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NOTE

From:	General Secretariat of the Council
To:	Working Group on Information Exchange and Data Protection (DAPIX)
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) - Impact Assessments and Prior Authorizations

Delegations will find below comments regarding Impact Assessments and Prior Authorizations.

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CZECH REPUBLIC

On Impact Assessments and Prior Authorizations

Comments on 5880/1/14 REV 1.

Article 33 paragraph 1

CZ strongly urges to qualify the risks involved. It is not enough to identify likelihood of *specific* risk, such risk should be also *high*, *severe* or *elevated* in order to achieve conformity with risk-based approach.

CZ also suggests framing the last sentence as an obligation for the processor as follows:

"The processor shall, on request, assist the controller with carrying out a data protection impact assessments."

This solves the situation where the controller still does not know who will be processor. In market economy, though, many processors (or even makers of processing equipment) may be expected to provide for at least part of impact assessment as a part of the product they offer (such as security CCTV systems).

Article 33 paragraph 1a

CZ prefers to provide that designating DPO is an alternative to obligations pursuant to this Article. That would make the DPO more accepted and used within EU. (See footnote 5.)

If the current text stands, it is necessary to rephrase it as follows, as DPO is not obligatory:

"The controller shall seek the advice of the data protection officer**, if any,** when carrying a data protection impact assessment."

Article 33 paragraph 2

Letter (a) should be rephrased in conformity with the results of discussions on automatic decision making and profiling.

Letter (c) - the requirement that monitoring is on "large scale" should be kept.

Letter (e) should qualify the risks involved. It is not enough to identify likelihood of *specific* risk, such risk should be also *high*, *severe* or *elevated* in order to achieve conformity with risk-based approach.

Article 34 paragraph 2

CZ also suggests framing the second sentence as an obligation for the processor as follows:

"The processor shall, on request, assist the controller with carrying out a data protection impact assessments."

This solves the situation where the controller still does not know who will be processor. In market economy, though, many processors (or even makers of processing equipment) may be expected to provide for at least part of impact assessment as a part of the product they offer (such as security CCTV systems).

CZ prefers to provide that designating DPO is an alternative to obligations pursuant to this Article. That would make the DPO more accepted and used within EU. (See footnote 4 on page 8.)

Article 34 paragraph 7

This provision sets unclear obligations ("in particular") and threatens to overburden the DPAs by requiring them to always respond to each proposal on time. Modern legislation deals very frequently with personal data processing in various forms and with various consequences. As the legislative procedures must sometimes conform to tight schedules (including due to transposition of EU law) DPAs should be allowed to exercise their judgment and to ensure certain prioritization.

Domestic rules on procedures for consultation of legislation should be respected as usual. The Regulation should not try to introduce specific procedures any more it tries to impose specific DPA nomination procedures (Article 48 paragraph 1 has been made flexible already).

Also, private members' bills (or amendments to government bills) should not be included, as the ability of the Parliament to discuss laws must be preserved.

Therefore, CZ proposes following changes:

Member States shall consult the supervisory authority during ~~the~~ **standard** preparation of proposals for legislative or regulatory measures which provide for the processing of personal data and which~~, in particular,~~ may severely affect categories of data subjects by virtue of the nature, scope or purposes of such processing. ~~The supervisory authority shall respond to consultation requests in due time.~~

Alternatively, both "in particular" and "severely" may be deleted.

FRANCE

(b) Impact assessments and prior consultations (Articles 33 and 34)

5880/1/14 REV1 DATAPROTECT 14 JAI 47 MI 92 DRS 15 DAPIX 8 FREMP 13 COMIX 69 CODEC 231

We would reiterate our proposals for alternative wordings for Articles 33 ff., which have never really been discussed (8826/13).

With regard to the working document circulated by the Presidency, we wish to make the following comments:

- Re Article 33 (Impact assessments)

  - With regard to paragraph 1a, we would stress that insofar as it is no longer compulsory to have a data protection officer, the words "*when carrying out a data protection impact assessment*" should be preceded by the words "***where applicable***" in order to align this provision with the other provisions of the proposal;

  - With regard to paragraphs 2a and 2b, we would make the following two points:

    1) In order to create any new data processing operation, the supervisory authorities and the EDPB must publish lists of operations which present particular risks and which are subject to an impact assessment; those lists must be updated each year in order to incorporate new types of data processing operations and to take account of any significant changes (e.g. in terms of technology);

2) as soon as the new data processing operation is included among the categories of operation subject to an impact assessment, it must be submitted to the supervisory authority for prior authorisation. In fact, the proposal already does away with most of the formalities as it stands. Minimal prior checks should therefore be maintained, in particular as regards the riskiest processing operations. Where appropriate, the text of Article 34 could specify that beyond a certain time limit, and in the absence of any response from the supervisory authority, the latter's silence will be deemed to constitute tacit approval of the data processing operation (at the end of the period necessary for the consultation of any other supervisory authorities concerned)[1].

- As regards paragraph 5, we would reiterate that we are opposed to the proposal whereby controllers which are public authorities or which comply with a legal obligation would be exempted from conducting an impact assessment. Given that the data processing operations will be among those identified as posing risks, they will have to be subject to an impact assessment aimed at evaluating those risks and providing for measures to reduce them. If specific rules have in effect to be laid down for these specific data processing operations to ensure that they can be carried out, we consider the derogations in question should be provided for under the authorisation procedure rather than under Article 33, which deals with impact assessments (see below).

[1] 8826/13 DATAPROTECT 50 JAI 313 MI 321 DRS 80 DAPIX 75 FREMP 44 COMIX 256 CODEC 896.

- As regards Article 34 on prior consultation

  - We reiterate our view that the scope of this procedure should not be limited only to those data processing operations which would be revealed by an impact assessment as posing increased risks (paragraph 2). We again emphasise that all processing operations on which an impact assessment is to be carried out, in particular those listed annually by the supervisory authorities and the EDPB, must be subject to a prior **authorisation** procedure or at least a binding veto, not to a non-binding consultation of the supervisory authority. In this regard the French delegation can again underline the fact that, in its legislative resolution, the European Parliament has itself incorporated a binding procedure of referral to the supervisory authority.

  - Furthermore, we would again emphasise that the supervisory authority consultation procedure provided for in this Article will have to be subject to the consistency mechanism for cross-border data processing operations.

  - Also, with regard to data controllers which are public authorities and data controllers with a legal obligation to undertake a data processing operation, we propose that a special, non-binding procedure for consulting the national supervisory authority be laid down. Controllers of these processing operations, which are undertaken for legitimate purposes, should not have to fulfil irreconcilable obligations. However, if these operations pose specific risks, the supervisory authorities should be allowed to give their opinion on the means of reducing such risks in order to point the controllers towards solutions that offer maximum protection to data subjects.

  - Lastly, as regards paragraph 7, we are against adding the term "*in particular*" to this Article, and we also enter a reservation here on the concept of "*which severely affects*".

ITALY

Based on our proposal for Article 34 (see below), the text of recital 74 should be amended to reflect the power of the DPA to do more than "give advice" if the processing is not in compliance with the Regulation. **We believe in such cases the DPA should be empowered to prevent processing that is or might be in breach of the Regulation.**

As for the final sentence, again **we believe that consultation of the DPA should take place regardless of whether the processing "may significantly affect categories of data subjects…"**: the risk-based approach is out of the question in such cases, as risk assessment should always be part of the law-making process and the DPA is in the best position to advise lawmakers in this regard. This is actually in line with the current directive 95/46/EC (see Article 28(2) thereof). Thus, **the final sentence of this recital should be deleted in our view**.

Article 33

Data protection impact assessment

2. The following processing operations (…) present specific risks referred to in paragraph 1:

   (a) a systematic and extensive evaluation (…) of personal aspects relating to (…) natural persons (…), which is based on profiling and on which decisions are based that produce legal effects concerning data subjects or severely affect data subjects;

We believe the text of this sub-paragraph (a) should be brought into line with the provisions on profiling. In order to be consistent with paragraph 1 of Article 20 and the (current) wording of recitals 58 and 58a, it should be assumed that **profiling per se entails "severe risks for the rights and freedoms of the individuals"**. Accordingly, the additional conditions mentioned here ("systematic and extensive evaluation of personal aspects relating to natural persons") should be deleted **to clarify, rather, that the specific risks mentioned in paragraph 1 are related to: '(a) profiling as defined in Article 4(12) if this is the basis for a decision or measure producing the effects referred to in Article 20(1)'**.

5. Where a controller is a public authority or body and where the processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or the law of the Member State to which the controller is subject, paragraphs 1 to 3 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.

Regarding paragraph 5, **we reiterate what is referred to in footnote 8.** We believe the DPIA should be an integral part of any law making process that is aimed at conferring specific powers on public bodies or authorities if such powers entail the processing of personal data.

Article 34

Prior (…) consultation

We agree on the addition of the final sentence concerning the processor's obligation to assist the controller. **However, we would like to reiterate that controllers should be empowered to consult the DPA also in cases other than those determined following a DPIA under article 33**. For this reason as well as to allow developing a European "catalogue" of prior consultation cases, **we would like to reiterate the need for keeping paragraphs 4 and 5 of the original text** (see below). It should also be considered that paragraph 7a already expanded the catalogue of mandatory prior consultation cases to include processing operations "in the public interest".

3. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 2 would not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall within a maximum period of 6 weeks following the request for consultation give advice to the data controller (…). This period may be extended for a further **six weeks**, taking into account the complexity of the intended processing. Where the extended period applies, the controller or processor shall be informed within one month of receipt of the request of the reasons for the delay.

Regarding paragraph 3 above and the DPA's power to give "advice" to the data controller, **we think it is appropriate to keep paragraph 4 and 5 of the original proposal by COMM – which allowed DPAs to prohibit a given processing operation if it was found that it might not be compliant with the provisions in the Regulation.** This is actually the stance taken by the European Parliament as well. **We find this is consistent with the precautionary approach mandated by the special risks highlighted by the DPIA** and the resulting obligation for a data controller to seek the DPA's views before starting the processing.

6. When consulting the supervisory authority pursuant to paragraph 2, the controller (…) shall provide the supervisory authority ~~,~~ with

(a) **where applicable, the respective responsibilities of controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;**

(b) **the purposes and means of the intended processing;**

(c) **the measures and safeguards provided to protect the data subject pursuant to this Regulation;**

(d) **where applicable , the contact details of the data protection officer;**

(e) the data protection impact assessment **as** provided for in Article 33 and

(g) any (…) **other** information requested by the supervisory authority (…).

7. Member States shall consult the supervisory authority during the preparation of proposals for legislative or regulatory measures which provide for the processing of personal data and which**, in particular,** may severely affect categories of data subjects by virtue of the nature, scope or purposes of such processing. **The supervisory authority shall respond to consultation requests in due time**.

We believe that the DPA's prior consultation should be mandatory (as already provided for by Directive 95/46/EC – Article 28.2) in all cases, i.e. regardless of whether the processing "may severely affect categories of data subjects…". Accordingly, **we propose deleting the sentence in paragraph 7 from "and which, in particular, …" to "of such processing."**

Article 37

Tasks of the data protection officer

1. The controller or the processor shall entrust the data protection officer (…) with the following tasks:

(f) **to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 33**;

We agree with this provision, **however we would point out that the provision in Article 33(1a) is to be construed as an obligation to seek the DPO's advice** ("the controller shall seek the advice of the DPO…".). The "where requested" bit of this provision is probably inappropriate.

LATVIA

b) In response to PRES question on prior consultations and impact assessment:

Latvia supports this regulation, especially taking into account that Regulation does not provide for registering processing of personal data with the supervisory authority.

Latvia supports the regulation of Article 33, in respect to when impact assessment should be carried out. Latvia considers that by determining the areas of risk will create harmonized legislation; also the controllers would know when to carry out an impact assessment if they plan data processing within EU.

HUNGARY

Presidency's proposals regarding data protection impact assessment and prior authorisation

1. In general, Hungary supports the concept of data protection impact assessment and prior consultation, however, in our opinion there are several details in the general framework which need to be further elaborated.

- We agree with the concerns articulated by other Member States about the increase of the administrative and financial burdens due to the anticipated obligations.
- In Article 33 paragraph 2a. and 2b., we generally support the DPA being able to extend the requirement for a data protection impact assessment to further processing operations which present specific risks to the rights and freedoms of the data subject. Nevertheless we have serious doubts about the implementation of the rules for the following reasons:

  - The territorial scope of the list published by the supervisory authority is ambiguous. The unified application of the regulation would be promoted if the same type of data processing operations triggered the requirement for data protection impact assessment. This aim is enhanced by the application of the consistency mechanism as well. However, this would amount with the consequence that before starting any data processing the controller needs to check all the lists published by the DPA's in the EU and EEA.

  - Is there any legal consequence, if so, what sort of legal consequence will be incurred by the list published by a DPA on the ongoing processing operations? Similarly, if a DPA confirms that a data processing operation poses specific risk and therefore a data protection impact assessment is required, to what extent does it affect the on-going data protection operations in the Member State concerned or in other Member States?

2. Hungary supports the involvement of the data processor and the DPO in the data protection impact assessment.

3. In our opinion, further expansion of the list of processing operations which pose ”specific” risks to the rights and freedoms of data subjects, respectively to other categories of special data and to children’s personal data is worth considering. This suggestion is in line with Germany’s proposal in document 5580/1/14 REV 1 p. 5, footnote 3.

4. There is a need for grammatical improvement in certain areas of the text. For example, in recital (74) the expression *“or by the use of specific new technologies”* does not fit in the sentence, in Article 33 paragraph 1. and 1a. instead of *“carrying”* the term *“carrying out”* should be used, and in Article 33 paragraph 2. letter b) the *“processing of”* expression is missing.

5. In Hungary’s view, the defining of the obligatory cases of prior consultation is still ambiguous, the identification of high degree of specific risks is still impossible. Therefore the current text – even with the related recitals – is not able to ensure legal certainty for data controllers.

6. In our opinion the current level of legal protection would be subdued, therefore we cannot support that the supervisory authority is only able to give an opinion on the data processing operation but cannot prohibit it if it is against the law (Article 34). Hungary deems it necessary to enable the DPA to prohibit the planned data processing operation if it seems to be obviously against the law and there should be only a very narrow exception to this rule (e.g. data processing established in Union or Member State law).

7. We support the involvement of the data processor in the prior consultation (Article 34 paragraph 2.).

8. Hungary is in favour of the modification concerning Article 34 paragraph 7. which enables the involvement of the supervisory authority into the consultation about every legislative proposal regarding the processing of personal data.

9. We suggest minor modifications on Article 34 paragraph 6. letter c) for the univocal and coherent wording – instead of *“protect the data subject”* we suggest *”protect the rights and freedoms of the data subject”*.

POLAND

Article 34

Prior (…) consultation[2]

1. (…)

2. The controller (…)[3] shall consult the supervisory authority prior to the processing of personal data where a data protection impact assessment as provided for in Article 33 indicates that the processing is likely to present a high degree of specific risks[4] [5]. The controller **may ~~shall~~** ask where necessary the processor for assistance with respect to the consultation of the supervisory authority.

3. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 2 would not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall within a maximum period of 6 weeks following the request for consultation give advice to the data controller (…)[6]. This period may be extended for a further six weeks, taking into account the complexity of the intended processing. Where the extended period applies, the controller or processor shall be informed within one month of receipt of the request of the reasons for the delay[7].

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2 ES, HU and UK scrutiny reservation; DE, NL and SK reservation on giving this role to DPAs, which may not be able to deal with these consultations in all cases. NL proposed to delete the entire article. FR however thought that Member States should be given the possibility to oblige controllers to inform the DPA of data breaches. See revised recital 74, which clarifies the scope of the obligation.

3 Deleted in view of BE, DK, FR, SE and PL reservation on reference to processor. COM reservation on deleting processor.

4 FR and SE scrutiny reservation on the concept of a high degree of specific risks. It was pointed out that such assessments might be time-consuming. IT thought there should be scope for consulting the DPA in other cases as well.

5 DE and ES proposed to exempt controllers from the obligation of a prior consultation in case they had appointed a DPO.

6 Drafting amended in order to take account of the concern expressed by several delegations that a sanctioning power for DPAs would be difficult to reconcile with (1) the duty on controllers to make prior consultation under the previous paragraph (DE, DK, NL, SE, SI) and (2) the freedom of expression (NL, PL, SI).

7 ES, NL and SI scrutiny reservation. FR thought that for private controllers an absence of consultation or a negative DPA opinion should result in a prohibition of the processing operation concerned, whereas for public controllers, the DPA could publish a negative opinion, but should not be able to stop the processing.

4. (…)

5. (…)[8]

6. When consulting the supervisory authority pursuant to paragraph 2, the controller (…) shall provide the supervisory authority~~,~~ with

(a) where applicable, the respective responsibilities of controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;

(b) the purposes and means of the intended processing;

(c) the measures and safeguards provided to protect the data subject pursuant to this Regulation;

(d) where applicable , the contact details of the data protection officer;

(e) the data protection impact assessment as provided for in Article 33 and

(g) any (…) other information requested by the supervisory authority (…).[9]

7. Member States shall consult the supervisory authority during the preparation[10] of proposals for legislative or regulatory measures which provide for the processing of personal data and which, in particular, may severely[11] affect categories of data subjects by virtue of the nature, scope or purposes of such processing. The supervisory authority shall respond to consultation requests in due time.

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8 IT reservation on the deletion of paragraphs 4 and 5.

9 DE thought this paragraph should be deleted.

10 CZ wanted clarification that this obligation does not apply to private member's bills.

11 COM reservation, in particular regarding regulatory measures: this threshold is not present in the 1995 Directive.

7a. Notwithstanding paragraph 2, Member States' law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to the processing of personal data by a controller for the performance of a task carried out by the controller in the public interest, including the processing of such data in relation to social protection and public health[12].

8. (…)

9. (…)

Comment:

Poland supports the optional nature of involvement of the processor in the process of data protection impact assessment and prior consultation. The obligatory nature of this involvement could, in many cases, entail excessive burden and cost, especially in a situation where a large number of processors are small and medium enterprises. This obligation should rest mainly on the controller, and the processor should be involved only where it is needed and feasible on the part of the processor.

[12] DK, NL, ~~PL~~, SE scrutiny reservation.

SLOVAK REPUBLIC

Impact assessment and prior checks

SK welcomes provisions which state that the processor should assist the controller in ensuring compliance with these obligations and we support involving DPO in this process and we support its strong position.

We would like to maintain our comment in footnote No. 4 in Art. 33(2) letter c).

We would also like to maintain our comment in footnote No. 1 in Art. 34(2) and we consider it more proper to exclude those controllers which process personal data on the grounds of the Union Law, international treaties which are binding for Member States and national acts of Member States.

We do not agree with DE and ES proposal in footnote No. 4 in Art. 34(2). Such exception shall cause massive designations of DPOs for the purposes of avoiding obligations of prior consultations which is in our opinion unwelcome when it comes to processing presenting high risks.

SK agrees with those delegations which do not support a time period for DPAs for prior consultations.

SK very positively welcomes current wording of Art. 37. However we would like to add small amendment which addresses a key obligation of the DPO:

Article 37

Tasks of the data protection officer

1. **Before commencement of the processing of personal data in the filing system the data protection officer shall be obliged to assess whether any danger of violation of the rights and freedoms of data subjects arises from such processing. The data protection officer shall be obliged to inform the controller in writing without undue delay of any disclosure of violation of the rights and freedoms of data subjects before commencement of the processing or of disclosure of a breach of provisions of this Regulation in the course of the processing of personal data**. The controller or the processor shall entrust the data protection officer (…) with the following tasks:

SWEDEN

Article 33

Data protection impact assessment

1. Where the processing, taking into account the nature, scope or purposes of the processing, is likely to present specific risks for the rights and freedoms of data subjects, the controller (…) shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. (…). ~~**The controller shall ask where necessary the processor for assistance when carrying a data protection impact assessment.**~~ **A** ***processor shall be obliged to assist in the carrying out of an impact assessment, if requested to do so by the controller.***

1a. The controller ~~**shall**~~ ***may where necessary*** seek the advice of ~~**the**~~ ***a*** data protection officer when carrying a data protection impact assessment.

2. The following processing operations (…) present specific risks referred to in paragraph 1:

a) a systematic and extensive evaluation (…) of personal aspects relating to (…) natural persons (…), which is based on profiling and on which decisions are based that produce legal effects concerning data subjects or severely affect data subjects ;
b) data revealing racial or ethnic origin, political opinions, religion or philosophical beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions and offences or related security measures, where the data are processed for taking (…) decisions regarding specific individuals on a large scale ;
c) monitoring publicly accessible areas on a large scale, especially when using optic-electronic devices (…) ;
d) personal data in large scale processing systems containing genetic data or biometric data ;
e) other operations where the competent supervisory authority considers that the processing is likely to present specific risks for the rights and freedoms of data subjects .

2a. The supervisory authority shall establish and make public a list of the kind of processing which are subject to the requirement for a data protection impact assessment pursuant to point (e) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.

2b. Prior to the adoption of the list the competent supervisory authority shall apply the consistency mechanism referred to in Article 57 where the list provided for in paragraph 2a involves processing activities which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in several Member States, or may substantially affect the free movement of personal data within the Union.

3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks for rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned.

4. (…)

5. Where a controller is a public authority or body and where the processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or the law of the Member State to which the controller is subject, paragraphs 1 to 3 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.

6. (…)

7. (…)

Comment

The amendments suggested in par. 1 and 1a are too prescriptive. It is in the controller's best interest to use the best available means when carrying out an impact assessment. In doing so it has to its disposal the processor and a data protection officer, if one is appointed. The situations in practice can vary and there is no need to burden the controller with unnecessary administrative obligations. If the wording in par. 1 would remain intact it should be combined with an obligation for the processor to assist.

Article 34

Prior (…) consultation

1. (…)

2. The controller (…) shall consult the supervisory authority prior to the processing of personal data where a data protection impact assessment as provided for in Article 33 indicates that the processing is likely to present a high degree of specific risks. ~~**The controller shall ask where necessary the processor for assistance with respect to the consultation of the supervisory authority.**~~ **A** ***processor shall be obliged to assist in the consultation of the supervisory authority, if requested to do so by the controller.***

3. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 2 would not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall within a maximum period of 6 weeks following the request for consultation give advice to the data controller (…). This period may be extended for a further six weeks, taking into account the complexity of the intended processing. Where the extended period applies, the controller or processor shall be informed within one month of receipt of the request of the reasons for the delay.

4. (…)

5. (…)

6. When consulting the supervisory authority pursuant to paragraph 2, the controller (…) shall provide the supervisory authority, ***on request,*** with

~~**a) where applicable, the respective responsibilities of controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;**~~

~~**b) the purposes and means of the intended processing;**~~

~~**c) the measures and safeguards provided to protect the data subject pursuant to this Regulation;**~~

~~**d) where applicable , the contact details of the data protection officer;**~~

e) the data protection impact assessment as provided for in Article 33 and

f) any (…) other information requested by the supervisory authority (…).

7. Member States shall consult the supervisory authority during the preparation of proposals for legislative or regulatory measures which provide for the processing of personal data and which, in particular, may severely affect categories of data subjects by virtue of the nature, scope or purposes of such processing. ~~**The supervisory authority shall respond to consultation requests in due time.**~~

7a. Notwithstanding paragraph 2, Member States' law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to the processing of personal data by a controller for the performance of a task carried out by the controller in the public interest, including the processing of such data in relation to social protection and public health.

8. (…)

9. (…)

Comment

As regards par.1 SE believes as is the case with impact assessments that it is in the controller's best interest to use whatever means necessary. The situations in practice can vary and there is no need to burden the controller with unnecessary administrative obligations. If the wording in par. 1 would remain intact it should be combined with an obligation for the processor to assist.

Furthermore we believe that it the amended obligations in par. 6 are overly prescriptive. We must have trust in the independent supervisory authorities to request whatever information is needed in the consultation at hand.

We are also of the opinion that the procedure, including time frames, for national legislation is best left to the Member States. The national legislation procedures vary and there is no need to burden this regulation with unnecessary provisions.

Finally, SE no longer has a scrutiny reservation regarding par. 7a.