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*Committee on Legal Affairs*

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13.4.2012

## **NOTICE TO MEMBERS**

**(0041/2012)**

**Subject:** Reasoned opinion of the Belgian Chamber of Representatives on the proposal for a regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Under Article 6 of Protocol No 2 on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament's Rules of Procedure, the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the Belgian Chamber of Representatives on the above-mentioned proposal.

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PE487.731v01-00

**EN**

*United in diversity*

**EN**

Chamber of Representatives  
Kingdom of Belgium

**PROPOSAL**  
**for a regulation of the European Parliament and of the Council on the protection of**  
**individuals with regard to the processing of personal data and on the free movement of**  
**such data (General Data Protection Regulation)**  
**COM(2012)0011**

**Opinion on subsidiarity**

Parliamentary procedures notwithstanding, the Justice Committee welcomes the harmonisation and updating of the rules at European level; after all, not only does the internet acknowledge no borders, but many firms and organisations are also active outside their own Member State's national borders.

Belgium has stringent laws on privacy protection and strict standards governing the use which may be made of personal data, especially in the public sector. It should be emphasised that the new regulation lays down a minimum standard, while authorising national legislators to make provision for a higher level of protection, particularly in the fields of social security and health and as regards the activities of the public authorities.

**1. Regarding subsidiarity**

As regards the principle of subsidiarity, the Justice Committee takes the view that the cross-border dimension of personal data protection, combined with increasing internationalisation and the problems caused by the ubiquitous presence of the internet, justifies action at European level. Member States, however, must be able to transpose European rules into their own systems of law as they see fit.

The Commission's decision to use a proposal for a regulation to bring the legislative framework governing personal data protection into line with the current state of technology in order, on the one hand, to strengthen consumer confidence by means of enhanced supervision and, on the other, to protect the digital economy (COM(2012)0011), prompts objections linked to the principle of subsidiarity, because by opting for a regulation (i.e. an instrument applicable without having to be transposed into national law) the Commission is disregarding current practice in Belgium. In our country, the legislator, supported by the Privacy Protection Committee in its capacity as a collateral body of the Chamber of Representatives, pays close attention to the specific way data protection is organised in Belgium.

In this context, the Justice Committee sees no alternative to a directive as the appropriate legal instrument of law in this instance and points out that a regulation can only be used to address certain specific issues that the Member States agree must be dealt with in that way, for example data exchange with countries outside the EU. The Commission's power to suspend the decisions made by privacy protection committees could be at odds with the principle of subsidiarity. In more general terms, it would be preferable to strengthen the role of the European *Data Protection Board*.

The proposed Article 62 would grant the Commission broad powers to adopt implementing provisions. It would make sense for the provisions of the future directive to be as comprehensive in scope as

possible from the outset, in order to ensure that all stakeholders, Parliament and the Council have a role.

## **2. *Regarding proportionality***

As regards compliance with the principles of *proportionality*, the Justice Committee wishes to express reservations concerning a number of provisions that could potentially violate the principles of proportionality. The Committee takes the view that the proposal for a regulation would influence or totally change the way in which the public sector currently processes personal data. In particular, it would affect the arrangements for supervising sectoral committees (social security and health, federal authority, national register and statistics), which specify that 'authorisations' must be granted before personal data can be processed, a procedure which the proposal for a regulation would rule out. Member States must be able to stipulate in their laws which forms of processing require prior authorisation. At the same time, the use of a common unique identifier, such as the national register number, might well increase the likelihood of problems arising. Member States must be able to lay down rules governing the processing of data which includes a national identification number, or any other general identifier. The proposed text is not applicable to personal data processing by European institutions. The Justice Committee is in favour of the European institutions also adopting the harmonised approach.

Date of adoption: 27 March 2012