

Genealogy Privacy

CODE OF CONDUCT OF THE AMATEUR GENEALOGIST

Preliminary draft, 1.0 version.

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Foreword

The definition and the adoption of the Code of Conduct of the Amateur Genealogist are voluntary steps from amateur's genealogists, genealogical federations, circles and associations wishing to give their support for this initiative.

This Code is proposed as a preliminary draft and it is intended for all the actors in the field of amateur genealogy, to introduce at European level an examination of the implications of national legislation derived from Directive 95/46/EC on the genealogical activity.

The National Supervisory Authorities have unquestionable possibilities to propose simplifications and exemptions from the obligations arising from this legislation. This can lead to very marked disparities between the countries of the EU in the national measures practically applicable to amateur genealogy.

Federations, circles and genealogical associations wishing to support this initiative, consider that this preliminary draft of the Code of Conduct of the Amateur Genealogist constitutes a very appreciable base to open a discussion in the EU about an harmonisation in the field of amateur genealogy, of the Community implementation measures concerning national legislation derived from Directive 95/46/EC.

The organisations referred to above wish moreover this work of legislation's harmonisation to lead to the drafting of a European Code of conduct of the Amateur Genealogist who could collect as broad as possible a base in his recognition by all the actors of the field of amateur genealogy in the EU.

The present English version of this Code of Conduct is a free translation from the French version. However, special consideration has been given to use the same terminology as the one used in the English version of Directive 95/46/EC. For example, the term "data subject" is used to refer to the person concerned by her personal data being processed by the amateur genealogist, and "live data subject" is the person concerned who is still living.

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References

Two types of references are used in this Code of Conduct of the Amateur Genealogist:

- The internal references to chapters or sections of this Code are indicated between hook by [Chap.x.y.z];
- The other references to articles, paragraphs and sections of Directive 95/46/EC are indicated between hook by [art.x §y.z];

Where x, y, z represent figures or letters.

1. A code of conduct, for which purpose ?

When Directive 95/46/EC was introduced into the Law of the European Union's Member States, it appeared essential to consider the various pre-existing deontology codes. One sought to supplement this contribution with the new requirements of this legislation, to consign these rules in a reference guide for the genealogist.

The associations which have contributed to this Code of conduct represent persons for whom genealogy is a hobby which is exerted voluntarily. By opposition, for the professional genealogist genealogy represents a succession of remunerated actions within the framework of a declared occupation and practised individually or within a company. This is why the qualifier « amateur » was added in the title of this document to specify that this Code of conduct applies only within the framework of the benevolence.

The associations which have contributed, declare their intention to introduce this preliminary draft of Code of Conduct of the Amateur Genealogist as a contribution to become a basis of discussion for the development of an European Code of Conduct of the Amateur Genealogist, under the provisions of paragraph 1.d of Article 30 of Directive 95/46/EC. The aforementioned associations ask the « Working Party on the Protection of Individuals with regard to the Processing of Personal Data » as set up by Article 29 of the aforementioned Directive to convene a « Group Special Genealogy Amateur » for the purposes of its development.

2. Amateur genealogist deontology

This chapter largely shows the ethics that prevails in numerous associations¹. These concepts are not new.

2.1. The mutual aid duty

The amateur genealogist collaborates voluntarily, if he can afford, with the other genealogists, with the associations and other organisations working in genealogy or in related matters.

The amateur genealogist shares with others the results of his research by making them largely accessible.

2.2. Intellectual probity

The amateur genealogist must not to invent, deform, camouflage, minimise neither to exaggerate knowingly the information collected within the framework of his work, nor publish non checked information or that he knows distorted.

The amateur genealogist indicates the source of each information that he records in his data. He indicates the possible cross-checkings of his sources. He identifies the text extracts in the context of their original document.

The amateur genealogist is not plagiarist. He respects the copyrights and the intellectual property on the work published or produced by others in not appropriating their contents without the authorisation of their author, and by mentioning their sources in the extracts and quotations that he publishes.

When he publishes his work or when he produces extracts of them, the amateur genealogist takes care to freely permit the reproduction, the distribution and the re-use of the information in its contents within the exclusive limit of being used for genealogical, historical or statistical purposes, while forbidding to others to get a pecuniary profit or a personal advantage from doing this.

2.3. The integrity duty

In genealogy, various thinking and sensitivities show their characteristics through associative and entrepreneurial life. Amateurs as well as professionals need the work of others. Some day, the amateur genealogist is led to collaborate with the professional. On this occasion they will work on the

¹ Certain clauses of this chapter are extracted from the Code de Déontologie du Généalogiste, by courtesy of the Quebec Federation of Genealogy Societies (Fédération Québécoise des Sociétés de Généalogie).

basis of a balanced and voluntary exchange of information in the respect of this Code of Conduct of the Amateur Genealogist.

Usually the amateur genealogist will not benefit of his research, or will not seek to compensate for the expenses that they incur, even partially, by merchandising its information with others.

However, the orientation towards a deontology based exclusively on the benevolence, which prevailed to the drafting of this Code, can not be shared by all. Some considering that a profit is the normal reward for any activity, all admit however that it can only concern a marginal, non leading income in the overall remuneration that the amateur genealogist draws from another activity or from its function.

When the amateur genealogist agrees to make research for others, he will do so with this in mind. He will warn the applicant if his financial resources no longer enable him to continue the research requested or whether the expenses met by the applicant cease being marginal in relation to his other incomes. He will seek then to direct the applicant towards some association or professional genealogists.

In this spirit, the amateur genealogist can charge to the applicant the expenses incurred to get archive's document copies if he is asked for copies, provided that he informed the applicant before. The amateur genealogist presents these expenses with objectivity and on request he provides the tariffs for the incurred costs.

The amateur genealogist doesn't let himself make any research directed against the interest of persons neither make any disclosure of information which can undermine persons' honour or reputation.

2.4. The role of the associations

The associations of amateur genealogists support the principles and regulations of the Code of Conduct of the Amateur Genealogist (hereafter named the Code).

The associations train their members on their rights and duties with regard to the Code.

The associations put into force the obligation to adhere to the Code after a limited period of training to keep the membership of the association.

The associations prevent the failures and the infringements by putting into force in their rules of procedure the obligations to adhere and respect the Code as well as by any plea that they consider useful to this prevention.

The associations impose penalties for the failures and the infringements to the Code at the end of an inquiry respecting the right of the members challenged to defend themselves.

In the event of a sanction against one of their members, the associations inform their national Supervisory Authority, as set up in Article 28 of Directive 95/46/EC, about the failures or infringements of which they were informed and about the nature of the penalty that they took.

2.5. The respect of the archives

The amateur genealogist respects the national laws on the archives where he works and in particular the deadlines prescribed for their consultation. He similarly complies with the rules of procedure specific to each archive's place. He spontaneously identifies himself at the entry of an archive's place and indicates the aims and purposes of his research.

The amateur genealogist must be aware that he attends study halls, to the sides of research workers from other disciplines undertaking sometimes important work within an often very short time, and that it is important for them to get an easy access to the documents in a spirit of solidarity. The amateur genealogist carries out his research with respect to the work of researchers who surrounds him and in good intelligence with them.

The amateur genealogist must not appropriate, sneak, damage, deteriorate, mutilate, annotate or affix marks or writings neither on the research instruments nor on the documents placed at his disposal on some support that they are (books, registers, sheets, manuscripts, plans, photographs, microfilms, microfiches, films, computer supports, etc.) He treats them with the greatest care, and when original documents are involved, he redoubles his attention in order not to contribute to their deterioration.

The amateur genealogist conforms to the regulations on document copy. He uses preferably the instruments placed at his disposal to carry out the copies, and he scrupulously pays the expenditure provided for in the tariffs. If he is permitted to take photographs, he avoids disturbing the other researchers with flashes and he prefers the numerical photography instead.

2.6. The distribution of work

The amateur genealogist will publish his research and will deposit a copy, not only in the associations of which he is a member, but also to libraries, archives, genealogical and/or historical documentation centres.

If he has access to the Internet and if he can afford it, the amateur genealogist will publish his results through the Internet by three following measures:

- He will publish the list of patronymics, which are the object of his research on the site of an association, or on its personal site where he will make the objectives of his research known.
- Also he will provide the list of patronymics, which are the object of his research at least to an indexing data bank, thus connecting these names with the depositing genealogist's details, in order to cause new contacts between genealogists. But this second measure will only be implemented if the supply of his data and the access to the data in the bank by others do not give rise to remuneration.
- Finally the amateur genealogist will be able to publish his genealogy on Internet in a personal site, by taking the precautions relative to the protection of live person's personal data [Chap.4.8] and by publishing only data acquired fairly from his sources of information.

3. Introduction to the legislation on personal data

3.1. Subject of Directive 95/46/EC

Directive 95/46/EC is concerned with the protection of freedoms and fundamental rights of natural persons, and with their right to privacy, with respect to the processing of personal data [art.1 §1]. It organises the protection measures and methods for their implementation by the Member States of the European Union.

This protection being afforded, Member States shall neither restrict nor prohibit the free flow of personal data between the countries of the European Union [art.1 §2].

The transfer of data of this kind towards third countries can take place only if the third country in question ensures an adequate level of protection [art.25 §1]. For this, are taken in consideration inter alia, the nature of the data, the purpose and the duration of the processing operations [art.25 §2]. The European Commission and the Member States maintain the list of countries with an inadequate level of protection, also the national supervisory authorities [art.25 §3].

The processing of personal data for genealogical purposes are legitimate by the fact that they are necessary for the carrying out of the secular interest continued by genealogists amateurs responsible for their treatments and by the third parties to whom this data is communicated, provided that do not prevail the interest or the fundamental rights and freedoms of the live person concerned [art.7.f].

3.2. National law applicable

Each Member State of the European Union transposes the European Directive in its laws. The national law applicable to the amateur genealogist is that of the country of the Union where he is established [art.4 §1.a], i.e. the place where is usually his residence. The amateur genealogist has the obligation to deposit the notification of his genealogical activity by the national Supervisory Authority of the Union's country where he is established [art.18 §1, see annex-1: List of the national Supervisory Authorities].

The amateur genealogist who is not established in a State of the European Union, but who enters personal data on living persons into one or more computers/servers located in the Union, is applied the national laws of each Member State where the data are deposited [art.4 §1.c]. This does not concern the servers of electronic mail used for the purpose of transit although located on the territory of the Union. Moreover he has the obligation to have a representative in each Member State concerned [art.4 §2] and to make the notifications about each activity to the national Supervisory Authorities of these Member States [art.18 §1].

3.3. To face genealogist's aims of research

The amateur genealogist sets his research aims. He specifies the purposes, the means and the categories of processing. The precise and explicit specification of the purposes of processing is necessary with respect to the law [art.6 §1.b].

By confronting their data the amateur genealogists can discover common ancestors. Thus, they also discover new descendants from these ancestors, and among them contemporaries with rights to be respected. By respect to the rights of these living persons, the amateur genealogist must set his research aims with precision by himself.

The aims of research generally have at the same time genealogical and historical aims. *Historical* research can concern a locality, an archive fund, a family, the ancestors of a person, etc.; therefore the ancestors of contemporaries, but does not concern these contemporaries themselves. *Genealogical* research will require the drafting of family and/or individual record sheets, concerning at the same time the deceased's personal historical data and the non-historical data of living persons.

The most traditional genealogical research topics are:

- The agnatics lines, i.e. the ascendants and descendants in the same patronymic line, the spouses included;
- The ancestors of a person;

- The descendants of an ancestor known, the spouses included;
- The research of the ancestors of a person and of the cousins from the same ancestors, spouses included;
- The patronymic research, i.e. all the families whose a member at least carries the patronymic, with the aim of finding the common roots of these families, the spouses included;
- The historical research on families having something in common, for example their locality, their house, their occupation, their notary, etc. including the descendants of these families, the spouses included;
- Other historical topics to be specified, requiring to gather personal data, including those of living persons.

All this research topics have in common to record parenthood links « Child-Parents », i.e. two links for each individual to the father and to the mother in addition to personal data. **Without parenthood link, there is more genealogy, but of the individuals' collections.**

In his notification to national Supervisory Authority, the amateur genealogist must specify the purpose of his processing [art.19 §1.b]. If thereafter he widens his research topics he must introduce a new notification.

This is why, he must take from the beginning all the necessary care to set his research aims. Thus, the initial topic to search for his ancestors can quickly require a new notification, at the moment of the discovery of common ancestors with another living person. Similarly if one wants to include a contemporary cousin in his files. In this case « **the search for ancestors and for cousins from the same ancestors, spouses included** » will be notified instead.

Given the care to be taken to the legal information obligations with respect to the contemporaries, the amateur genealogist must himself limit living persons appearing in his files to what is strictly necessary to achieve its aims of research.

In this respect, it should be noted with the previous example that, if it had not been specified « the spouses included », the family sheets (father, mother with children) of contemporary cousins could not have living spouses' data since they do not result « from the same ancestors ».

For these contemporary spouses, one is more and more often confronted with the existence of what is called « **recomposed families** » to follow divorce, re-marriage, or successive concubinages. On one hand, it will be advisable to specify that « **the term "spouses" also stretches to the concubines and other partners out of marriage** ».

On the other hand, certain persons during their life can had several « spouses ». Thus at the start of a person, the amateur genealogist could wish to extend the topic of his research and to include the spouses, then the spouses of the spouses and so on. In this case, it will be advisable to specify: « **With the spouses, the processing will include the spouses of spouses, and so on, with their descents** ».

Lastly, some amateur genealogists wish to include for each « spouse », the family sheet where these spouses appear as children. Thus, it will be advisable to specify: « **The processing includes the personal data of the parents and the spouses' brothers and sisters** ». [see: annex-4 « notification »].

3.4. The genealogical data processing

3.4.1. Definitions of processing, controller, processor

The « **processing of personal data** » is defined as « any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction » [art.2.b].

The amateur genealogist « **controller** » is defined as « the natural or legal person [...] who alone or jointly with others determines the purpose and means of the processing of personal data [...] » [art.2.d].

The « **processor** » is defined as « the natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller » [art.2.e].

3.4.2. Scope of the law and processing concept

The definition of the scope of this legislation must first be examined carefully.

In the scope of the Directive enter: « **the processing of personal data wholly or partly by automatic means, and the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system** » [art.3 §1].

But at once the Directive rejects of its scope « **the processing of personal data by a natural person in the course of a purely personal or household activity** » [art.3 §2, 2nd indent].

One can consider that this legislation does not apply to the storage within the household framework of personal data, which does not form parts or are not intended to form parts of a filing system. Here are some examples of documents which can be held by a person within a household framework: timetables with anniversary dates (births, marriages) about living persons, advertisements and death notices with family links to living persons, lists of guests with their family relationship, copies or certificates from registers of births, marriages and deaths, booklets of family, notarial acts of successions, donations or division, photography annotated with personal data, etc.

Such data of various origins does not enter the scope of this legislation as long as they are not collected to form « **a filing system in the form of any structured set of personal data accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis** » [art.2.c].

Thus, an embryonic gathering of personal data from such documents of various origins, when they are gathered into family or individual sheets, or into the form of a family tree, and manually written on paper, may constitutes *the processing otherwise than by automatic means of personal data which are intended to form part of a filing system*. The step to carry out this embryonic gathering already constitutes a neo-genealogical activity because the data was structured to be accessible according to specific criteria (for example by individual, by family or by tree), according to the form of this collection's results.

Consequently, one entered an intermediate stage where personal data has already been the subject of processing because they are collected and structured wholly or partly. But it is difficult to say if this whole constitutes strictly speaking a filing system « structured and accessible according to specific criteria » really workable or at least understandable for others.

Thereafter, the person who did this gathering work will be about to leave this intermediate stage, as soon as he declares his intention to communicate this personal data to others, because then, he will be outside from « the course of a purely personal or household activity ».

Accordingly, this person is required by the law to declare beforehand this genealogical and historical activity to the national Supervisory Authority from which he depends and to respect the other obligations among which the information to be given to the data subject.

4. Live persons' data

The amateur genealogist in his capacity as « controller » has the duty to ensure the compliance with the rules on the genealogical purpose of the data [art.6 §1.b], on the categories of data as adequate, relevant and excessive [art.6 §1.c], on the sensitive data [art.8], on the maintenance of the data's quality [art.6 §1.a, §1.d], on the identification of the sources, on the location of live data subjects [art.11 §2] and to take the necessary measures for the confidentiality [art.16] and for the security [art.17] of the processing.

Preliminary note : This chapter does not concern the deceased's personal data which is regarded as *historical* data, except where a precision specifies the contrary.

4.1. The compliance with the genealogical purpose of the data

During the collection, the interchange, the publication, the distribution and any other form of disclosure of personal data, the genealogical purpose of the processing must be declared explicitly and cannot be occulted or omitted.

The amateur genealogist, as controller, draws the legitimacy of his activity by the interests declared in his aims of research, pursued by him and by the third parties to whom the data are disclosed. He is attentive that the interests and fundamental rights of the data subject prevail within the framework of the protection offered by the law [art.7.f].

The amateur genealogist must not allow a further processing of personal data in a way incompatible with genealogical purposes [art.6 §1.b]. He must not disclose this data when he suspects the recipient of an intention to use them or to yield them to others, for a usage to other purposes.

However, a further processing for historical, statistical or scientific purposes is not incompatible with genealogical purposes if the Member State of which the legislation is applied provides appropriate safeguards [art.6 §1.b]. Such safeguards will be specified by regulation, because the deceased's data processing is pursuing at the same time genealogical and historical purposes.

4.2. The categories of personal data

Directive 95/46/EC stipulates that the personal data of live persons must be adequate, relevant and not excessive in relation to the genealogical purpose for which they are processed [art.6 §1.c].

The complete list of the categories of personal data considered adequate for the genealogical purpose for which they are processed [see. Annex-4, notification] must be identical:

- In the amateur genealogist's data files or data sets ;
- In the information provision where the data have not been obtained from the data subject ;
- In the notification of the processing to the national Supervisory Authorities.

The amateur genealogist must enter into his files only relevant data, i.e. data which:

- Are in direct relation to a category of personal data, with regard to the genealogical and/or historical purpose;
- Are recorded in a linguistic form and/or in a data format directly understandable for the majority of persons, in relation to the language and to the category of data concerned;
- Have a genealogical and/or historical undeniable value for the data subject.

The amateur genealogist does not record in his files any data excessive in relation to the genealogical purpose for which they are processed, in particular data in the personal notes and in files attached to other categories of personal data about the data subject.

May be considered excessive all information insufficiently in relation to genealogy or to history, which can present disadvantages, make wrongs, cause injuries, to be judged improper or simply soft in the eyes of the live data subject. For example: curriculum vitae, a photograph, old membership of a group or of an organisation, etc.

4.3. The sensitive data

Considering human rights and fundamental freedoms, Directive 95/46/EC lists the processing covering special categories of sensitive data [art.8].

Thus, the amateur genealogist has ban on processing the sensitive data *which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, as well as those concerning health and sex life* [art.8 §1].

However, the amateur genealogist who collected the explicit consent of the data subject [art.8 §2.a] or whose the data source attests that the data subject manifestly made them public [art.8 §2.e], may process these categories of sensitive information, except where the laws of the Member State which are applicable to him, would provide that the prohibition may not be lifted by the data subject's giving his consent [art.8 §2.a].

The amateur genealogist has also ban on dealing with the sensitive data *which reveals offences, criminal convictions or security measures* which concern live persons [art.8 §5] except if suitable specific safeguards for genealogical purpose's processing were provided under his Member State's laws.

The amateur genealogist who obtains a personal data, considered of an adequate category, by the consultation of a historical register of religious or philosophical origin does not transgress this prohibition. For example, it is legal to obtain a person's birth date from of the reading of a parochial register which is a historical document revealing a religious origin, because the information that is recorded, in this case the birth date (which is of an adequate category) does not reveal the person's religious convictions.

The amateur genealogist can process the data of deceased persons belonging to these *sensitive categories* under historical data, except if they are likely to be prejudicial to the spouses, ascendants or children of these deceased's or if applicable regulation deal with it.

4.4. The maintenance of data quality

4.4.1. Fairly and lawfully processed

The first quality of an item of data is that it **is processed fairly and lawfully** [art.6 §1.a]. The amateur genealogist's fairness consists in processing each category of data with the same level of quality for all the persons included in its files or data sets. The processing is lawfully if the amateur genealogist respect all the rules stated by this Code of Conduct.

4.4.2. Accurateness

The second quality of the data is their **accurateness** and, where necessary, their keeping up to date [art.6 §1.d]. To this end, the amateur genealogist takes all the reasonable measures so that the inaccurate or incomplete data, with respect to the declared genealogical purpose, is erased or rectified.

The amateur's genealogist responsibility is committed because of having discovered or having received a communication about rectifying data and not to take measures to update this data within a reasonable time.

For the deceased's, the incredible dates with regard to other events should be considered inaccurate; for example where the mother's death is prior to the birth of a child.

However it is admitted in genealogy to record an approximate historical date which will make it possible, at the time of a later research, to raise this approximation with more facility. Thus for example, an approximate marriage date (BEF 1855) will be noted in relation to the first child's birth date, etc.

For live persons, a date can be considered incomplete (the year alone, for example) if a more precise date is usually recorded for other persons. The amateur genealogist must therefore treat all the persons with equality (principle of fairness), and he must rectify or erase the date in question. He will use the provision of information to the data subject to request correction; in the mean time he will erase the inaccurate or incomplete item of data.

4.4.3. Permitting to identify the data subject

The following quality of the data is to be kept in a form **which permits identification of data subjects** [art.6 §1.e]. The amateur genealogist maintains them without coding.

However, a data subject may use his right to object [Chap.5.3] on compelling legitimate grounds to appear in no manner in a genealogical file [art.14]. But it may be that its spouse, and/or its ascendants and/or major descendants did not use an identical right to object. Then it is possible for the amateur genealogist to maintain the links to the spouse and the links between the ascendants and descendants (relation to the spouse, relations from grandchildren to grandparents) through an individual's element named « Right To Object », without another item of data. This element is so-named in the respect of the will of the opponent (absence of surname and data) and with the aim of maintaining the genealogical purpose of the activity, the cohesion and the consistency of the links between the other persons. Consequently, this naming may not be regarded as breaching the obligation to identify the data subject who used his right to object.

4.4.4. Duration of storage

Lastly, the data must **be kept for no longer than necessary for the purpose** for which they are collected or processed [art.6 §1.e]. The duration of storage of the data is an element within the « notification » to the national Supervisory Authority. It cannot be an unspecified duration. According to his aims of research, the amateur genealogist will possibly determine and notify a certain duration corresponding to his life expectancy.

Once the duration of storage is expired, the amateur genealogist will be able either to activate a new period of research by a new notification, or to consider that its genealogical data becomes private archives. In the latter case, as well as in the event of death, his genealogical activities finished.

In the case of a finished genealogical activity, the amateur genealogist must himself process the total withdrawal of all his files from the Internet, including the indexing data banks, and carry out the archiving of his genealogical files or data sets on a off-line data support and on paper for exclusively historical purposes.

In the event of amateur genealogist's death within the duration of his research, his successors (heirs, legatee's associations and archive funds) have the responsibility for these withdrawals and historical archiving in their capacity as successors of the « controller ».

The storage of personal data for historical, statistical or scientific purposes, beyond the planned duration, is accompanied by appropriate safeguards as determined by each Member State [art.6 §1.e].

4.5. The importance of the sources

4.5.1. Safeguarding the copyright

The amateur genealogist get the « copyright » on the family sheet and individual record sheets that he makes and records in his files or data sets by collecting data from various origins.

However, it may be that some data had not been obtained directly from his research in archives or from the data subject. Maybe, he could have obtained them from a communication (disclosure) made by a person who consequently may himself hold the copyright on his files and/or documents being passed on any supports and/or through any transmission media.

It is generally the case if information is received from another genealogist. The latter has a copyright on each processing operation, specific collection and/or retrieval of the data that he passed in files and/or documents on unspecified supports, and for each data collection which could be made from these files or supports.

Therefore, at the reception of a file and/or document, the amateur genealogist must make sure of the identity of his author. He records these documents in his « personal communications' register » in order to be able thereafter to respect the copyrights of his author.

Thereafter, he makes sure that the document/file was not prohibited by its author to be used for the genealogical and/or historical purpose of the research.

In the event of dispute, etc., an author can prohibit the use of a document. So penalised the amateur genealogist must then erase from all his files each individual data coming from files and/or documents prohibited of usage, even if that causes the total removal of individuals, of family branches or divides branches in its files.

The genealogist may reconstitute his data only from other sources. Preferably from public archives or with data extracted from files and/or documents which does not come from the same author. It is then of the greatest importance that he notes carefully in the sources the origin of the file/document, and the author.

When he communicates his data wholly or partly, the amateur genealogist must take care to join the sources attached to each data. By doing this, he indicates to others to who the copyrights are belonging.

4.5.2. Referencing the sensitive data

When a live person has manifestly made public some of his sensitive data [art.8 §2.e], the amateur genealogist notes in the source attached to each data item the reference to the file and/or document, and its author. He notes in its communications' register all the elements, which forged his conviction, that the data subject made manifestly public the sensitive data.

For the other cases of sensitive data not publicly revealed, the amateur genealogist must himself collect the written consent of the live data subject before including them in his files or data sets. He notes in the source attached to the sensitive data the reference of the document by which he collected the live data subject's consent.

However, if regulation and legislation applied by the Member State, would stipulate that the ban on using certain sensitive data may not be lifted by the data subject's giving his consent, then the ban on using the sensitive data questioned remains upon the amateur genealogist.

4.5.3. How to note the sources ?

The amateur genealogist must record his sources of information in the individual record sheet of the deceased or live data subject to identify the origin of each item of personal data. He is thus prepared to preserve the copyrights, to respect the obligation to inform live data subjects [Chap.5.1] and to justify the possible existence of sensitive data.

By taking some precautions in the way of noting his sources of information, the amateur genealogist ensures the trace-ability of information and protects his copyrights as well as those of others.

A genealogical database is a number of individual record sheets of deceased and live persons connected between them by links of the types: parent, children and spouses. Each individual record sheet contains several personal data of which can come each one from a different source. For example, the dates and places of birth, marriage and death will generally come from separate documents, corresponding to separate registers.

The « source » registered in front of a personal item of data will include in theory a *reference* to a *document*, an *author* and possibly an *intermediary* if the person having forwarded the document is not *his author*.

4.5.3.1. References

The body of proof intended to qualitatively support a genealogical database, is made up from a number of *documents*: textual, sound and pictures; on unspecified supports: papers, photographic films, microfilms, cassette, CD, DVD, diskette (etc.), including the *documents* disclosed by the networks (Internet, etc.) in various forms of computer multimedia files (text, audio's, photograph, video, Internet site, e-mail, etc.).

The amateur genealogist classifies these *documents*, provide them a reference and indexes them in his « communications register » [Chap.7.1]. In his genealogical database, attached to

each individual item of data, he registers in the « source » field the *reference* of the document being accepted as proof. By proceeding that way, he allows all later evaluations of an individual item of data, and facilitates rapid access to the *document* containing this item of data.

Numerous *documents*, originals and copies, are quickly accumulated in support of a genealogical database. It is of primary importance to use an appropriate *reference* system from the start.

To facilitate access to the sources, it is generally suggested that the *reference* to a *document* include at least:

- The origin of the *document* which indicates various levels of reliability about the data:
 - Copies from original *document* coming from archives (state, local, public, private, notarial, parochial, etc.), libraries, public registers of birth, marriage and death, publishers (books, videos, multimedia), original *documents* or copies of personal production (photographs, familial films and videos, motto and heraldic coats of arms), etc. ;
 - Notes, transcriptions and translations extracted from original *documents* coming from the same archives, libraries, public registers, etc. And also the transcriptions and translations resulting from studies of old writings ;
 - Notes taken during an interview ;
 - Extracts coming from genealogical databases. These extracts do not always refer to original *documents*. The amateur genealogist does not hold these originals and must trust others regarding the analysis of the information extracted from these *documents*.
- A sequential number of *references* in the order of the registrations:
 - A numbering for the *documents* of amateur genealogist's personal archives, qualitative support of his genealogical database. Therefore, a numbering for the *acquired documents*;
 - A separate numbering for the documents that he intends for other genealogists or for live data subjects. Therefore, a numbering for *transmitted documents*.
- An indication of the *document* support (paper, diskette, CD, DVD, cassette, multimedia, other). For example, the *documents* on paper and on videocassette are generally classified distinctly.

This reference system is only a suggestion. Each amateur genealogist is free to define his own reference system according to his needs and the volume of the personal archive *documents* that he will be led to classify, to index and transmit. This depends primarily on the purposes of his research.

4.5.3.2. Authors and intermediaries

According to the way in which data were collected, the *author* and *intermediary* indications depend on the method of acquisition of the *document* (see above under the title "*references*" for all the forms of *documents*) :

Copies from original document by the amateur genealogist:

In the course of his research, the amateur genealogist endeavours to acquire the copy of the original documents used (archives: State, notarial, parochial or private, as well as libraries, the public registers and generally for copies of original document of unspecified nature on unspecified support).

In this case, he notes on each copy the place of acquisition (archives, editor, etc.) and the reference of the original *document*, to facilitate a later access to it. He notes dates, allots his own *reference*, classify and register these copies in his « communications' register ».

Then, in his genealogical database, he records attached to *each personal item of data*, a source containing his *reference* and as an *author* his own surname, because he is at the

same time the author of this copy and the person who authenticates that this copy conforms with the original.

Notes, transcriptions, translations that the amateur genealogist made from original documents:

When at the time of his research the amateur genealogist did not acquire copies of the original documents used, then he notes dates, he allots his *reference*, he classifies and registers his notes (which can be extracts, integral transcriptions or translations from original documents) in the form of new documents in his « communications' register ».

He annotates these documents with the day, the archive location and the reference in archives of the original *document*, to facilitate a later access to it.

Then, in his genealogical database, he records attached to *each personal item of data*, a source containing his *reference* with his name as the *author*, because he is at the same time the author of this note and the person who authenticates that these transcriptions and/or translations conform with the original.

Personal data coming from interviews collected by the amateur genealogist:

For persons' interviews, the amateur genealogist registers the date, the identity of the person interviewed and who interview her, and he gives a *reference* to his interview notes that he registers in his « communications register ». Then he records in his genealogical database attached to *each personal item of data*, a source containing this *reference* with his name as the *author*.

Copies from original documents made by others:

The amateur genealogist proceeds in the same way that for the copies that he would have carried out himself, except that he indicates as the *author* the surname of the person who made the copy. Failing to know who authenticates the copy, he indicates as the *intermediary* the surname of the person who transmitted lastly the copy to him.

Notes, transcriptions, translations made by others from original documents:

The amateur genealogist proceeds in the same way that for the notes, transcriptions or translations that he would have carried out himself, except that he indicates as the *author* the surname of the person who wrote the note, carried out extracts, transcription or translation from the original documents. Failing to know who is the author of it, he indicates as the *intermediary* the surname of the person who forwarded lastly this document to him.

Extracted information from other genealogical databases:

At the beginning of this new legislation being in force, it was very rare to find sources in files and/or documents that were made, copied or yielded from genealogical databases. When one finds some, it is very rare that the amateur genealogist receives the copies of the corresponding original *documents* quoted in the sources of *each personal item of data*.

If, in some database extracts, he finds some sources which identify original *documents* supposedly checked by others, the amateur genealogist may use the *reference* allotted to the file and/or document registered in his « communications register » to maintain a link towards (the copy of) the original *document* that he did not obtain.

If he can identify the person who saw the originals, the amateur genealogist can register her as an *author*. If not, the person who forwarded the document/file becomes *the intermediary*. A very great prudence must be required. *An author* must never be registered if certainty is not gained that this person is the holder of (a copy of) a *document* of proof.

Personal data without source:

In the absence of source referring to originals in unspecified transmitted data *no author* will be registered. The surname of the person who forwarded the file and/or document should be registered as the *intermediary*.

4.6. Live persons' addresses

When personal data were not collected from the data subject, the amateur genealogist has the obligation to inform this live person [art.11 §.1, see Chap.5.1]. The personal data have been collected from others, i.e. members of the family, third parties or from another genealogist.

At the time of these interchanges of data between genealogists, it is recommended to include live data subject's addresses. In this way, it is more easy for the amateur genealogist who takes delivery of this data to proceed to the information of data subjects.

At the same time, there is a second reason to include live data subject's addresses, which is due to the *historical* nature of genealogical research. Because on the occasion of *historical* research, to proceed to the live data subject's information could appear impossible or involves disproportionate efforts for the amateur genealogist [art.11 §2].

[For a discussion of these disproportionate efforts and of this impossibility of informing the data subject, please refer to the Chap.5.1.6].

This Code of Conduct recommends therefore that the Member States of the Union, of which it is the liability to determine suitable safeguards for such cases [art.11 §2], change this recommendation into the obligation to transmit live data subject's addresses, when they are known, at the time of interchanges of personal data between genealogists. To be effective, this obligation should also concern the data transmitted by the professional genealogists.

So as to harmonise the position of the Member States in this respect, this obligation should form part of the Community implementing measures [art.31] on the activity of amateur genealogist.

4.7. Confidentiality and security of processing

4.7.1. Confidentiality of processing

Any person acting under the authority of the « controller » or of the « processor », including the processor himself, who access to personal data must not process them except on instructions from the controller, unless he is required to do so by law [art.16].

This article of the Directive 95/46 applies to the amateur genealogist in his capacity as controller responsible for the processing, as well as to the organisations in the capacity as processors which receive personal data to process them with the agreement of the amateur genealogist and to all persons under their respective authorities. The indexing data banks are an example of processors since the amateur genealogist deposits data to them with a view to facilitating the researches by all.

The concept of authority by the amateur genealogist and the processor on certain persons generates the obligation for the latter to act only on instructions, any infringement with these instructions engaging their liability.

This concept of authority within the household framework can apply to the domestic staff, and to persons under contract. Within the framework of exercising an authority on minors, the parents' responsibility on the actions of their children remains determining. Likewise, the concept of authority by the amateur genealogist in relation to his place within the family and the domestic cell will be determined by the laws of the Member States.

The amateur genealogist must therefore give instructions to persons in his environment who have access to the buildings and/or to the files or data sets for the exercise of a genealogical activity. These instructions are not to reveal personal data of live persons and to carry out no *processing* [Chap.3.4.1] of these data out of the framework laid down by this legislation for the lawfulness of the personal data processing. If a person in the environment is required to carry out processing, she must adhere to this Code of Conduct, and she must respect the legislation.

The instructions intended to an individual person having the quality of processor will be the respect of the legislation arising from Directive 95/46/EC, with adhesion to the guidelines of this Code of Conduct.

The instructions intended for a legal entity (association, company) having quality of processor must be governed by a contract or legal act and will therefore be put in writing. Indeed, the

amateur genealogist must not be in illegality by ignorance of the statutes, of the regulations or of the obligations imposed by a processor whatever be his legal statute.

The amateur genealogist who entrusts processing to processors (e.g.: data banks) is responsible to choose a processor providing sufficient guarantees in respect of the confidentiality of the personal data of live persons who are communicated to him. It is the case if data files to the Gedcom format are communicated to a data bank.

4.7.2. Security of processing

The amateur genealogist must implement the technical and organisational measures appropriate to protect the personal data of live persons against a number of mishap or illegal practice as well as against any other form of illicit processing. These measures must ensure [...] a level of security appropriate to the risks [art.17 §1]. The main problems to be prevented are:

- *The accidental or unlawful destruction, the accidental loss, the alteration* : the amateur genealogist must make regularly safeguard copies of his data files on computer's external supports (diskettes, ZIP). If he chooses to prevent the fire hazard, he will store these copies in other location, and if possible in another building than that of the computer. These copies will allow the later restoration of the data in their original state. To minimise the losses of data between two safeguards, it is appropriate to proceed to a safeguard after each major data update, otherwise at regular intervals, for example each week;
- *The unauthorised disclosure or access* : the amateur genealogist who uses the indexing data banks and/or who publishes his genealogical data on an Internet site must be aware that access to live persons' data is possible outside the « genealogical purpose » of the processing and that accordingly he is obliged to protect these data against any use incompatible with this purpose [see Chap.4.8];
- *When the processing involves the transmission of data over a network* : the transmission of personal data of live persons between genealogists must be protected reasonably. Examples: In e-mail, by the enciphering of the message body and/or the attached files; In accessing to a site with a restricted access, by a secure SSL connection.
- *All other unlawful forms of processing* : the main illicit processings concern the diversion of the « genealogical purpose » [see Chap.4.8], the use of data belonging to a category not declared to the national Supervisory Authority, and the use of data which were not obtained in the respect of the rights of the data subject of being given an information, of accessing, of rectifying and of objecting to his personal data.

4.8. Data protection on the Internet

4.8.1. Against the diversion of the genealogical purpose

On the Internet the genealogical purpose of the processing is preserved if the personal data of live persons flows only between genealogists duly declared to their national Supervisory Authority and is not voluntarily disclosed for other purposes.

But the information flowing on Internet can be made public or private. Data are public if their access is open to everybody, and private if protective measures check who is accessing to it and how the transmitted information is made secure.

4.8.1.1. E-mails

Being the person responsible for the contents of the messages and files included in the e-mails, the amateur genealogist must maintain the genealogical purpose of processing the live persons' data by making sure that recipients are exclusively genealogists. If in doubt, he can check that a national Supervisory Authority duly records the recipient with the capacity as genealogist.

The amateur genealogist exposes his registration number spontaneously at the time of a first contact.

The disclosure of e-mail by a person not recipient constitutes a punishable action. In matter of fact, the amateur genealogist incurs little liability not to encrypt his e-mails. Nevertheless, he always should be advisable to use the enciphering functions offered by electronic mail software when this involves personal data of live persons.

4.8.1.2. Internet sites with personal genealogies

Personal data as reduced as the surname, the given name and the links with the parents, allows the unambiguous identification of the live data subject. By nature these data are personal and must be protected from their diversion towards a non genealogical purpose, therefore illicit [art.17.1].

On the Internet sites where the access is open to everybody, the genealogical purpose of processing is not respected if a live person's data item is present (e.g.: the links between the surname of a live person and its parents). Except if the publication of this data item were the subject of an explicit consent by the data subject to be openly accessible to the public on the Internet.

At the contrary, on Internet sites built with restricted accesses only for the genealogists duly recorded to their national Supervisory Authority, all the personal data of live persons may be accessible. In its principle, restricted access is given only to genealogists who will be holder of a password when declared to a national Supervisory Authority. The amateur genealogist who implements a restricted access site with data of live persons, is responsible to check the recording of the applicant by the national Supervisory Authorities before the supply of a password.

If this checking and accordingly the attribution of passwords are entrusted to a « processor », for example in a company providing Internet site's hosting service, the amateur genealogist as controller for the processing must give to the processor instructions [art.17.3] aiming to protect the genealogical purpose of the processing. The organisations in capacity as processors, which provide these services, have their own regulations that the genealogist must not accept if the liability on these preliminary checks [Chap.6.2] is not assumed by the processor.

In addition to the access control, the connection must be made secure between the restricted access site and the genealogist who accesses it. The amateur genealogist as controller is responsible to check the implementation of a secure connection, for example SSL (Secure Socket Layer), to avoid data diversions in the process of transfer.

When the amateur genealogist « controller of the processing » publishes licitly personal data of live persons on an Internet site, he has to announce the frequency of updates, at reasonable intervals, so as to satisfy the requests for rectification.

4.8.1.3. Discussion Groups

The amateur genealogist is aware that "News Groups" and the sites organising genealogical groups of discussion are places accessible to everybody. Even if all the members of a closed group of discussion are recorded duly to the national Authorities in the genealogist's capacity, this does not prevent accessing to the messages circulating in the group. The amateur genealogist will show prudence and will not make available any item of data allowing the identification of a live person. He will prefer making secure contact directly by e-mail with another interested genealogist.

4.8.2. In the relationship with the processor

The amateur genealogist who entrusts processing in a processor (e.g.: data banks' feeding, Internet site hosting) is responsible to choose processors providing sufficient guarantees in respect of the organisational and technical security measures governing the processing to be carried out. The amateur genealogist must ensure compliance with those measures [art.17.2].

The amateur genealogist must be bound to the processor by *a contract or legal act* [art.17.3], which must stipulate that:

- *The processor shall act only on instructions from the amateur genealogist* : currently, the genealogical data banks, which are present on the Internet, have their own regulations and the amateur genealogist has to accept these rules or does not use their services. The Internet site hosting services generally defer all the responsibility for the contents of all data files on the amateur genealogist's site and he is responsible for what he loaded himself or the processor had loaded on the site for him.
- *The obligations set out in the art.17.1 of Directive 95/46/EC [to implement the technical and organisational appropriate security measures with respect to the risks] shall be incumbent to the processor as defined by the law of the Member State in which the processor is established* : This provision compels the processors to develop a number of measures similar in kind to those that the amateur genealogist must apply for data security of live persons in his own processing [Chap.4.7.2].

5. Live persons' rights

Directive 95/46/EC gives to live persons rights to be informed [art.10 and 11], to access and to rectify [art.12], and to object [art.14].

5.1. Information right

At the time of the acquisition of personal data on live persons, the amateur genealogist is responsible for the supply of certain information to each live data subject.

Among this information, Directive 95/46/EC does not compel the amateur genealogist to provide the data itself. It can provide it for the sake of transparency and to validate the data.

Two cases arise according to the method of acquisition:

The information to be provided at the time of collection of data from the data subject [art.10] is as follows:

- The identity of the genealogist as controller of the processing and of his representative, if any ;
- The purposes of the processing for which the data are intended;
- The recipients of the data ;
- The fact that there is no obligation to answer all the questions ;
- The existence of the right of access to, the right to rectify the data and the right of notification to third parties of the performed modifications.

To facilitate this supply of information, the amateur genealogist will use preferably the list provided in [annex-2].

The information where the data has not been obtained from the data subject [art.11] is the same, without the fourth, and with the addition of following information:

- The categories of data concerned.

To facilitate this supply of information, the amateur genealogist will use preferably the list provided in [annex-3].

In this second case, this information should be provided at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed, except where the data subject has it.

Accordingly, the recording of a further not sensitive data item, which concerns an already informed live person about the presence of data concerning him in the database of the amateur genealogist, can be made without him being again informed.

However, if this involves the addition of a data item classified as sensitive, this addition can be made only under the conditions set out in [Chap.4.3]. The list of the categories of data classified as adequate and sensitive for the genealogical purpose is in [annex-4].

5.1.1. Identification of the Genealogist

The amateur genealogist to be identified must give his surname, given name, address, telephone, as well as any information facilitating the contact for the data subject, such as his e-mail address, mobile telephone, etc.

If the amateur genealogist is not established in a Member State of the EU, he must identify in the same way, his representative in the country (countries) of the EU where he resorts to processing, if any [art.4 §1.c]. For examples: data banks' feeding, Internet site hosting.

5.1.2. Purpose of processing

The amateur genealogist must indicate to the data subject the purpose(s) of the processing for which the data are intended. The purpose of the processing, within the field of genealogy,

depends on the aims of amateur genealogist's research. One will refer to the discussion on this subject in [Chap.3.3] for a precise definition of the purpose of the processing.

In the lists of information to the [annexes-2 and -3], traditional topics of genealogical research can be selected. The research alternatives discussed in [Chap.3.3] are too. Other purpose can be specified.

It is important for the amateur genealogist to give to data subjects the same purpose of processing that he declared to his national Supervisory Authority at the time of the notification [Chap.6.1]. Therefore, the purposes declared to [annexes-2, -3 and -4] must be identical, if not the data subject will not have been informed fairly [art.6 §1.a].

5.1.3. The recipients of the data

The amateur genealogist must declare to the data subject that he intends to communicate his data exclusively for genealogical purposes, and in the respect of national and Community legislation arising from Directive 95/46/EC.

Recipients can be genealogists, genealogy associations, genealogical data banks of restricted accesses to the genealogists and archives funds or libraries.

The amateur genealogist as controller must assure the data subject that:

- The quality of genealogist of the recipient person duly registered to a national Authority (or the equivalent outside the EU) will be checked before any communication of his data ;
- The genealogy associations as recipient of his publications containing data on him, committed themselves to restrict their access to genealogists duly registered, and to who adhere to a Code of Conduct in the field of genealogy ;
- His personal data will not be communicated to the data banks which do not ensure access restricted to genealogists duly registered, this with the aim of preventing any diversion of the genealogical purpose of the processing [Chap.4.8.1] ;
- The archives funds and libraries, recipients of his genealogical publications containing data on him, must commit themselves not to make them public before the period provided for by the law which is applicable to them as regards the archiving of data of a personal nature ;
- The measures envisaged by legislation, which concern the confidentiality and the security of the processing the data on him will be maintained for all the duration of his research.

The amateur genealogist can also request the explicit consent of the data subject so that some of his personal data are made openly accessible to the public. In particular he can be useful that surnames, sexes and the links towards the names of the parents and spouses are the only data made accessible to the public, from an Internet site of genealogy open to the public. This faculty must be presented to the person concerned like an option.

5.1.4. The existence of the right to access and to rectify

To allow the data subject the exercise of his rights to access and to rectify the data on him, the amateur genealogist must specify that this type of request is provided for by the law and may be freely exerted by the data subject [Chap.5.2].

The amateur genealogist must specify the conditions of operation of the right to access [Chap.5.2.1] and must state that the right to rectify is provided for by the law and may be freely exerted by the data subject [Chap.5.2.3].

5.1.5. Categories of data

It is appropriate to present in [annex-3] all the categories of data declared to the national Supervisory Authorities [annex-4] without omission, so that the data subject is fully informed about the extent of declared research.

When the data was not collected from the data subject, the amateur genealogist must specify the categories of data that he holds on the data subject. For that, he selects, in the list of information in [annex-3], the categories of held data.

The categories of data must be classified in sensitive and not sensitive data, i.e. adequate data. The data subject must be informed on the nature of the sensitive data arising from human rights as listed by Directive 95/46/EC [art.8 §1].

The data subject must also be informed that the categories of data classified as sensitive require his explicit consent to be processed by the amateur genealogist, what other data do not require. Moreover, he can possibly be informed that his consent does not raise the ban on dealing with certain sensitive data owing to the national legislation and/or regulation applicable to the amateur genealogist according to the country where he is established.

5.1.6. Information impossible or involving disproportionate efforts

Where the data were not collected from the data subject, Directive 95/46/EC in its [art.11 §2] provides that the information of the data subject « shall not apply where, in particular for processing for the purposes of historical or scientific research, the provision of such information proves impossible or would involve a disproportionate effort ».

In such cases, Member States considered to take *appropriate safeguards*. Among these safeguards appear the *recognition* of genealogy as a historical research discipline, *preventive measures* and the *admissible conditions* to justify the abandonment of the obligation to inform the data subject when these conditions are met by the amateur genealogist.

It is therefore a request of the contributive associations in this Code of Conduct that amateur genealogy *is recognised* as a historical research discipline benefiting from the exemption of the obligation to inform as specified in [art.11 §2] with the aims referred to above.

Among the *appropriate safeguards* to be envisaged by the Member States, a *preventive measure* is recommended by the contributive associations in this Code of Conduct: To make compulsory the transmission of live data subject's addresses, when they are known, at the time of the interchanges of data between genealogists.

Among the *admissible conditions* justifying the impossibility of informing, the contributive associations in this Code of Conduct recommend to specify: Repeated failures to find the data subject after :

- The consultation of a number of directories in a list fixed and maintained up to date by Community implementing measures [art.31] ;
- The consultation of the genealogists who provided the data, after a certain delay to be fixed by Community implementing measures [art.31].

Among the *admissible conditions* justifying disproportionate efforts to the obligation to inform, the contributive associations in this Code of Conduct recommend to specify :

The costs incurred with the large number of data subjects to be informed, The abandonment of the obligation to inform is proposed according to a very distant degree of relationship with the genealogist amateur as controller for the processing. For example, a number of minimum links measured by the total of links to be passed in the family tree from the data subject until the amateur genealogist, with totalling the links from parent to children and between spouses, is determining the limit beyond which the abandonment of the obligation to inform is acceptable.

The archiving of research results to genealogy societies or associations. In this case, the exemption from the obligation to inform would be accompanied by the following appropriate safeguards : When data subject's personal data are held by a legal entity (societies or association) working in the genealogical field, and they are included in a restricted access data bank, being the subject of historical archiving after having belonged to a genealogist duly recorded to a national Supervisory Authority, when this genealogist indicated this legal entity in the notification to his Supervisory Authority as a recipient of the results of his research beyond the notified deadline of end of research, or when archiving is prior to the national legislation being in force, and as far as restricted access referred to above is given only to genealogists themselves duly registered to a national Supervisory Authority. Complementary exemption measures should be provided for the access of the genealogists from third countries.

So that the *recognition* of genealogy as a historical discipline, as well as the *preventive measures* and the *admissible conditions* (number of minimum links, archiving of the results of research) apply uniformly in all the Member States of the EU, these questions must be the subject of Community implementing measures [art.31].

5.2. Right to access and to rectify

Any data subject has the right to obtain from the genealogist amateur as controller for the processing, together or successively:

- To access his personal data;
- The rectification, erasure or blocking of his data ;
- The notification to third parties of the performed modifications.

5.2.1. Conditions of operation of the right to access

The data subject who justifies of his identity has the right of unconstrained access to his data, at reasonable intervals and without excessive delay or expense.

The copy of an identity paper certified with the original by a local authority justifies the identity of the data subject.

No constraint for accessing his data may be exerted on the data subject. For example, the access cannot be conditioned to the membership of a genealogy association.

Since in genealogy the stored data are rather static, the intervals between two applications of the right to access, such as already fixed in certain derived national laws, are not appropriate. Three-month intervals until the third application of the right to access, followed by intervals of one year, are judged as reasonable by the contributive associations in this Code of Conduct.

The appraisal of the excessive deadline for reply can vary from one Member State to the another. Similarly for the excessive expenses which, having regard to the voluntary character of amateur genealogy, can depart appreciably from the price of a stamped envelope usually admitted in genealogy.

The contributive associations in this Code of Conduct recommend that the conditions of operation of the right to access, concerning the justification of the identity of the data subject, the reasonable intervals between accesses, the duration of the deadline for reply and the appreciation of excessive expenses, be harmonised between the Member States of the EU and are the subject of Community implementing measures [art.31].

5.2.2. The information to be provided in answer

The information to be provided obligatorily to the data subject in response to a justified request to access to his data is:

- *Confirmation as to whether or not data are present.*
- *The information covering the purpose of the processing.* It is appropriate to provide the same information as those notified to the national Supervisory Authorities [annex-4, see Chap.5.1.2].
- *The categories of data which are processed.* It is appropriate to provide the same information as anticipated in [annex-3], without omission, by selecting among the whole categories of data notified to the national Supervisory Authorities [annex-4], those actually held on the data subject [Chap.5.1.5].
- *The recipients or the categories of recipients to whom the data are disclosed.* The recipients listed in [Chap.5.1.3] are accompanied by assurances for them [annex-3].
- *The communication, in an intelligible form, of the data undergoing processing, and of any available information as to their source.* The printing of *all* this data must be made fairly, without coding and without any omission of information available in the sources of the data

so as to reveal their origin, with if necessary the collecting author and the last intermediary [Chap.4.5].

- *The knowledge of the logic involved in any automatic processing of data concerning him, at least in the case of the automated decisions referred to in [art.15 §1].* This does not concern the genealogy, which produces no decision, automated or not, which could have an impact on the data subject.

5.2.3. Rectification, erasure or blocking of the data

According to the case, the amateur genealogist is obliged to proceed to the rectification, the erasure or the blocking of the data the processing of which does not comply with the provision of Directive 95/46/EC, in particular because of the incomplete or inaccurate nature of the data [art.12.b].

It should be noted that the data subject is not obliged to give the exact value of an erroneous or incomplete data item. He may, on the observation that this data item is incomplete or inaccurate, ask for the erasure of it.

At a later date, if the exact value of this data item is collected, for example in a register of births, marriages or deaths, the data subject must not be informed necessarily of this modification in the eyes of the law, except if he required blocking of it or he objected to it. However, by fairness to this person the amateur genealogist will prefer informing the person of it.

Blocking consists for the data subject in permitting the amateur genealogist to hold the data concerned, but compels him not to use them for certain processing.

Blocking can concern all his data in certain processing operations, for example the communication to others, a restricted access to certain persons on the Internet sites, the printing of documents according to their recipients, etc.

Blocking can concern certain categories of data in all processing. For example the sensitive data.

The amateur genealogist must communicate to the data subject, within a reasonable time, a confirmation that his request was carried out. Moreover, it is recommended to attach a documentary evidence on the data held after modifications.

The form and the contents of this communication and the duration of the reasonable period for its transmission are not determined by Directive 95/46/EC. They would deserve to be the subject of Community implementing measures [art.31].

5.2.4. Notification to third parties of the performed modifications

On the request from the data subject, the genealogist amateur as controller of the processing must notify to the third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out [Chap.5.2.3], unless this proves impossible or involves a disproportionate effort [art.12.c].

That supposes for the amateur genealogist to maintain up to date a communications' register [Chap.7.1]. He must hold copies of the documents communicated with others, which are only convincing on the detail of the exchanged data [Chap.7.1.3].

The notification to third parties can prove impossible or involve a disproportionate effort owing to *appropriate safeguards* already discussed in [Chap.5.1.6] for the information of the data subject. The contributive associations to this Code of Conduct propose to apply them, *mutatis-mutandis*, to the notification to third parties.

The *appropriate safeguards*, concerning the *preventive measure* to preserve the third parties' addresses and the *admissible conditions* to justify the abandonment of the notification to third parties, are eligible by analogy with the information of the data subject to be the subject of Community implementing measures [art.31] applicable in all the Member States of the EU.

5.3. Right to object

The right to object is recognised to the data subject, especially in the context of legitimacy granted to genealogy [art.7.f], at any time and on compelling legitimate grounds relating to his particular situation [art.14.a].

Where there is a justified objection, the processing instigated by the amateur genealogist as a controller may no longer involve the data specified by the data subject [art.14.a].

When the exercise of the *right to be informed* proved not possible or would have involved disproportionate efforts under *admissible conditions* [Chap.5.1.6], and that it is followed by a request of a data subject to exert his right to object, the amateur genealogist must provide him with the information planned for the case where the data had not been obtained from him [annex-3].

The amateur genealogist must always respect the *right to be informed*. Thus, the data subject knows the existence of a right of notification to third parties to whom the data have been disclosed already, that he may have applied in the event of permanent data erasure [Chap.5.2.4].

The amateur genealogist must communicate to the data subject, within a reasonable time, confirmation that his request was carried out. Moreover, it is recommended to attach documentary evidence on the data which remains possibly held after the objection.

The form and the contents of this communication and the duration of the reasonable period for its transmission are not determined by Directive 95/46/EC. They would deserve to be the subject of Community implementing measures [art.31].

5.3.1. Objection to certain process, to certain data

The data subject may specify the category of data and the process, which his objection covers. For example, sensitive data can be objected for the publication and the distribution (association, archives, etc.) but not for the communication to other genealogists duly recorded to the national Supervisory Authorities. This example is equivalent to the blocking [Chap.5.2.3].

In the absence of *precise details* on the categories of data and the processing operations aimed by the objection request, it is recommended to the amateur genealogist to consider that it is all the data and all the processing, therefore that it is *total objection*. The amateur genealogist will request from the data subject these *precise details* and could suggest him to limit his objection according to the reasons which he justifies.

The total objection of a person must not however jeopardise the cohesion and the consistency of the links between other persons in the processing. If necessary, the amateur genealogist can replace the person's surname by an indication « right to object » and suppress all other data [Chap.4.4.3].

5.3.2. Objection on compelling legitimate grounds

The data subject must motivate his request for objection by justifying it *on compelling legitimate grounds relating to his particular situation*. A not motivated request can be refused by default of justification.

In the motivation, the invoked *grounds* can bring into light the interests, freedoms and fundamental rights, and must be relative to the particular situation of the applicant.

The amateur genealogist as controller of the processing judges the admissibility of the request and, in the event of refusals considers the legal risks for his right to carry out a genealogical activity and the sanctions aiming at the forfeiture of his membership in genealogical associations.

6. Notification of processing to the national Supervisory Authorities

Directive 95/46/EC gives obligation to the genealogist amateur responsible for the processing, or if any to his representative, to notify his genealogical activity to the national Supervisory Authority on which he depends [see Chap.3.2, "applicable national law"] before carrying out wholly or partly automatic processing operation or set of such operations to serve a single purpose or several related purposes [art.18 §1].

6.1. Contents of notification

Directive 95/46/EC lays down the minimum of information that must appear in the notification [art.19 §1]:

- The name and address of the genealogist amateur as controller and of his representative, if any, (would be useful the e-mail address) ;
- The purpose of the processing ;
- A description of the category or categories of data subject and of the data or the categories of data relating to them ;
- The recipients or categories of recipients to whom the data might be disclosed ;
- The proposed transfers of data to third countries;
- The duration of the data storage for no longer than necessary for the carrying out of the purposes [art.6 §1.e].
- A general description allowing a preliminary assessment to be made of the appropriateness of the measures taken to ensure security of processing pursuant to Article 17 [Chap.4.7.2 and Chap.4.8].

To facilitate this supply of information, the amateur genealogist will use preferably the list defined in [annex-4].

When changes affect the information contained in the notification, the amateur genealogist provides these changes to the national Supervisory Authority according to procedures to be specified by each Member State [art.19 §2].

Each Member State can add information to this list, which should be regarded as the minimum, currently specified in European legislation for all the countries in the EU. To avoid disparities between the Member States, the contributive associations in this Code of Conduct ask for harmonisation to be the subject of Community implementing measures [art.31].

On this occasion, very close attention must be given to the list of categories of data concerning their adequacy [art.6 §1.c] to the purposes of genealogical research and their possible classification in sensitive data [art.8].

The contributive associations in this Code of conduct wish harmonisation of the number and the nature of the information to be provided for the genealogical notification in all the countries of the EU.

6.2. Access to the national registers kept by the Supervisory Authorities

Each national Supervisory Authority keep a *register of processing operations* notified which must contain at least the first five items provided for in the contents of notification. The *register of processing operations* can be inspected by any person [art.21 §2] who asks for.

6.2.1. Procedure of access

For confidentiality and security of the processing operations [Chap.4.7], including for personal data protection on the Internet [Chap.4.8], the amateur genealogist must be aware of the necessity to interchange this kind of data only between genealogists duly registered to a national Supervisory Authority or with genealogists recognised by an appropriate system in the third countries.

On their side, the national Supervisory Authorities must be aware that excessive access delays, with respect to the normal delay of response to e-mail or fax, make incompatible the observance by the amateur genealogist of the checking obligation by the *register of processing operations* with the proper etiquette to give response within the usual time required for e-mail and faxes to the pressures of their correspondents.

It is therefore an essential claim of the contributive associations to this Code of Conduct to obtain easy and rapid access to the *registers of processing operations* at least for all the amateur genealogists already registered. The *registers'* inspection being public, it is recommended to give them access via Internet and by fax. Access via Internet should be on-line and/or by e-mail.

6.2.2. Checking the existence of a notification

For any request of personal data of live persons, the amateur genealogist will take care of declaring spontaneously to his correspondents his registration number by the Supervisory Authority of which he depends [Chap.3.2].

In the event of a request sent by e-mail, the checking will be easy insofar as this request will have been received with the same e-mail address as were the one attached to the applicant's name in the *register of processing operations* as notified to the national Supervisory Authority.

This shows the importance of the e-mail address provided by the amateur genealogist at the time of notification to his national Supervisory Authority. He has then to use this e-mail address jointly with his registration number to authenticate his capacity of amateur genealogist duly registered in requests to his correspondents.

6.3. The role of the genealogical associations in preliminary controls

Directive 95/46/EC stipulates that Member States must check that the notified processing operations are examined prior to the start thereof [art.20 §1]. The genealogical processing being very standardised and notified in large numbers, the national Supervisory Authorities will have to check as most important the knowledge of the amateur genealogist and have to appreciate his capacity to respect the legal contingencies. This examination of knowledge should be organised under the responsibility of each national Supervisory Authority [art.20 §2].

The respect of the law will depend therefore on several elements: on a reference document which states all the rules (Code of conduct of the Amateur Genealogist), on the quality of the amateur genealogist's training, and on an examination establishing his aptitude to respect the law and to behave properly with respect to the deontology which concerns the genealogical discipline.

6.3.1. Maintenance of the Code of conduct of the Amateur Genealogist

This preliminary draft of Code of Conduct is just conforming to the legislation and is trying neither to simplify it nor to derogate from it. The notification can be the object of such simplification and/or exemption [art.18 §2], which justifies the maintenance of this Code of conduct.

Moreover, it is possible, while maintaining the desirable security level in the interchanges of data with genealogical purpose, to simplify preliminary controls to be exercised by the national Supervisory Authorities on the knowledge of the amateur genealogists. For example by submitting the amateur genealogists training and the checking of their knowledge to trainers and chartered inspectors within the genealogical associations.

The necessary harmonisation of the Community implementing measures [art.31] is an important additional reason to carry out the maintenance of the Code of Conduct of the Amateur Genealogist. And this reason needs multilateral and multinational consideration between the federations and genealogy associations in the Member States of the EU to maintain the Code of Conduct.

This is why this Code of Conduct needs to be validated at European level by a range as broad as possible of genealogical associations and federations in the countries of the EU in view to make it useful and practical and also to make the appropriate proposals for its simplification in the respect of the Community legislation.

6.3.2. The amateur genealogist training by the associations

This Code of Conduct of the Amateur Genealogist has the aim of contributing to the good application of national legislation derived from Directive 95/46/EC [art.27 §1].

The primarily individual nature of the amateur genealogist's activity makes essential the organisation of members' training in the genealogical associations at local level, to facilitate the understanding and the practical application of the Code of Conduct of the Amateur Genealogist.

For the old members, having already a long usage of the genealogical activity, legislation introduces new practices and behaviours. Simple awareness-raising is not always sufficient to change behaviour. Adapted training is therefore necessary for these senior amateur genealogists.

The need to offer this training locally, while building upon the existing associative structures, has to cause consideration on the local trainers' training, and on their approval by the national Supervisory Authorities.

Trainers will aim to provide knowledge and to check its assimilation by the amateur genealogists.

6.3.3. The checking after training by the associations

However, it is desirable to distinguish the roles of trainers and of inspectors. The latter are intended to check, under supervision of a national Supervisory Authority, the actual knowledge of the candidate amateur genealogist, to attest that he took the appropriate measures necessary for its activity, and that to his opinion he seems in a position to respect the obligations arising from legislation.

The inspector is therefore a senior genealogist who has connections at local level with one or more associations. It is desirable that the same person does not play both roles of trainer and inspector in the same association. An exchange can be established between locally close associations so that the inspector of an association is designated among the trainers of another association.

6.4. The transgression of the Code of conduct by the amateur genealogist

Any person having suffered a damage because of an illicit processing or because of any action incompatible with national law derived from Directive 95/46/EC has the right to obtain from the genealogist amateur as controller for the processing in question the repair of injuries suffered [art.23 §1]. The controller for the processing may be exempted from this liability if he proves that he is not responsible for the event giving rise to the damage [art.23 §2].

Administrative remedy can be provided before the national Supervisory Authority, prior to referral to the judicial authority [art.22].

In particular Member States lay down the sanctions to be imposed in case of infringement of the provisions adopted pursuant to the Directive [art.24].

6.4.1. The sanctions of the associations

The sanctions of the associations have to play a role in the event of transgression of the precepts stated in the Code of Conduct, while this transgression did not necessarily cause an injury for the data subject. Otherwise, insofar the data subject can be satisfied with repair of the injury without filing administrative or judicial action but by means of the sanction of the amateur genealogist's association.

The principal applicable sanctions are simple reprimand, blame, temporary exclusion and final exclusion from the association. The most serious sanctions correspond to judicial remedies.

Sanctions can be accompanied by probatory periods under monitoring of an inspector, so as to check that the causes of the transgressions were suppressed.

6.4.2. Transgression's notification to the national Supervisory Authorities

When administrative remedy by the national Authority was organised in a Member State, the data subject who suffered damage and is not satisfied of the repair proposed by the amateur genealogist, must receive aid from the association concerned to file this administrative action.

7. The disclosure of the genealogical data

Each elementary genealogical data adequate with the genealogical purpose of research [Chap.4.2] is classified between sensitive or not sensitive data [Chap.4.3]. The elementary data are combined according to their categories, in various quantities and with a number of relations between them, in documents of varied presentation, which work towards individual informative ends.

This involves varied documents in forms and supports (public register extracts, archive documents, lists of ascent, of descents, family trees, Gedcom files, etc.) to which attached copyrights are held by persons who created each document. By opposition the elementary data items are objective facts, therefore not protected by copyright. But the sensitive data are subject to authorisation of live data subjects who can restrict them for certain uses and certain disclosure or can object to any usage.

The protection of live data subjects and of the copyrights compels the amateur genealogist to note the sources [Chap.4.5] of each elementary data item that it integrates in his genealogical database.

The respect of copyrights on the disclosed documents, as well as the written agreement of live persons on the use of their sensitive data, require the *archiving* of interview notes and exchanged documents. *The recording* of these documents and notes in the communications' register of the amateur genealogist is necessary to establish the origin, the destination and the chronological order of exchanged information, to maintain their traceability and to allow effectively any further exerting of the rights to access, to rectify and to object by data subjects.

7.1. The communications' register of the amateur genealogist

The amateur genealogist opens a communications' register for all the duration [Chap.4.4.4] of his research. At the end of research this register will attest of the results obtained and of their conservation for historical purposes.

The obligation to open a communications' register is dictated by two considerations. On the one hand, the respect for the copyrights was put into force by the Bern Convention for the protection of the literary and artistic work (28-Sep-1979). A register helps to identify the authors of the disclosed documents, but the simple conservation of the documents with indication of their author did not make absolutely necessary to keep a register, except in case of a large number of documents.

On the other hand, the protection of individuals with regard to personal data is put into force by national legislation derived from Directive 95/46/EC. This implementation was not established in all the countries of the EU at the time of the initial drafting of this Code of Conduct of the Amateur Genealogist. The opening of a communications' register, especially in relation to considerations of disclosures' traceability making it possible to preserve the rights of data subjects, is made essential only after the implementation of applicable national legislation [Chap.3.2]. However, the amateur genealogist can voluntarily protect live persons by opening a communications' register without delay. It is almost a certainty that this legislation will be transposed quickly and will be put into force in all the countries of the EU.

The communications' register is a document in proof at the same time of fairly obtaining the data that the amateur genealogist entered into his database and of the quality of the data disclosed to others at a certain date.

In practice, the communications' register of the amateur genealogist is the link between the referred documents [Chap.4.5.3.1] that the amateur genealogist archives, and each elementary data item accompanied by its source [Chap.4.5] that he records in his database.

7.1.1. The importance of keeping the register

The communications' register has for use to authenticate each interchange of data and to give them a justification by the chronological registration of a number of information characterising the communication.

The omission to report in the register an interchange of data can be prejudicial to the traceability of information and ultimately to the protection of data subjects with regard to their personal data, and the copyrights.

The registrations in the communications' register must not be limited to interchanges of live persons' data and must not omit those concerning the deceased's ones. Because on the one hand, the interchange of certain data concerning deceased's in close relations to some live persons, can possibly carry injury with regard to the latter. And the written authorisation received from the deceased before his death becomes an essential justification. On the other hand, copyrights are attached to any exchanged document, even a simple data item on a deceased person dispatched in a short e-mail.

7.1.2. The contents of the register

This Code does not intend to impose a particular format for the communications' register of the amateur genealogist, but it endeavours rather to list the elements of information necessary to ensure the traceability of interchanged data.

The register has as a function to index chronologically all the « documents » containing data used in the database of the amateur genealogist. The « document » concept is taken here in the broader sense and covers the original documents as well as their copies, with all the diversity of the supports and of the contents. For example for the contents: originals, copies and extracts of document from archives, library, civil registers, book, video, multimedia, photography, film, heraldic motto and coat of arms, concerning ascending or descending genealogies, family sheets, family trees of genealogical database (Gedcom), authorisations of use of sensitive data, etc. For example for the supports: paper, data file, audio file, video or multimedia file, photographic film, microfilm, CD-audio, CD-CROM, DVD, e-mail, etc.

- The date of reception or of consignment of the document;
- The title of the document;
- The reference allotted [Chap.4.5.3.1] to the document by the amateur genealogist. The reference is a code which in theory describes the source of the document, the order of registration in the register and the support;
- The author of the document [Chap.4.5.3.2] if he is known;
- The intermediary who forwarded the document [Chap.4.5.3.2] when he is not the author;
- The origin of the document (files, database, interview, etc.) ;
- The information which forged the genealogist's conviction that sensitive data contained in the document was manifestly made public by the data subject [Chap.4.5.2] or the written authorisations which attest that these sensitive data can be used for certain genealogical processing operations [Chap.3.4].

7.1.3. The conservation of the interchanged documents

When data are rectified, erased or suppressed and blocked [Chap.5] by live persons, it is essential to find the trace of these data when they have already been transmitted to others, to meet data subjects' requests to notify these modifications to others.

The complexity and the variety of the received and sent documents is such that only their conservation makes it possible to find the amended elementary data precisely.

The classification is chronological by support and generally separated by received and sent documents. It is recommended to retain a copy on paper of the computer files to facilitate the ultimate archiving at the end of a research period extending over numerous years.

7.2. The interchange with another genealogist

When establishing contacts, genealogists may find it easy to declare one to the other the purpose of their respective research. This is because of the nature and diversity of the transmitted data that depends primarily on the purpose of their respective research.

It is not necessary to transmit a complete database (Gedcom) when the advantage of the contact covers the hypothetical discovery of a common ancestor. But if it is the case, the recipient has to select in the received database only the data which concerns the purpose of his research [Chap.3.3]

with a view to integrating them in his own database. If later there is some rectification requested by data subjects [Chap.5.2.3], all the database recipients must be notified while this data perhaps did not concern them. A better declaration of the objectives (purposes) of research for each one can avoid this extra work. Consequently, only the family branches of common interest are interchanged.

7.2.1. Inside the European Union

The free flow of genealogical data, including those of live persons, may neither be restricted nor prohibited by the Member States [art.1 §2] under national legislation derived from Directive 95/46/EC, where is placed an obligation on the amateur genealogists to declare their activity by a notification [Chap.6] to their national Supervisory Authority.

Before any data interchange, amateur genealogists check the existence of a registration of their respective notifications in a *register of processing operations* [Chap.6.2] kept by a national Supervisory Authority.

Amateur genealogists are fully responsible for the quality of the data [Chap.4.4], for satisfying the conditions to disclose classified sensitive data [Chap.4.3, Chap.4.5.2], and for the respect of copyrights [Chap.4.5.1].

The amateur genealogist joins the known addresses of live persons to their data when interchanging [Chap.4.6].

The amateur genealogist who receives data from live persons has the obligation to inform them [Chap.5.1].

The amateur genealogist acts in accordance with the regulations of the Code of Conduct of the Amateur Genealogist.

7.2.2. Outside the European Union

The transfer of personal data towards a third country can take place only if the third country in question ensures an adequate level of protection [art.25 §1], which is assessed according to several criteria, among which the genealogical purpose of the processing [art.25 §2]. Member States and the European Commission consider according to these criteria what countries do not have the adequate level of protection [art.25 §3].

The European amateur genealogist checks with his Supervisory Authority that the country towards which he envisages a live persons' data transfer is not noted with a non adequate level of protection. If it is the case, any transfer is prohibited or he suppresses all live persons from the data object of his exchange before the transfer.

The quality of genealogist claimed by a person of a third country is assessed in relation to his membership in a genealogical association or federation and in relation to his genealogical publications.

The European amateur genealogist's responsibilities remain the same as when interchanging inside the EU [Chap.7.2.1].

7.3. Feeding the data banks

Generally, the genealogical data banks have various aims of mutual aid enabling genealogists to progress in their research. Alternatively, certain data banks can give a storage service against the accidental destruction of the amateur's database and an archiving service beyond the duration necessary for research [Chap.4.4.4].

The legal statutes of the societies, which processes genealogical data banks, can be various from the non-profit-making association to the public limited liability company. Legislation imposes no specific legal statute. But it specifies what protections the sub-contracting data bank in capacity as processor must give as regards confidentiality and security of the processing [Chap.4.7] to the amateur genealogist, and that the relation from processor to controller of the processing (the genealogist) must be bound by a contract or a legal act with a number of conditions to be fulfilled [Chap.4.8.2].

Two procedures should be distinguished among the data banks:

- On the one hand, the data banks with restricted access only to genealogists duly registered to a national Supervisory Authority are protecting the genealogical purpose of the processing against diversions to other purposes and can therefore contain data of live persons;
- On the other hand, the data banks open to the public or with restricted access to persons not registered as genealogists to a national Supervisory Authority, cannot contain data of live persons without infringement of legislation which excluded processing operations incompatible with the declared genealogical purpose [art.6 §1.b].

According to the defined procedure, the amateur genealogist who wishes to feed a data bank with a mutual aid to research's aim, is liable in the case of the second procedure to exclude all data of live persons (including their names). Each feeding of a data bank has to be registered in the communications' register of the amateur genealogist.

The data banks with restricted access are implemented in particular by the genealogical associations. There are often historical archives being the results of the researches of their members or former members. Access is reserved for the members of these associations as paying a subscription fee. This access is sometimes extended to the members of other associations.

The associations' liability is engaged if they process data banks, with respect to the diversion of the genealogical purpose of the processing, because in order to ensure live persons' protection they must verify that restricted access and data exchange are given only to genealogists duly registered to a national Supervisory Authority.

One could think that certain data banks with the procedure open to the public do not contain directly identifiable persons, because they record only a kind of relations: a certain patronymic present in a locality within a given period of time. The same relation in the data of two genealogists thus reveals a strong probability of common data.

However, it may happen that this type of relation for contemporary period of time reveals a single person by simple consultation of the telephone directory. This possibility confirms that the amateur genealogist must not feed these data banks openly accessible to the public with data of live persons.

7.4. Interchanges within groups of discussion on the Internet

The amateur genealogist is aware that "News Groups" and the sites organising genealogical groups of discussion are places accessible to all [Chap.4.8.1.3].

The amateur genealogist will show prudence and will not distribute data allowing the identification of a live person. When he discloses data to the members of a group of discussion, the amateur genealogist registers it in his communications' register and classifies a copy of the message in his archives.

When the amateur genealogist receives information useful for his research by a group of discussion, he registers the useful messages in his communications' register and classifies a copy of these messages in his files.

When the received messages of a group of discussion are an invitation to exchange data concerning live persons, the amateur genealogist must leave the group of discussion and introduce a direct contact with the author of this invitation, without copy to the other members of the group of discussion. In this direct contact, the amateur genealogist declares the purpose of his research and his registration number to his Supervisory Authority, and he requests the same information from his correspondent. The follow-up of the contact is in conformity with *the interchange with another genealogist* [Chap.7.2].

7.5. The disclosure by publication on an Internet site

Considerations developed in this Code on *data protection on the Internet sites presenting personal genealogies* [Chap.4.8.1.2] aim to avoid the diversion of the genealogical purpose of the processing to other ends, with regard to the personal data of live persons.

Consequently, the genealogist amateur responsible for an Internet site open to the public which presents a personal genealogy, must place no data item of live persons in it, except those of persons of which he received an explicit authorisation (in written) to publish certain data on an Internet site open to the public. It should be reminded that live persons are perfectly identifiable with data as tiny as their surnames and first names and the links towards the names of their parents, and that a written authorisation also is required to put so little of their data on a site open to the public.

The amateur genealogist who wishes to publish a full personal genealogy on an Internet site, i.e. including the complete data of live persons, is responsible for the implementation of access control restricted by passwords and reserved only for genealogists duly registered to a national Supervisory Authority. Moreover he must ensure the implementation of a secure connection (for example SSL, Secure Socket Layer) between the restricted Internet site and the genealogist who reaches it. These measures apply as well to sites submitting static pages (hyper text mark-up language, HTML) as to those implementing dynamic management programmes and/or storage of personal data of live persons.

Considerations developed in this Code on *data protection on the Internet sites in the relationship with the processor* [Chap.4.8.2] aim at the contractual conditions and the obligations of confidentiality and security measures of processing [Chap.4.7] applicable to the processors which provide the hosting of Internet sites containing personal genealogies.

The amateur genealogist, who publishes personal genealogy on an Internet site, must register each update of the site in his communications' register. He retains a copy of the static pages existing on the site at the time of each update.

The amateur genealogist stores and archives each successive safeguard copy in progression with the modifications and additions introduced on a site by means of dynamic management programmes and/or storage of genealogical data. In this case each safeguarded copy is registered on the communications' register of the amateur genealogist.

Annex 1: List of the national supervisory authorities

The Directive 95/46/CE had to be implemented into national right of the 15 Member States of the European Union before October 25th, 1998. For each country, the status of that implementation was given by the CELEX database (© European Communities) on October 25th, 2000. National legislation's next implementation steps are given as a further commentary.

Austria

Director Buro der Datenschutzkommission
und des Datenschutzrates
Bunderkanzleramt
Ballhausplatz 1
A-1014 Wien

Status of implementation into national right :

Bundesgesetz vom 18/10/1978 über den Schutz personenbezogener Daten (Datenschutzgesetz - DSG), Bundesgesetzblatt für die Republik Österreich, Nr. 565/1978

Next implementation step :

NONE - Directive implemented to enter in force January 1st, 2000.

Belgium

Commissie voor de bescherming van de
persoonlijke levenssfeer
Waterloolaan 115
B-1000 Bruxelles

Commission de la protection de la vie privée
Boulevard de Waterloo 115
B-1000 Bruxelles

<http://www.privacy.fgov.be>
privacy@euronet.be

Status of implementation into national right :

Wet tot omzetting van de richtlijn 95/46/EG van 24 oktober 1995 van het Europees Parlement en de Raad betreffende de bescherming van natuurlijke personen in verband met de verwerking van persoonsgegevens en betreffende het vrij verkeer van die gegevens, Moniteur belge of 03/02/1999 p. 3049.

Next implementation steps :

The law was published in Moniteur Belge (Official Journal). But royal decrees necessary to setup the law in force are not published yet. (Status MARCH 2000)

Denmark

Datatilsynet
Christians Brygge 28, 4.
DK-1559 Copenhagen V

<http://www.datatilsynet.dk>
dt@datatilsynet.dk

Status of implementation into national right :

Lov nr. 400 af 26/06/1998 om ændring af lov om folkeregistrering. Indenrigsmin., 1998/6000-14. Lovtidende A 1998 hæfte nr. 93 udgivet den 27/06/1998 s. 2407

Next implementation steps :

Partial implementation of the Directive. Parliament pending to adopt a bill. Denmark is being sued before the European Court of Justice for failure to implement the legislation. (Status MARCH 2000)

Finland

The Data Protection Ombudsman
Albertinkatu 25
P.O.Box 315
SF-00181 Helsinki

<http://www.tietosuoja.fi>

Status of implementation into national right :

Personal Data Act 523/1999 adopted by Parliament March 22nd, 1999

Next implementation step :

NONE - Directive implemented to enter in force June 1st, 1999.

France

Commission Nationale Informatique et Libertés
21, rue Saint-Guillaume
F-75340 Paris cedex 07

<http://www.cnil.fr>

Status of implementation into national right :

NO REFERENCE AVAILABLE

Next implementation steps :

A bill is being considered by the Government. Parliamentary discussions pending. France is being sued before the European Court of Justice for failure to implement the legislation. (Status MARCH 2000)

Germany

Federal Authority :
Den Bundesbeauftragte für den Datenschutz
Postfach 200112
D-53131 Bonn - Bad Godesberg

Federal Authority: <http://www.bfd.bund.de/>

Länders' Authorities: http://www.bfd.bund.de/anschriften/dsb_land.html

Status of implementation into national right :

NO REFERENCE AVAILABLE

Next implementation steps :

Formal bill in preparation. Parliamentary discussions likely to start in Spring 2000. Legislation need to be implemented at Laender level. Germany is being sued before the European Court of Justice for failure to implement the legislation. (Status MARCH 2000)

Greece

Commission for Data Protection
12, Valaoritou
GR-10671 Athen

<http://www.dpa.gr>
contact@dpa.gr

Status of implementation into national right :

Law 2472 of 09/04/1997, FEK A number 50 of 10/04/1997 Page 685

Next implementation step :

NONE - Directive implemented. Law entered in force April 10th, 1997.

Ireland

Data Protection Commissioner
Irish Life Center, Block 4
Talbot Street, 40
IRL - Dublin-1

Status of implementation into national right :

NO REFERENCE AVAILABLE

Next implementation steps :

Bill was drafted. Pending approval by Government, then submission to Parliament. Ireland is being sued before the European Court of Justice for failure to implement the legislation. (Status MARCH 2000)

Italy

Garante per la Protezione dei dati personali
Largo del Teatro Valle, n. 6
I-00186 Roma

<http://www.garanteprivacy.it>
garante@garanteprivacy.it

Status of implementation into national right :

- Legge n. 675 del 31 dicembre 1996. Tutela delle persone e di altri soggetti rispetto al trattamento dei dati personali
- Decreto legislativo 11 maggio 1999, n. 135. Disposizioni integrative della legge 31 dicembre 1996, n. 675, sul trattamento di dati sensibili da parte dei soggetti pubblici
- Decreto legislativo 30 luglio 1999, n. 281. Disposizioni in materia di trattamento dei dati personali per finalità storiche, statistiche e di ricerca scientifica

Next implementation step :

NONE - Directive implemented and entered in force.

Luxembourg

Monsieur le Ministre de la Justice
16 Boulevard Royal
L-2934 Luxembourg

Status of implementation into national right :

NO REFERENCE AVAILABLE

Next implementation steps :

Bill to be approved by Government and submitted to Parliament. Luxembourg is being sued before the European Court of Justice for failure to implement the legislation. (Status MARCH 2000)

The Netherlands

Registratiekamer
Prins Clauslaan 20
Postbus 93374
NL-2509 AJ Den Haag

<http://www.registratiekamer.nl>
mail@registratiekamer.nl

Status of implementation into national right :

Wet van 6 juli 2000, Stb. 302, houdende regels inzake de bescherming van persoonsgegevens (Wet bescherming persoonsgegevens, WBP).

Next implementation steps :

Law was adopted by the Second Chamber. Submitted to the First Chamber (Senate). The Netherlands are being sued before the European Court of Justice for failure to implement the legislation. (Status MARCH 2000)

Portugal

Comissão Nacional de Protecção de Dados Informatizados
Rua de São Bento, n° 148, 3°
P-1200 Lisboa

<http://www.cnpd.pt>
geral@cnpd.pt

Status of implementation into national right :

Lei n.º 67/98 de 26/10/1998. Lei da Protecção de dados Pessoais (transpõe para a ordem jurídica portuguesa a Directiva n.º 95/46/CE, do Parlamento Europeu e do Conselho, de 24 de Outubro de 1995, relativa à protecção das pessoas singulares no que diz respeito ao tratamento dos dados pessoais e à livre circulação desses dados), Diário da República I Série A n.º 247 de 26/10/1998
Página 5536

Next implementation step :

NONE - Directive implemented and entered in force.

Spain

Agencia de Protección de Datos
Pº de la Castellana 41, 5.a planta
E-28046 Madrid

<http://www.agenciaprotecciondatos.org>

Status of implementation into national right :

- 01 . Real Decreto número 156/96 de 02/02/1996, por el que se modifica el Estatuto de la Agencia de Protección de Datos, aprobado por Real Decreto 428/1993, de 26 de marzo, para designar a la Agencia de Protección de Datos como representante español en el grupo de protección de personas previsto en la Directiva 95/46/CE, de 24 de octubre, Boletín Oficial del Estado número 37 de 12/02/1996 Página 4939 (Marginal 2991)
- 02 . Ley Orgánica número 5/92 de 29/10/1992 de regulación del tratado automatizado de los datos de carácter personal, Boletín Oficial del Estado número 262 de 31/10/1992

Next implementation step :

NONE - Directive implemented to enter in force January 14, 2000.

Sweden

Datainspektionen
Box 8114
S-104 20 Stockholm

<http://www.datainspektionen.se>
datainspektionen@datainspektionen.se

Status of implementation into national right :

01 Personuppgiftslag, Svensk författningssamling (SFS) 1998:204
02 Personuppgiftsförordning, Svensk författningssamling (SFS) 1998:1191
03 Datainspektionens föreskrifter i fråga om skyldigheten att anmäla behandlingar av personuppgifter till Datainspektionen, Datainspektionens författningssamling (DIFS) 1998:2
04 Förordning med instruktion för Datainspektionen, Svensk författningssamling (SFS) 1998:1192

Next implementation step :

NONE - Directive implemented and entered in force on October 24th, 1998.

United-Kingdom

Data Protection Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

<http://www.dataprotection.gov.uk>
mail@dataprotection.gov.uk

Status of implementation into national right :

The Data Protection Act 1998.

All automated processing will need to be brought into compliance with the requirements of the new Act before the end of 2001.

Next implementation step :

NONE - Directive implemented and entered in force on March 1st, 2000.

Annex 2: Information to be provided to the data subject in cases of data collection from him

1. Identity of the responsible genealogist and of his possible representative

NOTE: If the controller genealogist is not established in the European Union (EU), he is required to give you the identity of its representative in the EU.

The Controller Genealogist:

First name:

Last name:

Address:

Its representative, if any:

First name:

Last name:

Address:

Telephone no.:

E-mail:

Telephone no.:

E-mail:

2. Purpose of processing for which the data is intended

Research topics selected by the controller genealogist:

- The agnatic lines, i.e. the ascendants and descendants in the same patronymic line, the spouses included.
Patronymic concerned: ...
- The ancestors of a person
The person's name: ...
- The descendants of an ancestor known, the spouses included.
Name of the ancestor: ...
- The research of the ancestors of a person and of the cousins from the same ancestors, spouses included.
The person's name: ...
- Patronymic research, i.e. of all the families whose a member at least carries the patronymic with the aim of finding the common roots of these families, the spouses included
Patronymic concerned: ...
- Historical research on families having something in common, for example their locality, house, trade, notary, etc. including the descendants of these families with their spouses.
Point in common: ...
- Other historical topics to be specified, requiring to gather personal data, including those of live persons.
Summary of the research topic:

Research alternatives:

- The term "spouse" used in the above research topics, also extend to the concubines and other partners out of marriage.
- With the pre-defined spouses, processing will be able to include the spouses of spouses, and so on of, with their descents.
- Personal data of the parents and brotherhood of the pre-defined spouses are included in the processing.

3. The recipients of the data

Personal data concerning you may be communicated to genealogists, genealogy associations, genealogical data banks of access restricted to genealogists and archives' funds or libraries, in the respect of the purpose of processing (see above) and of national legislation arising from European Directive 95/46/EC concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The genealogist as controller gives you the assurance that:

- The quality of genealogist duly registered of the recipient person will be checked to a national authority (or the equivalent conditions outside the EU) before all communication of your data;
- The genealogy associations, recipient of his publications containing data concerning you, committed themselves to restricting their access to genealogists duly registered, and the former adhere to a Code of conduct in the field of genealogy;
- Your personal data will not be communicated to data banks which do not ensure an access restricted to genealogists duly registered, this with the aim of preventing any diversion of the genealogical purpose of the processing;
- The archives funds and libraries, recipients of his genealogical publications containing data concerning you, will commit themselves not to publicise your data before the delay provided for by the law which is applicable to them as regards the archiving of personal data;
- The measures defined by legislation for the confidentiality and the security of the transmissions and of the processing on data concerning you, were undertaken and will be maintained for all the duration of research.

4. The categories of data concerned

The controller genealogist is required to request your explicit consent for the gathering and further processing of *sensitive data* which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or concerning health and sex life (Convention of Human rights) as well as the data relating to offences, criminal convictions or security measures, except for those of this data which would be collected to sources attesting that you manifestly made them public by yourself.

Any other piece of data of a *non sensitive* personal nature concerning you, permitted by the national Supervisory Authority (or permitted under equivalent conditions outside the EU) for the genealogical purpose of research, is likely to be collected to other sources than you.

The controller genealogist is required to request your explicit consent so that some of your data of a personal nature are placed *openly disclosed to the public*. For example, your gender, the links with the names of your parents and "spouses", etc. This possibility must be presented to you as an option that you are not obliged to accept and for which you can freely choose what categories of data can fall in the public domain.

5. Non-obligation to answer the questions

You have no obligation to answer any question. The failure to reply has no consequence.

6. Your rights to access and to rectify

You have the right to obtain from the controller genealogist:

Access to your personal data;

Their rectification, erasure or blocking;

The notification to third parties who have already received your data, of the processed modifications.

Conditions of operation of the right to access:

If your address no longer corresponds with that registered the day of your interview, the controller genealogist can require a copy of an identity paper certified with the original by a local authority, in order to protect your data from a consignment at a wrong address.

The data detained on you for genealogical purposes are not suitable for frequent modifications. This is why the intervals considered reasonable between two exercises of your right to access were limited to avoid exceptional cases of harassment. The intervals to be respected by you are of at least three months until your third application. Then, they are at least twelve months for the following applications.

No other condition and no constraint can be imposed to you to obtain communication of all the personal data held on yourself.

Rectification, erasure or blocking:

The set of your data must be provided to you in clear form and without omission. The data must be accompanied by any information available on their origin, i.e. their source. Information already included in this document on the purpose of the genealogical processing, the categories of data which it covers and the recipients or categories of recipients to whom the data are communicated, must be reminded to you at the time of the response to your request for access.

You are asked to check your data and to have them rectified if necessary. You can have certain data erased or blocked in particular because of their incomplete or inaccurate nature, owing to the fact that certain data is classified sensitive or that certain data is according to you not to be disclosed openly to the public.

The notification to third parties who have already received your data, of the performed changes:

At the time of exercising your right to access, you may ask the controller genealogist that the required changes be transmitted to third parties to whom your data has already been communicated, if that does not prove impossible or does not involve a disproportionate effort to find these persons because in particular of the age of this communication.

Annex 3: Information to be provided to the data subject when his data were not obtained from him

The genealogist as controller must, at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed, provide the data subject with at least the information included in this annex-3 [Directive 95/46/EC, art.11 §1], except if that provision proves impossible or would involve disproportionate efforts [art.11 §2].

1. Identity of the responsible genealogist and of his possible representative

NOTE: If the controller genealogist is not established in the European Union (EU), he is required to give you the identity of its representative in the EU.

The Controller Genealogist:

First name:

Last name:

Address:

Telephone no.:

E-mail:

Its representative, if any:

First name:

Last name:

Address:

Telephone no.:

E-mail:

2. Purpose of processing for which the data is intended

Research topics selected by the controller genealogist:

- The agnatic lines, i.e. the ascendants and descendants in the same patronymic line, the spouses included.
Patronymic concerned: ...
- The ancestors of a person
The person's name: ...
- The descendants of an ancestor known, the spouses included.
Name of the ancestor: ...
- The research of the ancestors of a person and of the cousins from the same ancestors, spouses included.
The person's name: ...
- Patronymic research, i.e. of all the families whose a member at least carries the patronymic with the aim of finding the common roots of these families, the spouses included
Patronymic concerned: ...
- Historical research on families having something in common, for example their locality, house, trade, notary, etc. including the descendants of these families with their spouses.
Point in common: ...
- Other historical topics to be specified, requiring to gather personal data, including those of live persons.
Summary of the research topic:

Research alternatives:

- The term "spouse" used in the above research topics, also extend to the concubines and other partners out of marriage.
- With the pre-defined spouses, processing will be able to include the spouses of spouses, and so on of, with their descents.
- Personal data of the parents and brotherhood of the pre-defined spouses are included in the processing.

3. The recipients of the data

Personal data concerning you may be communicated to genealogists, genealogy associations, genealogical data banks of access restricted to genealogists and archives' funds or libraries, in the respect of the purpose of processing (see above) and of national legislation arising from European Directive 95/46/EC concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The genealogist as controller gives you the assurance that:

- The quality of genealogist duly registered of the recipient person will be checked to a national authority (or the equivalent conditions outside the EU) before all communication of your data;
- The genealogy associations, recipient of his publications containing data concerning you, committed themselves to restricting their access to genealogists duly registered, and the former adhere to a Code of conduct in the field of genealogy;
- Your personal data will not be communicated to data banks which do not ensure an access restricted to genealogists duly registered, this with the aim of preventing any diversion of the genealogical purpose of the processing;
- The archives funds and libraries, recipients of his genealogical publications containing data concerning you, will commit themselves not to publicise your data before the delay provided for by the law which is applicable to them as regards the archiving of personal data;
- The measures defined by legislation for the confidentiality and the security of the transmissions and of the processing on data concerning you, were undertaken and will be maintained for all the duration of research.

4. The categories of data concerned

The controller genealogist is required to request your explicit consent for the gathering and further processing of *sensitive data* which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or concerning health and sex life (Convention of Human rights) as well as the data relating to offences, criminal convictions or security measures, except for those of this data which would be collected to sources attesting that you manifestly made them public by yourself.

Any other piece of data of a *non sensitive* personal nature concerning you, permitted by the national Supervisory Authority (or permitted under equivalent conditions outside the EU) for the genealogical purpose of research, is likely to be collected to other sources than you.

The controller genealogist is required to request your explicit consent so that some of your data of a personal nature are placed *openly disclosed to the public*. For example, your gender, the links with the names of your parents and "spouses", etc. This possibility must be presented to you as an option that you are not obliged to accept and for which you can freely choose what categories of data can fall in the public domain.

List of the categories of data as classified sensitive or not:

[This list should be shown to the identical of the annex-4]

5. Your rights to access and to rectify

You have the right to obtain from the controller genealogist:

Access to your personal data;

Their rectification, erasure or blocking;

The notification to third parties who have already received your data, of the processed modifications.

Conditions of operation of the right to access:

If your address no longer corresponds with that registered the day of your interview, the controller genealogist can require a copy of an identity paper certified with the original by a local authority, in order to protect your data from a consignment at a wrong address.

The data detained on you for genealogical purposes are not suitable for frequent modifications. This is why the intervals considered reasonable between two exercises of your right to access were limited to avoid exceptional cases of harassment. The intervals to be respected by you are of at least three months until your third application. Then, they are at least twelve months for the following applications.

No other condition and no constraint can be imposed to you to obtain communication of all the personal data held on yourself.

Rectification, erasure or blocking:

The set of your data must be provided to you in clear form and without omission. The data must be accompanied by any information available on their origin, i.e. their source. Information already included in this document on the purpose of the genealogical processing, the categories of data which it covers and the recipients or categories of recipients to whom the data are communicated, must be reminded to you at the time of the response to your request for access.

You are asked to check your data and to have them rectified if necessary. You can have certain data erased or blocked in particular because of their incomplete or inaccurate nature, owing to the fact that certain data is classified sensitive or that certain data is according to you not to be disclosed openly to the public.

The notification to third parties who have already received your data, of the performed changes:

At the time of exercising your right to access, you may ask the controller genealogist that the required changes be transmitted to third parties to whom your data has already been communicated, if that does not prove impossible or does not involve a disproportionate effort to find these persons because in particular of the age of this communication.

Annex 4: Notification of processing to the national Supervisory Authorities

The controller genealogist can refer to the Code of Conduct to determine in which country the national law derived from Directive 95/46/EC is applicable to him [Chap.3.2]. He can determine if the law is already in force on the site www.genealogyprivacy.org where he will find the details of the national Supervisory Authority. To introduce a new notification or the change of an existing notification, the amateur genealogist must send the notification using the procedure as set up by the Authority.

Below, the list of the information to be provided is the minimum required by all the national authorities. The amateur genealogist will check by his national authority the additional information that can be considered necessary.

1. Identity of the responsible genealogist and of his possible representative

NOTE: If the controller genealogist is not established in the European Union (EU), he is required to give the identity of its representative in the country where he introduces the notification.

The Controller Genealogist:

First name:

Last name:

Address:

Its representative, if any:

First name:

Last name:

Address:

Telephone no.:

E-mail:

Telephone no.:

E-mail:

2. Purpose of processing for which the data is intended

(Notch in front of the topic(s) of genealogical research)

Research topics selected by the controller genealogist:

- The agnatic lines, i.e. the ascendants and descendants in the same patronymic line, the spouses included.
Patronymic concerned: ...
- The ancestors of a person
The person's name: ...
- The descendants of an ancestor known, the spouses included.
Name of the ancestor: ...
- The research of the ancestors of a person and of the cousins from the same ancestors, spouses included.
The person's name: ...
- Patronymic research, i.e. of all the families whose a member at least carries the patronymic with the aim of finding the common roots of these families, the spouses included
Patronymic concerned: ...
- Historical research on families having something in common, for example their locality, house, trade, notary, etc. including the descendants of these families with their spouses.
Point in common: ...

- Other historical topics to be specified, requiring to gather personal data, including those of live persons.
Summary of the research topic:

Research alternatives:

- The term "spouse" used in the above research topics, also extend to the concubines and other partners out of marriage.
- With the pre-defined spouses, processing will be able to include the spouses of spouses, and so on of, with their descents.
- Personal data of the parents and brotherhood of the pre-defined spouses are included in the processing.

3. The categories of data subject

The purpose of research [§2 above] determines all the persons concerned as data subjects.

4. The categories of data relating to the data subjects

The list of the categories of data concerned with genealogy requires harmonisation of the Community implementing measures [art.31] on their adequacy [art.6 §1.c] to the purpose of genealogical research and their possible classification in sensitive data [art.8].

The classification proposed below is neither final nor complete. Its only aim is to serve as a discussion basis for notifications' harmonisation by the national Supervisory Authorities of all the countries in the EU.

Non sensitive data

Usual data :

(All these data categories are selected automatically)

- Surname, first names, gender, used name, alias surname, link towards the father, link towards the mother, birth date, death date, date of marriage, birthplace, place of death, place of marriage, celebration of the marriage (yes/no), divorce (yes/no), separation (yes/no), divorce date, place of divorce, separation date, burial date, incineration date, profession/occupation, notes, last known address

Special data :

(Notch the categories of data which will be used)

- Nickname, marriage agreement, adoption date, link towards the adoptive father, link towards the adoptive mother, annulment of marriage, army, attribution of a name, marriage contract, asks of divorce, removal, diplomas, date of publication of marriage announcement, exempts from publication of marriage announcement, migration, engagement date, place of engagement, divorce decision, immigration, place of residence, nationality, naturalisation date, census, date of retiring, will, last wills, physical description, notary's name, property, heritages, title (preceding the name), seniority/order (after the name: father/son, number, senior/junior),

Sensitive data

(Categories of sensitive data for which live data subjects must have given explicit consent for their use and later disclosure before any processing)

Baptism, adult's baptism, bar-mitsva, benediction, death causes, circumcision, solemn communion, convictions, confirmation (sacrament of), conversion, colour of skin, physical deficiencies, excommunication, miscarriage, freemason, physical disability, homosexuality, hospitalisation, offences, illness, mission, ordination, ethnic origin, religious order, tribal origin, photography, video, multimedia, first communion, race, religion, sacraments, sanctions, date of the civil solidarity pact (French PACS), place of the civil solidarity pact (French PACS).

5. The recipients of the data

Personal data may be communicated to genealogists, genealogy associations, genealogical data banks of access restricted to genealogists and archives' funds or libraries, in the respect of the purpose of processing (see above) and of national legislation arising from European Directive 95/46/EC concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The genealogist as controller gives the assurance that:

- The quality of genealogist duly registered of the recipient person will be checked to national authority (or the equivalent conditions outside the EU) before all disclosure of data;
- The genealogy associations, recipient of his publications containing data, committed themselves to restricting their access to genealogists duly registered, and the former adhere to a Code of Conduct in the field of genealogy;
- Personal data will not be disclosed to data banks which do not ensure an access restricted to genealogists duly registered, this with the aim of preventing any diversion of the genealogical purpose of the processing;
- The archives funds and libraries, recipients of his genealogical publications containing data, will commit themselves not to publicise data before the delay provided for by the law which is applicable to them as regards the archiving of personal data;

6. The transfers of data envisaged to third countries

The controller genealogist will send genealogical data only to persons of countries for which the authorisation aiming at the genealogical purposes were given by his national Supervisory Authority or by the European Commission.

7. Duration of storage of the data, ultimate destination of archives

The amateur genealogist as controller declares that the deadline for the end of his research is: ...

Beyond this deadline, the amateur genealogist declares that he wants to deposit the results of his research to the following associations, libraries and/or archives funds:

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-
-

8. Description of the safety measures

The amateur genealogist as controller declares to have respected the regulations of the Code of Conduct of the Amateur Genealogist.

In particular the following measures were taken: safeguard back-up of the data files, checking of the identity and of the capacity as genealogist recorded of the person before to give access to the data, encoding of the e-mail, Internet site of access restricted by password and SSL connection, if any.

It was checked that the data banks and Internet site's hosting processors respect the same safety measures, otherwise live persons' data will have been excluded from the concerned processing operations.

DATE :

SIGNATURE :