

## Use of Pseudonyms in Albrecht's Draft Report

On January 8th, 2013, a set of amendments was issued by Jan Albrecht, the Member of the European Parliament who has chaired the committee process to consider the draft EU Data Protection Regulation. This document collects statements about the use of pseudonymous data found in the Draft Report on the proposal for a regulation of the European Parliament and of the Council on the protection of individual with regard to the processing of personal data and on the free movement of such data. The complete Draft Report can be found at [http://www.w3.org/wiki/images/b/b0/Draft\\_Report.pdf](http://www.w3.org/wiki/images/b/b0/Draft_Report.pdf).

### Amendment 33

#### Proposal for a regulation

##### Recital 52

*Text proposed by the Commission*

(52) The controller should use all reasonable measures to verify the **identity of a data subject that requests** access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

##### *Amendment*

(52) The controller should use all reasonable measures to verify the **authenticity of a subject** access **request**, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

##### *Justification*

*If pseudonyms are used, which is encouraged by this Regulation, the user only needs to authenticate himself/herself, e.g. by providing proof that he/she is the owner of an account, without providing identity information. See related Articles 10, 11(2) and 15(1).*

### Amendment 85

#### Proposal for a regulation

##### Article 4 – point 2 a (new)

*Text proposed by the Commission*

##### *Amendment*

**(2a) 'pseudonym' means a unique identifier which is specific to one given context and which does not permit the direct identification of a natural person, but allows the singling out of a data subject;**

##### *Justification*

*For the use of pseudonymous data, there could be alleviations with regard to obligations for the data controller. See related amendments to Recital 23 and Article 7.*

### Amendment 105

#### Proposal for a regulation

**Article 7 - paragraph 2 a (new)**  
*Text proposed by the Commission*

*Amendment*

**2a. If the data subject's consent is to be given in the context of the use of information society services where personal data are processed only in the form of pseudonyms, consent may be given by automated means using a technical standard with general validity in the Union in accordance with paragraph 4c, which allows the data subject to clearly express his or her wishes without collecting identification data.**

*Justification*

*This allows for the use of standards such as "Do Not Track", combined with an incentive to use only pseudonymous data based as found e.g. in §15 of the German Tele-Media Law. In order to ensure such a standard is in line with this Regulation, it needs to be approved by the Commission. See related amendments to Articles 4(2a), 7(4c) and Recital 23*

**Amendment 117**  
**Proposal for a regulation**  
**Article 10**

*Text proposed by the Commission*

If the data processed by a controller do not permit the controller to identify a natural person, the controller shall not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation

*Amendment*

If the data processed by a controller do not permit the controller to identify **or single out** a natural person, **or consist only of data relating to pseudonyms**, the controller shall not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

*Justification*

*Data controllers may use a unique identifier for the same person across different services and contexts, while still not being able to identify a natural person on their basis. Pseudonyms as defined in the amendment to Article 4 are limited*

**Amendment 328**  
**Proposal for a regulation**  
**Article 81 - paragraph 2 a (new)**  
*Text proposed by the Commission*

*Amendment*

**2a. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 2, with regard to research that serves an**

***exceptionally high public interests, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all necessary measures shall be taken to prevent re-identification of the data subjects. Such processing shall be subject to prior authorisation of the competent supervisory authority, in accordance with Article 34(1).***

*Justification*

*The amendments to paragraphs 2 and 2a ensure that health data, which is extremely sensitive, may only be used without the consent of the data subject if it serves an exceptionally high public interest and in this case must be anonymised or at least pseudonymised using the highest technical standards. See Council of Europe Recommendation R(97)5 on the protection of medical data, paragraph 9.*

**Amendment 334**

**Proposal for a regulation**

**Article 83 – paragraph 1**

*Text proposed by the Commission*

1. Within the limits of this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

*Amendment*

1. Within the limits of this Regulation, personal data ***not falling within the categories of data covered by Articles 8 and 9*** may be processed for historical, statistical or scientific research purposes only if:

*Justification*

*Data about children and sensitive data can only be used for research under the conditions in the new paragraphs 1a and 1b. It may only be used without the consent of the data subject if it serves an exceptionally high public interest, and in this case must be anonymised or at least pseudonymised using the highest technical standards.*

**Amendment 337**

**Proposal for a regulation**

**Article 83 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 1a, with regard to research that serves an exceptionally high public interests, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all necessary measures shall be taken to prevent re-identification of the data subjects. Such processing shall be subject to prior authorisation of the competent supervisory authority, in accordance with Article 34(1).***

### *Justification*

*In cases where the data subject has not given consent, sensitive data and data about children should only be used for research purposes if based on law and serving exceptionally high public interest. Otherwise, any "research", no matter if academic or corporate and including e.g. market research, could be used as an excuse to override all protections provided for in the other parts of this Regulation, such as in Article 6 on legal grounds etc. The wording is identical to the proposed provisions in Article 81.*

### **Strengthening individuals' rights**

As the Regulation implements a fundamental right, a limitation of the material scope, particularly as regards the definition of “personal data”, by for instance introducing subjective elements relating to the efforts the data controller should make to identify personal data is rejected. The concept of personal data is further clarified with objective criteria (Article 4(1); Recitals 23 24) . Legitimate concerns regarding specific business models can be addressed without denying individuals their fundamental rights. In this context the rapporteur encourages the pseudonymous and anonymous use of services. For the use of pseudonymous data, there could be alleviations with regard to obligations for the data controller (Articles 4(2)(a), 10), Recital 23).

### **Amendment 14**

#### **Proposal for a regulation**

#### **Recital 23**

#### *Text proposed by the Commission*

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.

#### *Amendment*

(23) The principles of protection should apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the individual. ***This Regulation should not apply to anonymous data, meaning any data that can not be related, directly or indirectly, alone or in combination with associated data, to a natural person or where establishing such a relation would require a disproportionate amount of time, expense, and effort, taking into account the state of the art in technology at the time of the processing and the possibilities for development during the period for which the data will be processed.***

#### *Justification*

*The concept of personal data is further clarified with objective criteria for anonymous data, based on Council of Europe Recommendation 2006(4). See related amendment to Article 4(1), Recital 24.*

## Amendment 15

### Proposal for a regulation

#### Recital 24

*Text proposed by the Commission*

(24) When using online services, individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers. ***This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.***

#### *Amendment*

(24) When using online services, individuals may be associated with ***one or more*** online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses, cookie identifiers ***and other unique identifiers. Since such identifiers leave traces and can be used to single out natural persons, this Regulation should be applicable to processing involving such data, unless those identifiers demonstrably do no relate to natural persons, such as for example the IP addresses used by companies, which cannot be considered as 'personal data' as defined in this Regulation.***

#### *Justification*

*The concept of personal data is further clarified with objective criteria. Identifiers that have a close relation to a natural person must be regarded as personal data. See related amendment to Article 4(1), Recital 23.*

## Amendment 84

### Proposal for a regulation

#### Article 4 – point 1

*Text proposed by the Commission*

(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an ***identification number***, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

#### *Amendment*

(1) 'data subject' means an identified natural person or a natural person who can be identified ***or singled out***, directly or indirectly, ***alone or in combination with associated data***, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to a ***unique identifier***, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, social ***or gender*** identity ***or sexual orientation*** of that person;

*Justification*

*The concept of personal data is further clarified with objective criteria. See related amendment to Recitals 23, 24.*