

Proposed General Data Protection Regulation: Exemption for Data Processing for Journalistic Purposes (Article 80)

Press Freedom in Europe in severe danger

EFJ - the European Federation of Journalists, EMMA - the European Magazine Media Association and ENPA - the European Newspaper Publishers' Association, are extremely concerned by the ongoing Council negotiations regarding Article 80 of the proposed General Data Protection Regulation. We note that new changes regarding the wording are being discussed, but worryingly the key issue still remains unaddressed: the Council text does not include a **robust and directly applicable exemption** for data processing for journalistic purposes. This exemption is indispensable for a free press in Europe.

The Council text in its current version – just like the text of the Parliament – does not guarantee any protection for press freedom, but leaves it entirely up to the Member States to “reconcile” the right to the protection of personal data with the right to freedom of expression. The wording of the **Council text even implies** that data protection rules are **to be applied to journalistic data processing**.

Not only would the adoption of this Council wording be a tremendous step backwards and fall far behind the current level of protection of press freedom, it would represent the **abolition of the current *acquis communautaire* on European press freedom**.

At Council level, the proposed changes to the Article 80 text which have been under discussion would result in a weakening of the guarantees set out in the original Commission proposal and as compared to the Directive 95/46/EC. The wording of an optional “reconciling” presents the risk of leaving too much flexibility for Member States when it comes to the implementation of Article 80. It would also create a **risk of governments’ misuse** of this provision in Member States where protection of press freedom remains weak. As mentioned above, the wording even implies that data protection rules could apply to journalistic data processing. Therefore, those Member States willing to uphold press freedom on a national level, might even be hindered to do so by the Regulation.

Moreover, the Council should not follow the **European Parliament’s approach**, which rendered the Article 80 exemption meaningless given that the primary purpose of this exemption – in both the current Data Protection Directive (95/46/EC), as well as the Commission proposal – is the protection of journalistic activities. The Parliament’s text, however, omits any specific reference to journalistic data processing, in an attempt to cover other forms of expression online (including blogs, forums, etc.), and makes the exemption sound almost optional (“whenever this is necessary”) rather than being binding.

1. Solutions

The best approach would be to amend Article 80 so as to create a directly applicable and binding exemption on processing of personal data for journalistic purposes, as proposed by the European Parliament’s opinion-giving committees (ITRE and JURI). This would subsequently avoid a scenario whereby a Member State could abuse the flexibility of Article 80 or even use it as an argument for the application of the regulation to journalistic data processing. The exemption also needs to clearly identify the Chapters, which are not to be applied to journalistic data processing. These Chapters need to be taken out as a whole

Alternative paragraph 2 (giving Member States a greater margin of appreciation):

2. Member States shall provide for exemptions or derogations from the provisions mentioned in paragraph 1 of this article for the processing of personal data not covered by sentence 1 of this paragraph, whenever this is necessary in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

c) Minimum Solution

If a directly applicable exemption cannot be agreed upon, the following minimum solution has to take into account as follows:

- (1) There must be a clear obligation and no discretion for Member States in implementing the exemption for data processing for journalistic purposes.
- (2) The exemption must cover as a minimum any processing "for journalistic purposes. There must be no suggestion of any unclear balancing process being required.
- (3) Chapters have to be clearly identified in an encompassing way, including VIII
- (4) Non-journalistic data processing must be protected separately and distinguished from journalistic data processing.

Article 80

1. Member States shall provide for exemptions or derogations from **Chapter II (General principles), Chapter III (Rights of the data subject), Chapter IV (Controller and processor), Chapter V (Transfer of personal data to third countries and international organisations), Chapter VI (Independent supervisory authorities), Chapter VII (Co-operation and consistency) and Chapter VIII (Remedies, liability and sanctions)** for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

2. The obligation for member states in paragraph 1 applies to processing of personal data not covered by paragraph 1 whenever this is necessary in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

[or, as another option of including non-journalistic freedom of expression]

2. Member States shall provide for exemptions or derogations from the provisions mentioned in paragraph 1 of this article for the processing of personal data not covered by sentence 1 of this paragraph whenever this is necessary in order to reconcile the right to the protection of personal data with the rules governing freedom of expression.

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