

Dear all,

Agreement was reached in trilogue on the Data Protection Regulation (and associated law enforcement Directive) yesterday evening. The outcome for research is very positive and we've issued a press release, copied below. Thank you all for your support in making this happen.

Here's a quick summary based on my initial analysis and I'm happy to provide further detail later.

- **Safeguards must be in place for the research provisions to apply (A.83).** The nature of the safeguards are left for Member States to develop, but anonymous data must be used where possible. Pseudonymisation is suggested as another possible safeguard, provided that the research can be fulfilled with pseudonymised rather than fully identifiable data.
- **Researchers will be able to use special categories of data, including data concerning health, without consent, as long as this is based on Union or Member State law (A.9(2)(i)).**
- **Further processing of data collected for another purpose for research is to be deemed 'not incompatible', which means there are fewer restrictions on its re-use (A.5(1)(b)).**
- **The key derogations for research from the Commission's text are maintained in the agreed compromise.** There are derogations:
 - o to allow longer storage periods for research (A.5(1)(e));
 - o from the right to notify data subjects about processing where someone else had collected the data initially (A.14a(4)(b));
 - o from the right to be forgotten (A.17(3)(d)); and
 - o Subject to additional safeguards, Member States may create further derogations from data subject rights in Articles 15 (data subject access), 16 (rectification), 17a (restriction of processing) and 19 (object).
- **Where consent is used as the legal basis, this must be 'specific', but recital 25aa suggests that broader forms of consent may be acceptable in scientific research.** How this is interpreted in implementation will be interesting, but research conducted under broad consent will still be possible anyway since the Regulation makes provisions for alternatives to consent.
- **The definitions of data concerning health and genetic data are somewhat clearer than earlier versions.**
- **There is helpful language about research in recitals 125, 125aa and 126.**
- **There is no longer an independent legal basis for research as A.6(2) has been deleted.** However, many member states operate without one at present. It will be important in implementation to make sure that there are other legal bases in A.6 (e.g. legitimate interests) that are clearly available to research.
- 'Pseudonymisation' is now defined in the text (A.4(3b)). Recital 23 suggests that data that has been pseudonymised should be considered personal data. This would be a departure from the current

approach in some Member States, including the UK. It will be interesting to see how this is interpreted further in implementation.

The full text is available here:

<http://www.statewatch.org/news/2015/dec/eu-council-dp-reg-draft-final-compromise-15039-15.pdf>

Next steps:

- LIBE committee (Parliament) vote on Thursday at 0930-1000 CET
- Coreper (Member State ambassadors) to vote on Friday or Monday.
- These votes will indicate informal political agreement on the Regulation.
- The Regulation will then go for legal linguistic checks ahead of formal votes in Parliament plenary and the Council of Ministers next year.
- The new rules will apply from two years after the Regulation enters into force in 2016 – this is expected to be Q1/Q2 2018.

I'll keep you updated on the final stages and implementation, and look forward to continuing to work with you! In the meantime, I hope you have a very happy Christmas and New Year.

Best wishes,

Beth

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