



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

20.3.2012

NOTICE TO MEMBERS

(32/2012)

Subject: Reasoned opinion of the French Senate on the 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 flow of such data (General Data Protection Regulation).
(COM(2012)0011 – C7-0025/2012 – 2012/0011(COD))

Under Article 6 of the 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 compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the French Senate on the above-mentioned proposal.

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№ 105

SENATE

ORDINARY SESSION, 2011-2012

4 March 2012

EUROPEAN RESOLUTION
CONTAINING A REASONED OPINION

on the conformity with the subsidiarity principle of the proposal for a Regulation of the European Parliament and of the Council on the **protection of personal data**

Pursuant to Article 73g(4) and (5) of the Senate's Standing Orders, the motion for a resolution of the Laws Committee, set out below, has become a Senate resolution.

See publications: Senate: 424 and 447 (2011-2012).

The proposal for a regulation, which is directly applicable, seeks to reduce legal fragmentation and provide greater legal certainty by introducing a harmonised set of core rules. In a number of areas it confers on the Commission the power to adopt delegated acts in accordance with article 290 of the TFEU. In order to guarantee uniform conditions for its implementation it confers implementing powers on the Commission. Article 51 creates a 'one-stop shop' system whereby the power to supervise the activities of a controller or processor established in several Member States is conferred on the supervisory authority of the Member State where the controller or processor has its main establishment.

Having regard to Article 88-6 of the Constitution,

The Senate makes the following comments:

- Article 5 of the Treaty on European Union stipulates that, under the principle of subsidiarity, 'the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'; this means that it must not only be considered whether the objective of the proposed action can be better achieved at Community level, but also whether the intensity of the action undertaken does not go beyond what is necessary to achieve the objective pursued.
- in an area that touches directly on citizens' rights, the proposal for a regulation must not deprive the Member States of the option of temporarily maintaining in force more protective national rules so as to ensure that European harmonisation cannot result in guarantees being reduced;

- the very large number delegations to the Commission, over and above its implementing powers, goes beyond the inherent purpose of a delegated act under Article 290 of the TFEU; some of them, including those concerning the data subject's right to be forgotten, should be regulated directly by the European legislature; others might fall within the sphere of national supervisory authorities or European-level groupings of such authorities;

- the 'one-stop shop' arrangement provided for in Article 51 of the proposal for a regulation would prevent the persons concerned from seeing all their complaints under investigation by the national supervisory authority and would generate a great deal of complexity for complainants owing to the asymmetry between administrative complaints brought before a foreign authority, and judicial appeals against data processors, heard by the national courts; to ensure compliance with the subsidiarity principle, preference should be given to a procedure whereby those concerned could apply to the supervisory authority of their Member State of residence.

The Senate therefore takes the view that Article 51 of the proposal for a regulation, and the provisions of the regulation concerning delegated and implementing acts, do not in their present form comply with the subsidiarity principle.

This text became a Senate resolution on 4 March 2012.

The President

Signed: Jean-Pierre BEL