

Proposals for amendments on the Data Protection Regulation

Aggregate Data Reports

Article 4: Definitions

For the purposes of this Regulation:

4(22): ‘aggregate data reports’ shall mean reports of anonymous data or pseudonymous data generated by the collection of personal data for the purpose of further providing anonymous or pseudonymous aggregate data.

Article 83: Processing for **aggregate data reports and** historical, statistical and scientific research purposes

83(1): Within the limits of this Regulation, ~~Personal~~ data may be processed for **aggregate data reports and historical, statistical or scientific ~~research~~ purposes only if:**

- (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.~~

2. Personal data processed for ~~Bodies conducting~~ **aggregate data reports and historical, statistical or scientific research may *be published* or otherwise publicly disclosed ~~personal data~~ only if:**

- (a) the data subject has given consent, subject to the conditions laid down in Article 7;
- (b) the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or
- (c) the data subject has made the data public.

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 processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions

Article 5: Principles Relating to Personal Data Processing

(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 **aggregate data reports and** historical, statistical or scientific research purposes in accordance with the rules and conditions of Article 83 and if a periodic review is carried out to assess the necessity to continue the storage;

Article 6: Lawfulness of Processing

6(1): Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of their personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (f) processing is necessary for the purposes of the legitimate interests pursued by a 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 of their tasks; *or*
- (g) *only pseudonymous data is processed*.

6(2): Processing of personal data which is necessary for the purposes of ***aggregate data reports and*** historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

Article 9: Processing of Special Categories of Personal Data

2(i): processing is necessary for ***aggregate data reports and*** historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

Article 17: Right to be Forgotten and Erasure

3(c): for ***aggregate data reports and*** historical, statistical and scientific research purposes in accordance with Article 83;

Article 79: Administrative Sanctions

5(g): does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for ***aggregate data reports and*** historical, statistical and scientific research purposes.

Article 81: Processing of Personal Data Concerning Health

Processing of personal data concerning health which is necessary for ***aggregate data reports and*** historical, statistical or scientific research 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 Article 83.

Recital 40

The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for ***aggregate data reports and*** historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.

Recital 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 grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for ***aggregate data reports and*** historical, statistical and scientific research purposes.

Recital 50

However, it is not necessary to impose this obligation where the data subject already disposes of this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. The latter could be particularly the case here processing is for ***aggregate data reports***, historical, statistical or scientific research purposes; in this regard, the number of data subjects, the age of the data, and any compensatory measures adopted may be taken into consideration.

Recital 88

Transfers which cannot be qualified as frequent or massive, could also be possible for the purposes of the legitimate interests pursued by the controller or the processor, when they have assessed all the circumstances surrounding the data transfer. For the purposes of processing for ***aggregate data reports and*** historical, statistical and scientific research purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration.

Recital 125

The processing of personal data for the purposes of ***aggregate data reports and*** historical, statistical or scientific research should, in order to be lawful, also respect other relevant legislation such as on clinical trials.

Recital 129

In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of lawfulness of processing; specifying the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access; the right to be forgotten and to erasure; measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the Supervisory Authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer; codes of conduct; criteria and requirements for certification mechanisms; criteria and requirements for transfers by way of binding corporate rules; transfer derogations; administrative sanctions; processing for health purposes; processing in the employment context and processing for **aggregate data reports and** historical, statistical and scientific research purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Justification:

The proposed amendments are in accordance with the proposal of the Council of the European Union and have allowed for the inclusion of aggregate data reports into the Article 83 exception for processing for historical, statistical and scientific research purposes.ⁱ Aggregate data reports are generated by the collection of of personal data for the purpose of further providing anonymous or pseudonymous aggregate data.

Under the Draft Regulation, no accommodation is made for aggregate data reports. Article 83 provides for an exception to the Article 6 requirements for lawful processing if the processing is for historical, statistical and scientific purposes. However, the scope of what is processing for statistical purposes is not thought to include aggregate data reports as presently drafted.

Furthermore, aggregate data reports are not included in the Article 6(f) derogation to the lawfulness of processing. Article 6(f) allows for the processing of personal data where the “*processing is necessary for the legitimate interests pursued by a controller*”. Recital 37 defines what is necessary as something “vital to the data subject’s life”, and as such, aggregate data reports are excluded from the derogation.

An exception should be granted to aggregate data reports to the extent that the purpose is for the optimization of website elements, performance of a website and adserver analytics for billing purposes. The alternative, i.e. strict compliance with the Draft Regulation, may result

in significant harm to e-commerce as online analytics providers would be forced to obtain data subject consent and provide data subject rights (access, correction, deletion, blocking...).

ⁱ See Council of the European Union, Interinstitutional File 2012/0011 (COD), 22 June 2012.