



EU INITIATIVES 2015-2020: CHALLENGES AND OPPORTUNITIES

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LEGISLATION

- General Data Protection Regulation (GDPR) – Status Quo
- Small Claims Procedure

GDPR: LEGISLATIVE HISTORY

- 25th January 2012: European Commission introduces proposal for a General Data Protection Regulation
- 21st October 2013: Final vote on proposal of the Parliamentary LIBE Committee
 - Rapporteur: Jan-Philipp Albrecht (Greens)
 - Shadow rapporteur: Axel Voss (EPP)
 - Shadow rapporteur: Marju Lauristin (S&D)
- 12 March 2014: European Parliament adopts LIBE proposal
- 15 June 2015: European Council adopts its proposal

TRILOGUE

- Trilogue negotiations (24th June)
 - GDPR versions of European Commission, European Parliament, European Council
- Areas of concern/discussion
 - Chapter II
 - Article 6(1)(f) – Legitimate Interest (EP and Council versions)
 - Recital 39 (a) (EP version)
 - Article 6(3)(a) – Change of purpose/compatible grounds (Council version)
 - Recital 40
 - Article 6(4) – Change of purpose/incompatible grounds (Council version)

TRILOGUE

- Chapter III
 - Article 17 – Right to be forgotten
 - Article 19 – Right to object
 - Article 20 – Profiling/Automated processing
- Dates
 - Trilogue meetings on Chapters II-IV
 - 16th/17th September
 - 29 September
 - 15th October (!)

GDPR: FENCA LOBBYING EFFORTS

- Communication of FENCA positions to MEPs, Council (Presidency and member countries), Commission
- Communication and position papers with other federations
- Membership of ICDP (Industry Coalition for Data Protection)
- Meeting with Bodo Lehmann (3rd September 2015)
 - Cabinet Commissioner Oettinger, Digital Economy & Society
- FENCA-sponsored Event Strassburg, 6th October 2015
 - MEP Jan Philipp Albrecht (Greens)
 - MEP Axel Voss (EPP)
 - MEP Marju Lauristin (S&D)

ARTICLE 6 (1) (F)

Commission	European Parliament	Council
<p>(f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.</p>	<p>(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or, in case of disclosure, by the third party to whom the data is disclosed, and which meet the reasonable expectations of the data subject based on his or her relationship with the controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.</p>	<p>(f) processing is necessary for the purposes of the legitimate interests pursued by a the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance exercise of their tasks.</p>

ARTICLE 6 (1)(F) – EP VERSION

“processing is necessary for the purposes of the legitimate interests pursued by the controller or, in case of disclosure, by the third party to whom the data are disclosed, and which meet the reasonable expectations of the data subject based on his or her relationship with the controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data. This shall not apply to processing carried out by public authorities in the performance of their tasks.”

RECITAL 39(A) – EP VERSION

“Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, **the prevention or limitation of damages** on the side of the data controller should be presumed as carried out for the legitimate interest of the data controller **or, in case of disclosure, of the third party** to whom the data is are disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller. The same principle also applies to the enforcement of legal claims against a data subject, such as **debt collection** or civil damages and remedies.”

ARTICLE 6 (4) – COUNCIL VERSION

“Where the purpose of further processing is incompatible with the one for which the personal data have been collected by the same controller, the further processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1.

Further processing **by the same controller** for incompatible purposes **on grounds of legitimate interests of that controller or a third party** shall be lawful if these interests override the interests of the data subject.”

ARTICLE 6(3) – COUNCIL VERSION

“In order to ascertain whether **a purpose of further processing is compatible with the one for which the data are initially collected**, the controller shall take into account, unless the data subject has given consent, inter alia:

- (a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;
- (b) the context in which the data have been collected;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9;
- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards.”

RECITAL 40 (COUNCIL PROPOSAL)

“Further processing shall not be considered incompatible with the initial purpose of the collection of data if it is **necessary for implementing business models that contribute to the functioning of the internal market** or national economies or serves consumer interests, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding.”

ARTICLE 17 (1)(A)

Tentative agreement in trilogue:

“The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;”

ARTICLE 17 (3)(E)

Tentative agreement in trilogue:

“Paragraphs 1 and 2 shall not apply to the extent that processing of the personal data is necessary:

(e) for the establishment, exercise or defence of legal claims.”

ARTICLE 19

To be rediscussed at a later stage

ARTICLE 19 (1) – COUNCIL VERSION

“The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her which is based on points (e) or (f) of Article 6(1); the first sentence of Article 6(4) in conjunction with point (e) of Article 6(1) or the second sentence of Article 6(4). The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.”

ARTICLE 19 (1) + (2) – EP VERSION

“1. The data subject shall have the right to object at any time to the processing of personal data which is based on points (d) and (e) of Article 6(1), **unless the controller demonstrates compelling legitimate grounds** for the processing which override the interests or fundamental rights and freedoms of the data subject.

2. Where the processing of personal data is based on point (f) of Article 6(1), the data subject shall have, at any time and without any further justification, **the right to object** free of charge in general or for any particular purpose to the processing of his or her personal data.”

ARTICLE 20

To be rediscussed at a later stage.

SMALL CLAIMS PROCEDURE

- Permanent Representatives Committee (Coreper), on behalf of the Council, reached compromise with the European Parliament on 29 June 2015
- European Parliament approved new regulations with 650 to 26 votes, and with 28 abstentions on 7th October 2015
- Formal agreement by the Council needed

SMALL CLAIMS PROCEDURE

- the **increase in the threshold for a small claim from €2.000 to €5.000**. The possibility of raising the threshold even further will be examined after the first five years of application of the new rules;
- the obligation of the member states to **ensure the court fees** charged for European Small Claims Procedure **are not disproportionate** and **not higher than the court fees for national simplified court procedures**, as well as the obligation to offer remote means of payment for the payment of court fees;

SMALL CLAIMS PROCEDURE

- an increase in the **use of distance communication technology** for oral hearings and taking of evidence, and the establishment of a general framework that allows the use of electronic service of documents;
- the **minimisation of the translation requirement (and related costs)** as regards the certificate necessary for the enforcement of a judgment given in the European Small Claims Procedure;
- the **creation of "a bridge" between the European Small Claims Procedure and the European Order for Payment Procedure by allowing the claimant to use the European Small Claims Procedure when a statement of opposition has been lodged against a European order for payment.**

OPPORTUNITIES

■ Capital Markets Union

- Green Paper
- improving **access to financing** for all businesses across Europe and investment projects, in particular start-ups, SMEs and long-term projects;
- increasing and **diversifying the sources of funding** from investors in the EU and all over the world;
- making the **markets work more effectively** so that the connections between investors and those who need funding are more efficient and effective, both within Member States and cross-border.

■ Digital Single Market