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Abstract of the Statement

at the Interparliamentary Committee Meeting in Brussels on 9 September 2012

The Reform of the EU Data Protection framework –
Building trust in a digital and global world

SESSION IV
Data controllers and processors
in the private and employment sector

1. The Commission's proposal for a General Data Protection Regulation aims at ensuring a harmonized high level of the protection of personal data throughout the Union (cf. Recitals 2,5 and 6). This is to be welcomed. However, as the Directive 95/46 stated (cf. Recital 10), approximation of the laws of Member States must not result in any lessening of the protection they afford. The same applies to harmonization by means of a regulation. This should be clarified in the text of the regulation.

2. More flexibility for Member States in certain areas such as the employment sector. Art. 82 of the Draft Regulation is too narrow and too vague since Member States have this option only "within the limits of the Regulation". In Germany there are laws which provide for specific protection of employees and job applicants. It is unclear whether they would stay in force after the adoption of the Regulation. The European legislators should not diminish this protection since harmonization of laws for data protection should not lead to a "race to the bottom" but rather to an improvement of protection.

3. It is to be welcomed that the new Regulation states that companies established outside the European Union will have to follow the rules in place in the European Union in certain circumstances.

4. Direct marketing should be based on informed consent *(opt-in, permission marketing, do-not-track as default)* as any other processing of personal data without an alternative legal basis under Art. 6 (1) (b-f) of the Regulation. Art. 19 (2) and Recital 57 should be deleted.

5. The right to have one's data pseudonymised should be introduced in the Regulation as an important tool of privacy by design.

6. The relationship between the Regulation and the e-Privacy-Directive has to be clarified. Art. 89 raises more questions than it answers. The provision is an example for insufficient delineation between the general framework and specific secondary legislation on the protection of personal data.

7. The relationship between the Regulation and existing Freedom of Information Laws in the Member States has to be clarified. This concerns not only the public but also the private sector where increasingly Member States provide for transparency and access to information.

8. The European Commission is assuming a dominant role in the Draft Regulation. This is true for the amount and extent of delegated acts reserved by the Commission as well as for its role in the consistency mechanism. Essential elements have to be determined by the European legislature (not the Commission). At least the European Data Protection Board should have a greater say before delegated acts are adopted. The Commission's role in the consistency mechanism does not comply with the jurisprudence of the European Court of Justice on the independence of supervisory authorities.