) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
  - b) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;
  - c) Articles 17, 17a, 1 and 18 19 insofar as such restriction is necessary for the fulfilment for scientific or historical purposes.

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<sup>1</sup> It should be left to the data controller to strike a proper balance between the interests served by publication or disclosure and the adoption of safeguards to protect personal data. Furthermore, NL wants to avoid possible problems in relation to the freedom of expression and the freedom of academic research.

4. **By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific or historical purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller complies with the conditions referred to in Paragraph 1<sup>12</sup>. implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual and by pseudonymisation of personal data.**

5. (...)

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<sup>1</sup> Clarification of the text.

<sup>2</sup> NL thinks that either an express provision or a recital is necessary to cover the continuous use of all data processed pursuant to Directive 95/46/EC prior to the entry into force of this Regulation. NL proposes to address this question when Chapter XI will be discussed.

## POLAND

### Articles 83 a and 83 c

#### **General comment:**

- *PL favours a separate article to cover archives and an article combining scientific and historical purposes.*

125a) The protection of personal data should take into account 'the importance of archives for the understanding of the history and culture of Europe' and "that well-kept and accessible archives contribute to the democratic function of our societies', as underlined by Council Resolution of 6 May 2003 on archives in the Member States . Where personal data are processed for archiving purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. To meet the specificities of processing personal data for archiving is carried out by public (...) or private bodies in the public interest pursuant to Union or Member State law (...). Member States should have the possibility to provide for specification of and/or derogations from certain rules of the Regulation. Member States should **have the possibility to** provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, and **should have the possibility to** determine that rectification may be exercised exclusively to the provision of a supplementary statement. Public authorities or public or private 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 public interest. Where personal data are collected for other purposes, processing of personal data for archiving purposes in the public interest should not be considered incompatible with the purpose for which the data are initially collected and may be processed for longer than necessary for that initial purpose. Member States should also have the possibility to provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest, such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.

The processing of personal data for archiving purposes in the public interest should be subject to appropriate measures to safeguard the rights and freedoms of the data subject, including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons. Codes of conduct may contribute to the proper application of this Regulation, taking into account the specific features of data processing for archiving purposes in the public interest. Such codes of conducts should in particular specify appropriate safeguards for the rights and freedoms of the data subject.

**Comment:**

- *PL is for greater consistency and the uniform application of the derogations in all Member States would lead to greater harmonisation. Therefore the derogations should be mandatory.*

112) Where personal data are processed for scientific purposes or historical purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing. For the purposes of this Regulation, processing of personal data for scientific purposes should include fundamental research, applied research, **and including** privately funded research, 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. Scientific purposes should also include studies conducted in the public interest in the area of public health. Historical purposes should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.

***Comment:***

- *Types of research (fundamental research and applied research) and the source of funding for research are not disjointed notions.*

To meet the specificities of processing personal data for scientific purposes or historical purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific or historical purposes. Member States should have the possibility to provide for derogations from certain rules of the Regulation. Where personal data are collected for other purposes, processing of personal data for scientific purposes or historical purposes should not be considered incompatible with the purpose for which the data are initially collected and may be processed for a longer period than necessary for that initial purpose. Member States should ~~have the possibility to~~ provide, under specific conditions, for restrictions to the information requirements and the rights to erasure, restriction of processing and on the right to portability, ~~and should have the possibility to determine that rectification may be exercised exclusively to the provision of a supplementary statement~~. The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject. In particular the controller should ensure that the data are not used for taking measures or decisions which might affect particular individuals. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of that processing.

***Comment:***

- *PL is for greater consistency and the uniform application of the derogations in all Member States would lead to greater harmonisation. Therefore the derogations should be mandatory.*

*Article 83a*

***Derogations for Processing of personal data  
for archiving purposes in the public interest***

6. Where personal data are processed for archiving purposes carried out in the public interest pursuant to Union or Member State law, Member State law **may shall**, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
- g) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
  - h) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;
  - i) Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for the archiving purposes.

**Comment:**

- *PL is for greater consistency and the uniform application of the derogations in all Member States would lead to greater harmonisation. Therefore the derogations should be mandatory.*

7. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for archiving purposes (...) carried out in the public interest shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary subject to appropriate safeguards for the rights and freedoms of the data subject, 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**, and subject to specifications on the conditions for access to the data.

**Comment:**

- 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.

***Article 83c***

***Processing of personal data for scientific and historical purposes***

1. In accordance with this Regulation ~~and in particular with Article 6(1)~~, personal data may be processed for scientific *and historical* purposes, including for scientific or historical research, provided that (...) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject and according to the following conditions;
  - (a) 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; and
  - (b) the personal data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions which may affect that individual; and
  - (c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.
2. Personal data processed for scientific or historical 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 or historical 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 manifestly public by the data subject; **or**
  - (c) **(...)the publication of personal data is necessary to present scientific findings or to facilitate scientific or historical purposes insofar as the interests or the rights or freedoms of the data subject do not override these interests**

**Comments:**

- Article 83 c para 1 – the term “in accordance with the regulation” should be sufficient and we do not see the need of pointing out of art. 6.
- Article 83 c para 2 - the wording proposed by the PRES would lead to excessive restriction of the freedom to conduct of scientific research

3. Where personal data are processed for scientific or historical purposes, Member State law **may shall**, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
- g) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
  - ~~h) **Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;**~~
  - i) Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfilment for scientific or historical purposes.
4. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific or historical purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual and by pseudonymisation of personal data.

**Comment:**

- *Article 83c para. 3 - PL is for greater consistency and the uniform application of the derogations in all Member States would lead to greater harmonisation. Therefore the derogations should be mandatory.*

*Article 83c para. 3 point (b) - PL does not see the need for derogation for Article 16 for processing of personal data for historical and scientific purposes. This derogation is only justified in case of data processing for archival purposes as the right to rectification of data stored in archives would hinder their reliability and authenticity. There is no such a risk with respect to scientific and historical purposes – on the contrary in these cases the data subject should have the right to rectify her or his data according to Article 16, as basing research on incorrect data is detrimental to its value.*

## PORTUGAL

A proposal for the wording of Article 83b/1:

### Article 83b

#### Processing of personal data for statistical purposes

- 1.
2. **Within the limits of this Regulation, personal data may be processed for statistical purposes carried out by public authorities or public bodies performing tasks of official statistics in the public interest pursuant to Union or Member State law and shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose, provided that these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject, and according to the following conditions:**
  - ~~(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit 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) the data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions with respect to that individual; and**
  - (d) that the controller provides appropriate safeguards for the rights and freedoms of the data subject individual**

## ROMANIA

RO agrees with the formulation of **art. 80, 80a and 80b**.

### **Art. 81 – Processing of personal data for health -related purposes**

1. Within the limits of this Regulation and in accordance with points **(g) and** (h) of Article 9(2), (...) personal data **referred to in Article 9(1) may be processed** on the basis of Union law or Member State law which (...) provides for suitable and specific measures to safeguard the data subject's legitimate interests **when** necessary for:
- (a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy **under Union or Member State law or rules established by national competent bodies to the obligation of professional secrecy or by** another person also subject to an equivalent obligation of **secrecy**; under Member State law or rules established by national competent bodies;

For legal and linguistic clarity we propose to reformulate the text of the paragraph 1, point (a) as follows:

- (a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies ~~to the obligation in the field~~ of professional secrecy, or by another person also subject to an equivalent obligation of secrecy under **professional secrecy rules stated in Union or Member State law or rules** established by national competent bodies.

## Art. 82 - Processing in the employment context

### Paragraph (2)

2. *Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them*

RO would like to draw the attention about the fact that there are many other articles in the text of the regulation similar to art 82 (2) on which it hasn't been established an obligation to notify COM on the provisions that the MS adopt.

In this sense, we indicate the provisions of Art.53, Art.44 par.5, Art.17 par.3, b, Art.6 par.3, point.b), Art.79b par (3). We consider that for this provisions a uniform approach should be established.

The same observations could be made also for art. 84 par (2).

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

### Paragraph 1

RO proposes to redraft Article 83a paragraph 1 as follows:

- (1) Within the limits of this Regulation, processing of personal data for historical purposes in archives carried out by public authorities or public bodies pursuant to Union or Member State law, ***including the processing carried out by public institutions managing the files issued or elaborated by the totalitarian regimes***, and shall not be considered incompatible with the purpose for which the data are initially collected ...etc”.

In this context, we 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.

To avoid iteration of traumatic episodes or public debates with long term implications, after 1990, the authorities in Central and Eastern Europe decided that victims of totalitarian regimes, as well as their inheritors, such as citizens who have suffered from a moral or material point of view and their, should be able to document about their memory and breach of their fundamental rights, 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 out based on national legislation and respecting the current European legal framework, regarding the processing of personal data.

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

### **Paragraph 1**

1. *Within the limits of this Regulation, processing of personal data for historical purposes in archives carried out by public authorities or public bodies pursuant to Union or Member State law (...)*

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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.

RO would like to point out that the text refers only to processing by *public authorities or public bodies*, contrary to the provision of 95/46/EC Directive (art. 6(1)) which applies to all categories of controllers.

RO proposes that the art 83a be applied to **all controllers, not only public authorities and bodies.**

**Art. 83c alin.(2) lit.c)**

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:

(...)

**(c) the publication or other public disclosure 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.**

RO considers the texts of paragraph 2 and letter c) of the same paragraph are very similar in formulation. In this respect, we propose deletion of letter c) or reevaluation of the text.

**Art. 84 alin.(2) - Obligations of secrecy**

**Same observations as art 82**

## **SLOVAKIA**

### **Article 80**

The Slovak Republic is leaning towards the opinion of the Czech Republic which states that the issue of balance between the rights of the data protection and the freedom of speech cannot be objectively resolved by integrating it into the text of the regulation and conflict resolution of these two rights should be left to each particular national court. The Slovak Republic believes that the addressing the relationship between these two rights in the text of the Regulation is potentially harming and could lead to application of one rights at the expense of the other. We also support opinion of the Portugal which states that the balancing of two basic rights which are in conflict takes place on the daily basis in the everyday life and the specific adjustment of this matter in the Regulation is not needed.

### **Article 80a**

The Slovak Republic does not have any substantial comment towards this article.

### **Article 80b**

This article is acceptable for the Slovak Republic in its current form.

### **Articles 81, 82, 82a**

The Slovak Republic applies scrutiny reservation towards these articles.

### **Art. 83a and corresponding recitals**

SK does not agree with general exclusion of the processing of personal data of deceased persons from the scope of the Regulation and similarly as MT we believe that the text of the Regulation proposal should include some categories of personal data of deceased persons since this data often are also personal data of the living persons. The legislation of SK grants legal protection also to personal data of deceased persons, which is regulated directly by our national PDP Act in the form of the right to raise objection to the processing of personal data of deceased persons which may be exercised by close relatives of the deceased person. The aim of these provisions is not to limit the processing of personal data of deceased persons in the extent of historical, scientific or statistical purposes, but to provide close relatives (such as spouses, children, parents, etc.) with the right to protect this personal data similarly as it is recognised in the protection of personality as it is recognised by the civil law.

We are however opened to a compromise which would regulate processing of personal data of deceased persons only within some sensitive categories such as medical data, genetic or biometric data, etc.

We also support the proposition of MT on elaboration of recital which would regulate that the Regulation should not apply to deceased persons only in those cases, where personal data of deceased persons do not include data from sensitive categories of personal data and processing of such data does not violate rights of other persons, mainly their close relatives.

The wording of such provision should read as follows: „*This Regulation should not apply to deceased persons unless the data under Article 4 (10) to (12) are being processed or the processing of personal data of deceased persons violates rights and legitimate interests protected by law of close relatives of deceased persons*“.

SK also welcomes the elaborations of the independent article regulating exceptions of personal data processing in archives. We do however agree with BE, ES, AT and others which expressed the need to include archives which process personal data for private purposes, not only in the public interest in the wording of the Art. 83a (1) and (2) by deleting the expression “*in the public interest*”.

We also support the proposition of SI to invite experts from the areas, which are affected by the provisions of the proposal for the Regulation.

### **Art. 83c**

SK would like to join IE, FR, MT, CZ, PT, RO, ES, UK, NL, and SE which expressed the need to divide this article into two individual articles regulating personal data processing on historical and scientific purposes separately. We believe that current wording has the ability to restrict the scientific work.

### **Articles 84 and 85**

The Slovak Republic has no substantial comments.

### **General comment regarding the Chapter IX**

The Slovak Republic joins those member states which expressed their reservation towards the use of the term “within the limits of this Regulation” in the whole text of this chapter. We believe this particular term is redundant and has no additional value therefore we request its deletion from the whole Chapter IX.

## FINLAND

### Comments on Article 80(a)

FI welcomes this new Article. FI can also support IE's written proposal. IE proposed that to accommodate UK concerns that access should also be available to documents held by private bodies carrying out public functions, the text of recital 18 could be amended by inserting the following sentence before the last sentence: "This may also apply to official documents held by a private body."

### Comments on Article 83(a)

Following text from the recital 125(a) should be moved to Article 83(a) "Member states can provide that personal data processed for archiving purposes in the public interest may be further processed in exceptional cases for important reasons of public interest".

The need for archiving in the private sector has not been fully addressed in this Article.

The words "for those purposes for longer than necessary" should be deleted or alternatively it should say "for longer than necessary for the initial purpose".

### Comments on Article 83(c)

In the most recent Presidency paper it is suggested that when processing personal data for scientific purposes in such cases where the initial purpose has been something else, personal data should be pseudonymised. (Art. 83(c)(4)). FI would prefer the earlier formulation in document 17831/13, which leaves more margin for the processor. This might be necessary for example in such cases where the research relates to cancer cells or hereditary disease. Furthermore, as regards para 4, it is not clear to us, what is the relation between reference to Article 5(1)(e) and the requirement of pseudonymisation. Another unclear point is the relation between Article 1(a) and pseudonymisation in para 4. The Article does not seem easy to read as it stands now.

It should be specified that consent is not needed when the research is based on large scale population studies. However, this possibility should be narrowly defined and be limited to strictly necessary cases. See the drafting proposal.

Furthermore, FI sees that historic purposes could be differentiated from the scientific research Article as proposed by some delegations. However, it should not be incorporated with Article 83(c) as previously suggested. Archiving purposes might have other than historical purposes. Furthermore, recital 126 (111 in document 5331/14) has reference to genealogical purposes. This reference should be maintained and it should be functional with the historical research Article.

As earlier noted, processing of personal data for scientific and statistical purposes are often overlapping. Sometimes the same data bases are used for both of these purposes. At the moment Article 83(b) regarding the processing of personal data for statistical purposes mentions Article 15 as one of the derogation Articles. However, this is not the case as regards Article 83(c). Different rules in these two Articles and in this situation is likely to add administrative burden.

### *Article 83c Processing for scientific and historical purposes*

1. **In accordance with** this Regulation **and in particular with Article 6(1)**<sup>1</sup>, personal data may be processed for scientific *and historical* purposes, **including for scientific or historical research**, provided that (...) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject **and according to the following conditions**;

- (a) 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; **and**
- (b) the **personal** data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions **which may affect** that individual; and
- (c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.

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<sup>1</sup> This reference to Article 6 should be removed.

2. Personal data processed for scientific **or historical** 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 **or historical** 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 manifestly public by the data subject.
- (c) (...)

3. **Where personal data are processed for scientific or historical purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:**

**a) Article 14a(1) and (2) where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;**

**b) Article 16 insofar as rectification may be exercised exclusively by the provision of a supplementary statement;**

**c) Articles 17, 17a, and 18 insofar as such restriction is necessary for the fulfillment for scientific or historical purposes.**

**d) Article 6(1a) insofar as such restriction is strictly necessary for conducting large scale population studies of important public interest related to social welfare or national health**

4. **By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific or historical purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose, provided that the controller implements appropriate safeguards for the rights and freedoms of data subjects, in particular (...) that the data are not processed for any other purposes or used in support of measures or decisions affecting any particular individual and by pseudonymisation of personal data.**

**5. (...)**

## SWEDEN

### **Introduction**

The Presidency has invited delegations to send in written comments on articles 83a and 83c of the proposal for a General Data Protection Regulation (doc. 5331/14). Sweden presents in this paper some comments and proposals for amendments, in addition to those already put forward at the meetings of the working party.

We would like to underline that the comments and proposals are preliminary and that we maintain a general scrutiny reservation.

**Bold underlined** indicate proposed new text.

- **Recitals**

125a). The protection of personal data should take into account ‘the importance of archives for the understanding of the history and culture of Europe’ and ‘that well-kept and accessible archives contribute to the democratic function of our societies’, as underlined by Council Resolution of 6 May 2003 on archives in the Member States<sup>1</sup>. Where personal data are processed for archiving purposes, the general principles on the protection of individuals with regard to the processing of personal data and the other rules of this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. To meet the specificities of processing personal data for archiving is carried out by public (...) or private bodies in the public interest pursuant to Union or Member State law (...). Member States should have the possibility to provide for specification of and/or derogations from certain rules of the Regulation. Member States should have the possibility to provide, under specific conditions, for restrictions to the information requirements and the rights to **rectification and** erasure, **right to object** and restriction of processing and on the right to portability **(...)**. Where personal data are collected for other purposes, processing of personal data for archiving purposes in the public interest should not be considered incompatible with the purpose for which the data are initially collected and may be processed for longer than necessary for that initial purpose. Member States should also have the possibility to provide that personal data processed for archiving purposes in the public interest may be further processed (...) for (...) reasons of public interest, such as providing specific information related to the political behaviour under former totalitarian state regimes, or for safeguarding the rights and freedoms of the data subject or overriding rights and freedoms of others according to Union or Member State law.

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<sup>1</sup> OJ C 113, 13.5.2003, p. 2.

The processing of personal data for archiving purposes in the public interest should be subject to appropriate measures to safeguard the rights and freedoms of the data subject, including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons. Codes of conduct may contribute to the proper application of this Regulation, taking into account the specific features of data processing for archiving purposes in the public interest. Such codes of conduct should in particular specify appropriate safeguards for the rights and freedoms of the data subject.

*Comments:*

*It should be possible to make derogations from the right of access and right to object. Processing of data in archives is not only carried out by public authorities which has as "their main mission" a legal obligation to archive personal data. The proposed Regulation should not prevent an authority from archiving or saving official documents or that archive material is taken care of by an archive authority. Archives kept by public authorities have for example been used in order to investigate former systematical violations and malpractice of institutionalized citizens (i.e. childcare and forced sterilization during the years 1950-1980) which have been of great value for the citizens and their families in means of restitution and redress.*

**126) For the purposes of this Regulation, processing of personal data for scientific purposes should include basic research, applied research and experimental development. The processing of personal data for scientific purposes 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. To meet the specificities of processing personal data for scientific purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific purposes. Where personal data are collected for other purposes, processing of personal data for scientific purposes shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for a longer period than necessary for that initial purpose. Furthermore Member States should have the possibility to provide for derogations from rules of the Regulation concerning information requirements, the right of access for data subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to portability and on the right to object. The processing should be subject to appropriate measures to safeguard the rights and freedoms of the data subject. In particular the controller should ensure that the data that are processed for scientific purposes are not used for taking measures or decisions which might affect particular individuals. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of that processing.**

*Comments:*

*Research is defined according to OECDs Frascati Manual Proposed Standard Practice for Surveys on Research and Experimental Development as creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications. The term Research and experimental development (R&D) covers three activities: basic research, applied research and experimental development. Basic research is experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view. Applied research is also original investigation undertaken in order to acquire new knowledge. It is, however, directed primarily towards a specific practical aim or objective. Experimental development is systematic work, drawing on existing knowledge gained from research and/or practical experience, which is directed to producing new materials, products or devices, to installing new processes, systems and services, or to improving substantially those already produced or installed. R&D covers both formal R&D in R&D units and informal or occasional R&D in other units.*

*Research should not be defined by the subject area of processing, such as studies in public health. Genealogy is yet another subject area of processing personal data, which can be de-fined as research (using systematic methods in scientific historical research) or can be per-formed for private reasons in pursuit of family history. In the latter case SE suggests that this is included in the term historical purposes. Historical research, on the other hand, is included in the term research. Processing of personal data in historical research can involve publicly disclosing personal data of certain individuals that are the main focus for the specific research project. The funding of research (e.g. privately or publicly funded) should not define whether or not a certain activity can be considered as research.*

Article 83a

Derogations for processing of personal data  
for archiving purposes in the public interest

8. Where **personal data in archives** are processed (...) in the public interest pursuant to Union or Member State law, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from:
- j) Article 14, 14a(1), (2) **and 15** where and insofar as the provision of such information proves impossible or would involve a disproportionate effort or if recording or obtaining or disclosure is expressly laid down by Union law or Member State law;
  - k) Article 16 (...);
  - l) Articles 17, 17a, 18 **and 19** insofar as such restriction is necessary for the fulfilment for the archiving purposes.
9. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for archiving purposes (...) carried out in the public interest shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for (...) longer (...) than necessary subject to appropriate safeguards for the rights and freedoms of the data subject, **including control of access (...) and restricted access in cases where such access would or might affect the rights and freedoms of natural persons (...)**.

10. (...).

11. (...).

12. (...).

*Comments:*

*We would prefer to use the phrase "personal data in archives" instead of "archiving purposes" (IE doc. 9181/13). Member states should be able to provide for derogations from the articles 14, 15 and 19. Archive purposes should also be included in article 9.2(i).*

*Article 83c*

Processing for scientific (...) purposes

1. In accordance with this Regulation (...) personal data may be processed for scientific (...) purposes (...) provided that (...) these purposes cannot be otherwise fulfilled by processing data which does not permit or no longer permits the identification of the data subject and according to the following conditions;
  - a) 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; and
  - b) the personal data are not processed for any other purpose, in particular not for the purpose of supporting measures or decisions which may affect that individual; and
  - c) the controller implements appropriate measures to safeguard the rights and freedoms of the data subject.
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 (...).
3. Where personal data are processed for scientific (...) purposes, Member State law may, subject to appropriate measures to safeguard the rights and freedoms of the data subject, provide for derogations from articles **14a(1) and (2), 15, 16, 17, 17a, 18 and 19.**
4. By derogation from points (b) and (e) of Article 5(1) and from Article 6(3a), processing of personal data for scientific (...) purposes under the conditions referred to in paragraph 1 shall not be considered incompatible with the purpose for which the data are initially collected and may be processed for those purposes for longer than necessary for the initial purpose (...)
5. (...)

*Comments:*

*SE suggests that processing for historical purposes should be regulated in a separate article since the provisions in 83c does not work well with historical purposes, such as genealogy.*

*1. Research should not be defined by the subject area of processing, such as studies in public health or history. Thus, historical research should be included in the term research. In order not to differentiate data processing with regards to different sorts of research this article should cover all types of research. It is not necessary to stress “in particular with article 6 (1)” when “in accordance with this Regulation” has been added.*

*2. The rights and freedoms of the data subject must already be taken into account.*

*3. Processing personal data for scientific purposes takes places under special circumstances and the regulation needs to be flexible. Therefore it is important that Member State law may provide for derogation also from articles 15 and 19 and that the possibility to provide for derogation from all the articles 14 a, 15, 16, 17, 17 a, 18 och 19 is not restricted. When data collected by a public authority is further processed for scientific purposes, the data is often pseudonymised, thus the scientists are not able to confirm if data concerning a specific data subject is being processed or give data subjects access to the contents of a data being processed. For the same reason the data subject cannot object to data being processed by a scientist processing a certain data set, as neither the scientist nor the data subject will be aware of the identities of the data subjects in the data set.*

*4. The conditions for processing personal data for scientific purposes are referred to in paragraph 1. It is not necessary to repeat those conditions in paragraph 4.*

## **UNITED KINGDOM**

### **NOTES**

To note that these comments in respect of Chapter IX have been split into two parts. The set of comments immediately below relate to the text issued by the Greek Presidency on 16 January 2014 (document 5331/14). The second set of comments relate to the text issued by the Lithuanian Presidency on 16 December 2013 (document 17831/13).

Given the quick succession that these two documents were issued, and the limited time available for stakeholder consultation, we have decided not to merge the comments on the two papers into a single paper, particularly as the latter document only covers a portion of the material covered in the earlier document.

Also given the limited time available for the compilation of these comments, the UK maintains a scrutiny reservation on the whole of Chapter IX and related recitals. The UK may also submit further written comments following wider consultation on the newer versions of the text that have been circulated.

### **COMMENTS ON DOCUMENT 5331/14 ISSUED ON 16 JANUARY 2014**

#### **General points**

The UK retains a scrutiny reservation on the contents of this document. As with the comments made previously, the UK reiterates that it is not the purpose of the proposed Regulation to regulate whole sectors through this instrument. It is important that we preserve the ability of controllers in all sectors covered by this Chapter to process personal data in the way that they are legitimately able to do so at present. Research is of significant economic value to the UK and these sectors are already highly regulated. It is important that we do not lose the immense benefits to society that research brings.

It appears to us that the architecture of the instrument is becoming increasingly unclear. If Articles in Chapter IX are intended to be derogations (see for example the heading on 83a), it might make more sense to provide the necessary exemptions through the vehicle of Article 21. Further, it is noticeable that much of the data processed for these purposes will be less sensitive or (at its highest) as sensitive as data processed for the purposes of the prevention, investigation, detection and prosecution of criminal offences (Article 21(1)(b)) for example. It is therefore not clear why it is necessary to treat these areas separately and at times subject these types of processing to tighter restrictions than data such as that processed for the prosecution of offences, for example.

In terms of document 5331/14, this paper would have benefitted from some explanation of what the objectives of the new text are. Instead it becomes more difficult to set into context exactly what it is we are trying to achieve here. Also we note that the Article 83b (on processing of data for statistical purposes) was excluded from this paper. Although we assume that we will return to statistical processing, it is difficult to form a conclusion on Article 83 as a whole without considering all the elements of it together. We, however, submit our preliminary observations on this paper below which supplement our observations on document 17831/13 further down this submission.

#### **Recital 125a**

We welcome the reference to private bodies here but we consider that this does not cover all eventualities. There could be private individuals working in the public interest who may not necessarily be covered by the household exemption. For example, which rules would apply where a journalist is processing personal data contained in archives for the purposes of writing a historical biography of a living person? Would it be permissible for such a biography to be written? It goes without saying that it should be but it is not entirely clear on the basis of the text provided as the level of complexity of the rules start to become out of proportion with the objective in mind. The text itself is very long and not easily digestible.

We are also concerned about the reference to the body having as its “main mission a legal obligation to acquire, preserve, praise, arrange, describe, communicate, promote, disseminate, and provide access to records of enduring value for general public interest”. This could potentially limit the scope of legitimate processing as not all public or private bodies would fully meet these criteria.

### **Recital 111**

The reference to scientific purposes in this Recital is not clear. It may be that this wording could mean knowledge of any kind but in modern English, we would look specifically to link this to the study of the physical and natural world.

Also it is not clear why public health has been specified here as type of scientific purpose. It is important that we do not inadvertently place limitations on what comes within the scope of legitimate data processing for scientific purposes.

### **Article 83a**

We reiterate that archiving purposes may not necessarily be set in national law or be the subject of a legal obligation. We are also unclear as to why a separate article setting out derogations for archiving purposes in the public interest needs to be included here. We consider that archiving purposes would more rationally fall under an article which covers processing for historical purposes or more generally on the basis of Article 6(3). Therefore with respect to paragraph two, the text here could be read as applying a higher standard in respect of archiving purposes than would otherwise be the case but this would go against the risk based approach.

In paragraph 2, the wording "...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..." appears to contradict the wording in Recital 125a which allows for further processing in exceptional cases for important public reasons of public interest (which in itself we consider constitutes an excessive standard in our opinion). The inclusion of this wording could disengage the potential beneficial effects that further processing could deliver in certain scenarios

### **Article 83b**

We reserve our position pending further discussion on this Article on statistical purposes.

### **Article 83c**

It is not clear to us what the rationale is behind bringing processing for scientific and historical purposes into the same article. Some explanation would be helpful.

Article 83c as set out is confusing. It effectively reads that in historical research, data enabling the attribution of information to an identifiable subject would need to be kept separate. Would this therefore preclude the identification of an individual within a piece of historic research? We can assume that this is not the intended effect but in a directly applicable Regulation it is essential that the intention is supported by the wording. However, we consider that the Article as drafted here is wrong as well as being contrary to accountability principles and the risk-based approach.

It is also important to make the point that when it comes to presenting historical research, they may always be two sides to every story. What one subject of research may be happy to consent to the publication of, another may not. How would such a dispute be resolved and how could such a scenario be additionally resolved with the right to the freedom of expression? We already have national laws which provide protection against libellous allegations so we consider, in the historical context, that limitations on publication here would be too restrictive.

We consider that Article 83c(1), particularly in the context of the wording “cannot be otherwise fulfilled” is far too restrictive and could potentially inhibit research and impairs its ability to provide groundbreaking discoveries. Under 83c(1)(b) we consider that the keeping identifiers separate would be an excessively rigid and expensive requirement. It is important that we do not lose the benefits which research can confer on society through rigid rules.

Under Article 83c(2), it would appear that an author of a historical biography not only would need to consider the rights and freedoms of the data subject also have to ask the explicit consent of the people they are writing about.

We would like to place a specific scrutiny reservation on Article 83c(3) in terms of the derogations which are available. We will need to consider the whole text once again to determine if any other articles should be included.

In our view, Article 83c(4) is too restrictive. Putting up barriers to processing for other purposes might actually be detrimental in some circumstances and may cut across any positive effect that the further processing may confer, for example in the context of “measures or decisions affecting any particular individual”.

**General points**

It is important to preserve the ability of controllers in all the sectors covered by this Chapter to process personal data in the way that they are legitimately able to do so at present.

The beneficial use of data for the purposes described must not be overridden by an attempt to over-regulate whole sectors in their own right through this instrument. Regulating these sectors through this instrument goes beyond the scope of data protection. However the text makes certain types of processing more difficult, for example processing for scientific purposes.

We are concerned about references to public authorities or public bodies through the text of this Chapter. This may not work in all situations for the UK, particularly where public services functions are delivered by non-public sector organisations. Certain types of processing such as archiving are not restricted to those carrying out public functions in any event. One solution instead might be to apply certain provisions to bodies which carry out public functions.

More generally however, we are concerned that the text as drafted is becoming too detailed in order to be practicable in application. For example processing for the purposes of social protection has been added as a new category under this Chapter but this only highlights further that other sectors across other areas of public life have been excluded.

Many of the sectors covered in this Chapter are already highly regulated, for example in the research sector through the important work of ethics committees. The text here therefore should not cut across existing governance arrangements and codes of conduct, thereby placing more obstacles in the way of responsible data controllers. Otherwise there is a risk of losing the immense benefits to society that scientific and historic research, statistical analysis and archives services bring to all of us.

On that basis, we continue to argue for the risk-based approach to be applied in the context of processing in these sectors where the controllers remain accountable for the processing decisions they make and the safeguards they put in place.

**Recital 124b (see also Article 83b)**

We are concerned that the text here would exclude non-public organisations, particularly where there is a requirement for the organisation concerned to develop, produce and disseminate official statistics.

The term “official statistics” itself could be problematic. In the UK this term has a particular meaning defined in section 6 of the Statistics and Registration Service Act 2007. “*Subsection (1)(a)* defines official statistics as statistics produced by the Board, government departments (which includes executive agencies), the Devolved Administrations in Scotland, Wales and Northern Ireland, or any other person acting on behalf of the Crown”. However, it is not clear what is intended to be covered by this term in the Regulation.

We consider that it is not necessary to refer to both Union or Member State law, and the public interest here. A reference to public interest should be sufficient here.

**Recitals 125 and 125a**

We support the general provision that data originally collected for different purposes can be later processed for historic, statistical or scientific purposes. We also support the reference that the data can be processed for a period which is longer than necessary for the original purpose

We would question what exemptions being applicable only under “specific conditions” actually refers to. It is not clear what “specific conditions” would actually apply.

We support the emphasis in Recital 125a of the value of archive services. Recital 125a also stresses the importance of archives in understanding the history and culture of Europe. This appears to have Holocaust remembrance in mind but also seems flexible enough to deal with other requirements of a similar nature.

**Recital 125b (see also Article 83a.1)**

We welcome the new reference to genealogical and public health purposes. We also welcome the provision for extending the processing period beyond that of the initial purpose.

We do remain concerned that the text here would not work in the context of the UK common law because there is a lack of specific archive legislation within our domestic law. Also the text as written would not recognise the position of for example local government organisations that carry out archives functions but not as part of their main mission or task. The same applies for organisations in the non-government sector, even where they do fulfil a public service function.

### **Recital 126**

We welcome the emphasis here that data processed for the scientific purposes should not be considered incompatible with original purpose.

### **Article 80**

It is not clear how the one-stop-shop and the consistency mechanism will work in the situation where the right to data protection needs to be balanced against the right to freedom of expression and a national and cross-border level.

We consider that this Article requires further discussion in the context of the one-stop-shop and the consistency mechanism. The question remains, would the national law of the complainant or the national law of the data controller apply where they are situated in different Member States?

### **Article 80a**

One issue for the UK remains the reference to “official documents held by a public body or a public authority”. In the UK, it is increasingly common for public functions to be fulfilled by private or non-government bodies, for example privately run prisons or public service regulators which are constituted as private companies. The application of this Article to such bodies needs to be considered further. We also need to consider further how this Article would interface with our domestic Freedom of Information regime.

### **Article 80b**

It is not clear why this Article has been introduced. The UK does not operate a single national identification number system although other identifiers are used. This Article appears to be superfluous to us although we acknowledge that it may deal with situations in other Member States. We would query what “any other identifier of general application” means.

## **Article 81**

We remain concerned that this Article is too prescriptive and would question whether the articulation of these measures is compatible with the principles of proportionality and subsidiarity. The text appears to set up further requirements for processing in paragraphs 1(a) and 1(b) which are unnecessary. Instead it would be preferable to allow the health sector to rely on Article 6 and Article 9 in order to process personal data.

Taking this into account, our preference is for the text in Article 9(2)(h) to revert back to the original Commission draft of the text. We consider, that the version presented in the latest Presidency text risks adding further conditions which may limit the ability of health services to process personal data in all legitimate circumstances. This is already a highly-regulated and does not require more conditions on processing than were originally set out in this instrument

We would query the reference in Article 81(1)(a) to professional secrecy. Our expert stakeholders in this area say that there is a difference between professional confidentiality and professional secrecy. A view has been shared that secrecy could imply a prohibition on sharing information to an extent which is greater than applying a standard of confidentiality. We would not want this instrument to cut across well-established governance arrangements or codes of practice in the health sector by setting out such standards here.

We do not consider that it is appropriate for the Commission to be able to adopt delegated acts under Article 81(3), in particular for the purpose of further specifying other reasons of public interest in the area of public health.

## **Article 82**

As with Article 80, we would query how the one-stop-shop and the consistency mechanism would work where employment data are being processed. Many multi-national employers will hold and process employee data in a central location in a different Member State to where some of the employees work and reside.

In such circumstances, it is not clear whether under the one-stop-shop the data protection authority of the main establishment of the employers of the DPA where the employee resides would be competent to deal with any complaints. Essentially, however, this is a question about applicable law, which is a problem which is broader than the one-stop-shop and consistency mechanism. It is potentially an issue in any cross-border processing situation.

### **Article 82a**

It is not clear why this new Article on processing for the purposes of social protection has been added. We do not consider that it serves a particular purpose and as other delegations have mentioned, there is a danger that by adding more articles of this nature to Chapter IX, there is a danger that other sectors may also claim to have an equally valid right to be included.

The UK would like to file a specific scrutiny reservation on this inclusion of this article pending further consultation.

### **Article 83a (general comments)**

If the matter of preserving and accessing historical collections can be accommodated within the text generally, we do not consider that there needs to be a separate Article for archives. However, it may be helpful to acknowledge (in a recital) that permanent retention is the norm for historical collections. Also a clearer statement in a recital that data processing for historical purposes without personal data is impossible would be helpful, as would be an explanation about the role of archives in historical purposes and the importance of documentary integrity whilst the data contained in the record remains of a personal nature.

### **Article 83a.1**

We are concerned that the archives sector would be defined within the confines of a public authority or body pursuant to Union or Member State law. We do not consider that it should be for this instrument to define the sector in this way.

We do however welcome the acknowledgement that processing of personal data for historical purposes shall not be considered incompatible with purposes for which the data are initially collected and may be processed for those purposes for a longer period than necessary for that initial purpose. As written though, the text is still too restrictive. For example an archive could reveal something about an individual which could benefit them.

### **Article 83a.2**

We welcome the removal of the obligation on the individual seeking access to data to demonstrate they will only use it for historical purposes. The preservation of such an obligation would have been against the principle of open data.

We however question whether the individual's reasons must instead involve the public interest or safeguarding rights and freedoms. It seems that the text here is seeking to narrow the legal basis which allows making historical material publically accessible. It is not clear what the justification is for this qualification.

### **Article 83a.3**

We welcome the inclusion of this paragraph so that Article 14a shall not apply where the provision of such information proves impossible or would involve a disproportionate effort. However, we are concerned that this restriction would only apply to data “processed **only** for historical purposes”. This restriction may not cover all practical scenarios.

### **Article 83a.4**

We welcome the exemptions set out in Article 83a(4) but are concerned that they may not be wide ranging enough. In addition to the exemptions set out in here, we consider there are a number of other obligations that would impose a disproportionate burden on historical processing by archives services: for example in relation to, Article 12 (information to the data subject), Article 15 (Right of access for the data subject) and Article 19 (Right to object).

Where Article 15 applies, we consider that it may be excessive to expect archiving services to comply with all Requests for Access from data subjects. Historical documents are frequently in the form of large analogue collections which often take a lot of effort to examine and collate into a response to an access request. The same arguments apply to Articles 83b on processing for statistical purposes, and Article 83c on processing for scientific purposes.

Concerning the exemption for Article 17 (Right to be Forgotten/Erasure), we need to consider the role of archives in preserving evidence for the redress of injustice in society. Representatives of Holocaust Memorial bodies have raised questions about the balancing of interests in Article 17. We must ensure that a ‘right to be forgotten’ does not override those purposes where it is essential that records are preserved, for example the archiving of Holocaust remembrance (see our comments on recital 125a).

### **Supplementary point on Article 6**

A further general point on this topic is that we are assuming that the reason why Article 6(2) was deleted from the original draft of the text is that 6(1)(e) and 6(1)(f) were considered to be wide enough to accommodate this type of processing. We would seek clarification that this was indeed the intention behind the deletion of the original Article 6(2).

### **Article 83b**

In parallel with our views on Recital 124b, we are still concerned about the exclusion of private bodies which process personal data for statistical purposes. We are also concerned about the further requirement for the organization's "task" to revolve around "official statistics pursuant to Union or Member State law."

As mentioned in our comments on Recital 124b, the term "official statistics" has a particular meaning in UK law but the definition in the Regulation. However the definition here of "official statistics" is unclear. The use of the term is also unhelpful in that it is not only official statistics which we consider should be captured here. In that case it would be better for the terms "official statistics" not to be here at all.

Concerning Article 83b(1) in particular, and similar to our views on historical purposes, we welcome the provision for processing for statistical purposes to "not be considered incompatible with purposes for which the data are initially collected."

However, on Article 83b(1)(a) we consider that the wording here is too restrictive. Where the text says "provided that these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the individual", we consider that this once again imposes restrictions on personal data in the field so effectively this is regulating the sector. The text should not have the effect of choking off the possibilities for a statistician to make free and unencumbered decisions about how they do their work. It therefore seems that this paragraph does not reflect the risk-based approach and accountability principle.

We consider that Article 83b(1)(b) could be problematic in that it is not always possible to separate identifiers and attributed information, and cleansing data of identifiers may be very expensive. It would also imply that different versions of data sets would need to be stored in order to meet this requirement.

For Article 83b(1)(c), we have concerns about data not being able to be processed for multi-purposes, such as for both historical and statistical ends. This again would be overly-restrictive and could preclude processing which may benefit an individual.

With reference to Article 83b(2)(a) &(b), we welcome the acknowledgment that statisticians should not have to comply with all of the obligations in the proposed regulation where the provision of such information would require a disproportionate effort. Also paragraph 3 seems acceptable in its own right. However in reality, data processed for statistical purposes are very unlikely to affect an individual in such a way.

We welcome the exemption to Articles 15 and 16 if complying would involve disproportionate effort or prove impossible.

### **Article 83c**

Similar to our views on Article 83a and 83b, we welcome the inclusion in paragraph 3 of reference to “processing of personal data for scientific purposes [...] shall not be considered incompatible with purposes for which the data are initially collected”. However it is not clear what scientific purposes means in this context.

As with 83b, we consider that the wording in Article 83c1 is too restrictive. Where the text says “provided that these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the individual”, we are concerned that a whole sector is being regulated here. Good practice sets out that where data are processed for scientific purposes, anonymous data or coded/pseudonymous data should be used where possible. However the use of personal data should not be precluded as its use may be needed in order to obtain a specific benefit from the research, for example when examining at location factors when doing research on specific illnesses.

So it is very important to retain the accountability principle when such research is being carried out. Ethics committees have a very important role to play in determining how the processing should be carried out and what safeguards should be in place. These committees must be allowed to do their job as they are well placed to determine the parameters of the processing. Therefore we welcome the wording in Article 83c(1)(d) which appears to allow for the controller to implement the appropriate measures in order to safeguard the rights and freedoms of the data subjects.

Article 83c(2)(c) seems superfluous to us as it is unlikely that personal data would normally be presented for publication without conditions in (a) or (b) being fulfilled but we would not object to its inclusion.

The text in Article 83c(3) is confusing, in particular the reference to the use of pseudonymous data at the end of the paragraph. Further clarity on what is intended here would be helpful.

We also welcome the recognition in Article 83c (4) that it may be disproportionate to expect individuals processing for scientific purposes to comply with A14a, and paragraph 5's exemptions for Articles 15, 17, 17a, and 18. However, we are concerned that the exemptions may not be wide-ranging enough here.

#### **Article 84**

We maintain a scrutiny reservation on this Article. Legal Professional Privilege is an important principle which must not be compromised and the certainty of lawyer-client confidentiality needs to be maintained. We would once again query how the development of specific rules by Member States would work in the context of the One-stop-shop and Consistency Mechanism

#### **Article 85**

This Article does not have any specific effect on the UK. We have no objection to its inclusion if it deals with particular situations in other Member States.

## NORWAY

Reference is made to your invitation by email 21 January 2014 to submit written remarks to draft Chapter IX of the General Data Protection Regulation. In general, Norway is of the opinion that substantial improvements have been made in this chapter and that the current text largely is able to meet our previous concerns. Please note however the following remarks:

### Recital 125a

We are concerned that the last sentence of Recital 125a is somewhat narrowly worded. The provision allows further processing of data in archives only in “exceptional cases for important reasons of public interest, such as...”. It should be stressed that processing of personal data in archives must be seen in conjunction with processing for other purposes, in particular scientific work. Such work may often have as its basis data collected from archives, and may prove impossible if further processing of the data is not permitted. In our view, such processing cannot always be classified as “exceptional cases”. Our concern is therefore that the proposed wording of the Recital does not adequately reflect archival data’s significance in other contexts.

### Article 83a

We are of the opinion that the current drafting of this provision reflects the important role archival institutions play in European societies. Derogations as those mentioned in paragraph 1 may be key for such institutions to appropriately perform their functions, and we are satisfied that the states themselves may, within certain limits, assess how the particular needs of archival institutions are adequately catered for.

Moreover, we are content that paragraph 2 now explicitly states that further processing for archival purposes is not to be considered incompatible with the purpose for which the data are initially collected. This specification is crucial to ensure that data protection rules do not prevent archives from fulfilling their primary function and object.

### Article 83c

Similarly, we are generally satisfied with the changes made in Article 83c and believe these are necessary to ensure a sufficient degree of flexibility. We are nevertheless somewhat unsure about the key role anonymised data play in Article 83c paragraph 1, and question what the practical effects of this provision will be. An example may serve to illustrate our concern: If several healthcare providers register anonymous health data stemming from the same data subject, this will cause multiple entries in a register. Consequently, statistical records from the register do not correspond with reality, and extracts from the register are not suited for statistical research. It is therefore important that the possibility of using non-anonymised data is not too limited. To ensure this, it might be necessary to reconsider the wording of Article 83c paragraph 1, in particular the phrase “these purposes cannot be otherwise fulfilled...”.

It should also be pointed out that anonymisation of personal data may prove more difficult in smaller countries with a limited population, where individuals are more easily identified. With regard to this, it should be ensured that the Regulation does not in fact have different effects in smaller than in bigger countries.

As regards Article 83a paragraph 2, we question the added value of this provision. In our opinion, a general data protection instrument should not specifically regulate publishing of research results etc. As far as the protection of the personal data of persons involved is concerned, the general rules of the Regulation should be sufficient.

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