

# Annex D

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# Table of Comments on Consultation Paper No. 6 of 2019

# Proposed New Data Protection Law

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| Note 1: DIFCA reserves the right to publish, including on its website, any comments you provide. However, if you wish to remain anonymous, you must expressly request at the time of making comments that this should be the case. Note 2: The second column, ‘comments on proposed policy’ relates to the policy explained in the CP paragraphs specified. The third column, ‘comments on legislation’ refers to the draft legislation reflecting the proposed policy.Note 3: It is possible that you may not have any comments, either on the proposed policy or draft legislation, or may have comments on one and not the other. You may leave a blank column if you either agree to the proposed position, or you have no concerns relating it. Note 4: If there are any ambiguities relating to the proposed policy or draft legislation, you may raise those in your comments. |

| **Name of individual / entity providing comments:** |  |
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| No.  | Comments on proposed policy | Comments on legislation |
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| Application of the proposed Law (Article 5) |
| **Q1: If you believe the scope of the law is unclear then please provide comments as to why.** |
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| Requirements for legitimate and lawful Processing (Articles 9-13) |
| **Q2: With reference to section 7, do you believe the omission of: "*[Special Categories of Personal Data shall not be Processed unless] necessary to uphold the legitimate interests of the Controller recognised in the international financial markets, provided that such is pursued in accordance with international financial standards and except where such interests are overridden by compelling legitimate interests of the Data Subject*", will prove problematic? If you are a Controller, what activities do you perform in reliance on this basis that could not be performed in reliance on one of the other bases?**  |
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| **Q3:** **With reference to section 28, please advise if you believe you have audit and accounting requirements which require the Processing of Special Categories of Personal Data and which are not mandatory legal requirements.** |
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| **Q4: Please let us know if you have any concerns or comments in relation to the conditions for reliance on consent as a basis for Processing, in particular in relation to Article 12. Please note that the ability of a Data Subject to withdraw consent will not be compromised.** |
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| Q5: Please let us know if you have any concerns or comments in relation to the use of legitimate interests as a basis for Processing, in particular in relation to Article 13. |
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| General Requirements (Articles 14-21) |
| **Q6: Controllers and Processors are invited to raise any concerns in relation to the record keeping requirements in Article 15.** |
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| **Q7: Is the definition of High Risk Processing Activity sufficiently clear? We ask Controllers and Processors to bear in mind that, in practice, if such persons are in any doubt as to whether their activities are High Risk, our intent is that they would adopt a cautious approach and appoint a DPO. In due course, the Commissioner may publish guidance or Regulations which confirm (non-exhaustively) that certain types and categories of Processing operations are considered to be High Risk Processing Activities.** |
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| **Q8: If you believe you will be required to appoint a DPO but have concerns about your ability to do so, please provide details.** |
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| **Q9: We welcome the views of Controllers as to whether the requirements in relation to the need to carry out a data protection impactassessment are clear.** |
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| **Q10: In certain circumstances described in Article 21, a Controller may be required to consult with the Commissioner of Data Protection. We welcome the views of Controllers as to whether the requirements in relation to the need to consult are clear.** |
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| Cessation of Processing (Article 22) |
| **Q11: The concept of putting data "beyond further use" is included in recognition of the fact that some storage systems, Processing methods or technologies which can legitimately be used present difficulties when it comes to permanent and complete deletion of data.**  **We welcome opinions from Controllers as to whether the definition of "beyond further use" in Article 22(2) is clear.**  **We would like to hear from Controllers currently Processing Personal Data who believe that such Personal Data can be neither deleted nor put "beyond further use" (as defined) when the basis for Processing ceases to exist. We would be keen to understand such circumstances in more detail and request Controllers to provide as much information as possible (respecting confidentiality and privacy); alternatively, we would be happy to discuss such matters directly with Controllers.** |
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| Joint Controllers (Article 23) |
| Q12. Controllers who believe they may be Joint Controllers may provide comments on Article 23. |
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| Processors (Article 24) |
| **As written, from the moment the Proposed Law becomes effective, the Proposed Law provides that all arrangements between Controllers and Processors must comply with Article 24 otherwise such parties will be in violation of the Proposed Law. It is acknowledged that this presents problems with respect to arrangements already in place before the Proposed Law becomes effective. In Europe, for example, much time and effort was spent "remediating" existing contracts for GDPR, sometimes with uncertain legal results (where both suppliers and customers purported to impose their own terms). Ultimately, it is not (usually) wholly within the gift of a single party to amend the terms of an agreement so even parties which conscientiously sought to comply with updated international data protection laws such as the GDPR could not ensure their own compliance in the absence of agreement from counterparties.** |
| **Q13: As noted, the Commissioner of Data Protection may publish model contract clauses to assist Controllers and Processors. Could Controllers and Processors please confirm if the publication of model clauses by the Commissioner of Data Protection would be helpful – in principle – in ensuring a smooth process of contract amendment without the need for a "battle of the forms" or for protracted negotiations? Such clauses would not address liability limitations or exclusions.**  |
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| **Q14: We are prepared to consider a reasonable transitional period during which existing agreements would not be deemed to be in violation of the Proposed Law, subject to suitable parameters. We would certainly expect significant Processing agreements (where high volumes of Personal Data are involved, where Special Categories of Personal Data are involved or where the Processing is high-risk for some other reason) to be amended to ensure compliance as soon as possible. We welcome comments from both Controllers and Processors on the following:** **- the number of arrangements that the party believes they would need to address (to allow us to form a view of the compliance burden on such parties);****- what proportion of the arrangements are significant Processing arrangements;****- what proportion of the arrangements are long-term (i.e. are not due to expire within the next 12 months)?**We also welcome comments on whether a transitional period would be helpful. |
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| Data Export (Articles 26-28) |
| Q15: Controllers who expect to fall within the scope of Article 28 are invited to provide comments on the Article. |
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| Provision of Information (Articles 29-31) |
| We are keen to consult on the issues noted in section 54, which are not addressed in other prominent data protection laws. Please see question 16 below. |
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| Data Subject Rights (Articles 32-40) |
| Q16: Controllers who intend to use innovative Processing methods where erasure (and therefore complying with a valid objection) and rectification (for example, where stored Personal Data are intended to be immutable) are technically impossible or infeasible are invited to provide views on the provisions referenced in section 56. |
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| Commissioner of Data Protection (Articles 43-58) |
| Q17: We are keen to hear from any Controllers or Processors who believe certification schemes would be valuable and from any person who has an interest in establishing a certification scheme and being recognised as an approved certification body. Please provide your comments. |
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| Remedies, Liabilities and Sanctions (Articles 59-64) |
| Q18: Controllers and Processors are invited to comment on the provisions of Articles 59 – 64. |
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| Miscellaneous |
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