

Draft General Data Protection Regulation

European journalists and press publishers urge Member States to not to lower the level of protection of Press Freedom

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EFJ, the European Federation of Journalists, ENPA, the European Newspaper Publishers' Association, EMMA, the European Magazine Media Association, and EPC, the European Publishers' Council, acknowledge the latest suggestions proposed by the Italian Presidency regarding Article 80 of the General Data Protection Regulation (GDPR), but remain extremely concerned about developments in the negotiations between Member States' delegations in the Working Party on Information Exchange and Data Protection (DAPIX).

As European journalists and press publishers have mentioned several times before, a robust, directly applicable, and legally binding exemption for journalistic data processing is indispensable for European press freedom. Publishers and journalists cannot investigate, report, publish, store, and archive information if they have to rely on the consent of the "data subject" or a legitimate interest, or would be subject to controls by data protection authorities.

Leaving a broad margin of flexibility to Member States as to how they implement the exemption is detrimental to press freedom for two reasons.

- An ambiguous wording, requiring the Member States to simply reconcile the rights to data protection with freedom of expression (rather than having an obligation to provide for exemptions for journalistic data processing as is the case in the current Data Protection Directive), opens the door to legislation which restricts the media. With so much flexibility, data protection law could easily become an efficient tool to control editorial content of the press, if it is not clearly exempted from applying to journalistic activities.
- An ambiguous wording would make it optional for Member States to implement clear exemptions in favour of press freedom and leave room for manipulation. For example, the current wording would create an imbalance between privacy rights and press freedom, setting the precedent of privacy rights over the latter. In practice, this means that an article cannot be published without the consent of e.g., a "data subject" referred to in the article. This will have a great impact on investigative journalism. It is clear that **current exemptions in national law** transposing Article 9 of the Directive **cannot be upheld** under an Article 80 of the Regulation falling far behind the current level of protection.

It is therefore crucial to have the legal certainty that Member States will continue to be obliged to – and indeed able to – introduce vital exemptions and derogations to data processing rules in order to allow for journalistic data processing. This is particularly crucial in the context of this directly binding Regulation which is introducing more stringent data protection rules. It is particularly important in this regard that in the wording of Article 80:

We therefore urge the Member States to stand up for a clear and directly binding exemption in Article 80, as suggested below. This will:

- give Member States the **broadest scope to balance the conflicting rights** in their respective national media laws
- ensure that **all** EU Member States will have to uphold a **minimum level of press freedom** by not applying stringent EU data protection rules to journalistic data processing.

The minimum solution to merely uphold the *acquis communautaire* as regards press freedom – in line with Article 9 of the Data Protection Directive - would therefore be an exemption as follows:

For the purposes of paragraph 1,¹ Member States shall provide for exemptions or derogations from the provisions in Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organizations), 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 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 right to freedom of expression.

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¹ The exemption could be implemented as Article 80 paragraph 2 after a general stipulation in paragraph 1. For other forms of exercising the right to freedom of expression another paragraph could be added making it optional for Member States to provide for exemptions if necessary.