

## Session III - Data protection and law enforcement challenges

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We believe that the EU data protection framework rules should apply both to domestic law enforcement processing and activities cross-border, as clearly mandated in the Lisbon Treaty (TFEU). In an ideal world we should have had on the table only one data protection law proposal for everything, with appropriate sectoral restrictions and rules. This is the case with the current Data Protection Directive - the majority of Member States have applied it “across the board”.

However we have a separate, self-standing proposed Directive, so member countries will have to adopt “two for the price of one”; this will add up to many complexities and will fail to achieve a high level of data protection for citizens in all circumstances. Inevitably, the transposition of the Directive in the different nations will result in the very fragmentation that the new legal framework aims to avoid. We may end up with one harmonised general data protection legislation, and 27 differing regimes for law enforcement purposes.

But even more important are considerations of the rights of the individuals. The EU is working to achieve common minimum standards for protecting the fundamental rights of the people being investigated - the suspects and the accused. To this end, a roadmap was adopted in 2009 by the Justice Council, proposing legislative measures on issues such as access to legal advice, right to translation, protection of vulnerable suspects, and so on. Data protection legislation is not covered by this roadmap, but it should be an essential part of it, to help achieve the goal of mutual recognition. This is also a major reason for the proposed Directive to apply domestically.

But law enforcement is not just about criminals, suspects and accused; it involves victims and witnesses and others caught in the net of investigations. It is an area where processing of sensitive personal data is more than likely to be involved, and therefore citizens may be put at particular risk. Such processing routinely involves DNA and biometric data, people in very vulnerable circumstances and often very long periods of data retention.

Therefore it is very important that the provisions of the proposed Directive are equally strong and harmonised with those of the proposed general data protection Regulation. Currently they are not. We consider that in the proposed Directive: data processing principles are less ambitious, more ambiguous and more limited, than those in the proposed Regulation; the rights of the data subjects are significantly weaker than in the proposed Regulation; controllers are subject to fewer, and vaguer obligations; transfers rules are unclear and less restrictive than they could be; and supervisory authorities have fewer and weaker powers.

So, in conclusion, we think it is essential for the legislators from across the EU to ensure that law enforcement is subject to the same essential data protection provisions as the rest of the public and private sectors; that these rules apply both domestically and cross-border, and come into force at the same time.