



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 April 2012

8699/12

**Interinstitutional File:
2012/0011 (COD)**

**DATAPROTECT 50
JAI 250
MI 244
DRS 60
DAPIX 58
FREMP 58
STAT 14
COMIX 235
CODEC 972**

NOTE

from:	Presidency
to:	Working Group on Information Exchange and Data Protection (DAPIX)
No Cion doc.:	5853/12 DATAPROTECT 9 JAI 44 MI 58 DRS 9 DAPIX 12 FREMP 7 COMIX 61 CODEC 219
Subject:	Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) - Letter from the Chair of the Working Party on Statistics

Delegations find in Annex a letter from the Chair of the Council Working Party on Statistics regarding the General Data Protection Regulation.



Mr. Jens Teilberg Søndergaard
Chairman of the Council Working Party on Data Protection and
Information Exchange (DAPIX)
Head of Division
Ministry of Justice

11 April 2012

Dear colleague,

I am writing this letter to you in my capacity as chairman of the Council Working Party on Statistics on behalf of the National Statistical Institutes (NSIs) in the European Statistical System.

I would like to draw your attention to the "Proposal (COM (2012) 11/4 draft) for a Regulation of the European Parliament and of the Council on protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)".

The NSIs in the European Statistical System have serious concerns about the following aspects of the proposal, and we would like to share them with you as leading in this dossier.

1. Right to be informed (article 14)

In this proposal, the data subject has the right to be informed about, for instance, the purpose of collection and the period of time for which data will be stored (article 14 paragraph 1). This information must be given by the controller [e.g. the NSI, but also any research institute engaged in data analysis] if personal data are collected from the data subject himself or herself *but also if personal data are not collected from the data subject. In many cases, it will not be quite clear whether the exceptions under article 14 (5) may be used. Therefore, we are very much in favour of clear exceptions in the case of statistical (and historical and scientific) purposes if the data originate from registers. Without a clear exception for statistics, we foresee a disastrous administrative burden for the National Statistical Institutes, as well as for other bodies engaged in research and statistics. The result will be a serious deterioration of the quality and coverage of statistics and research.*

The Directive currently in force (Directive 95/46/EC) on data protection stipulates that for data not obtained from the data subject an exception is made (article 11 paragraph 2). The rationale behind this provision is that personal data in statistical systems can never form the basis for any decisions regarding the data subject or be brought to the knowledge of anyone except the statisticians. Therefore, the data subject has no real interest in knowing what is registered in a statistical register.

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2. Right of access for the data subject (article 15)

According to article 15 the data subject has a right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed, and if this is the case, which information is kept. Again no exception is made for statistical use of personal data. So the NSI has to give this information. Personal data in statistical systems can never form the basis for any decisions regarding the data subject or be brought to the knowledge of anyone except the statisticians. Therefore, the data subject has no real interest in knowing what is registered in a statistical register. Article 15 will result in yet another disastrous administrative burden for the NSIs. Again we propose an exception for statistical purposes. This exception automatically applies to the right of rectification (article 16), which is useless without the right of access. See also article 13 paragraph 2 of Directive 95/46/EC.

3. Delegated acts (article 83.2)

Furthermore, in article 83.2 the Commission shall be empowered to adopt delegated acts for further specifying requirements for the processing of personal data for historical, statistical and scientific research purposes, as well as any necessary limitations on the rights of information to and access by the data subject and detailing the condition and safeguards for the rights of the data subject under these circumstances. We strongly recommend that the limitations be included in the text of the Regulation.

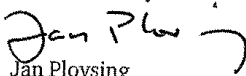
This could have a significant influence on how NSIs may process their data. The freedom of NSIs to determine their own ways of processing data could be severely limited by this article, to the detriment of the statistics and research without benefitting the rights of the registered individuals.

In addition to these three articles, other provisions also directly touch on the way statistics are produced.

At the moment, a small statistics expert group is analyzing the draft Regulation. The group will try to arrive at a common understanding of the issues for statistics and the potential solutions to them and also highlight missed opportunities for statistics, in case the Regulation were to be adopted in its present form.

I would appreciate it very much if you could take our concerns explicitly into account and accept the paper as input for the discussions of the DAPIX.

Yours sincerely



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