



The reform of the EU Data Protection framework - Building trust in a digital and global world

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1. Do you see a necessity and added value in the proposed EU Data Protection reform (questions on subsidiarity and the chosen legal form - two instruments - regulation and directive)?

General Regulation presented by the Commission is an opportunity modernize and harmonize European data protection legislation and to improve execution of rights of data subject which is a key element to boost individuals' trust in the digital environment and thereby a potential driver of economic growth and innovation.

Developing of a common framework for the data protection in European Union (further – EU) is value however that does not create a situation when the same issues might be treated differently in the regulation and the directive.

2. How do you see the relation between Union and national legislation (questions on subsidiarity and the chosen legal form - two instruments - regulation and directive)? Should there be more flexibility for Member States to regulate data processing in special situations? How would this affect the harmonisation of the internal market?

A goal for creating a coherent and more uniform set of data protection rules consistently applied across the EU would be an instrument which helps to eliminate the current costs and administrative burden for business deriving from different national data protection rules and requirements. Regulation by two instruments helps to extend the scope of areas regulated by data protection rules and better execute rights of data subject.

Regulation as legislative form is understood as regulation by common rules within EU guarantee that certain areas (rules for private sector, competences and cooperation of data protection authorities and etc.) would create a level playing fields across Europe and are very important for the internal market and that type of regulation helps to avoid problems related to different implementation of the EU legislation in member states. Legal provisions settled in the Regulation ensure the right of member states to regulate some issues by national legal acts and it makes possible to be flexible in changing of clauses which depend on national peculiarities but powers of the European Commission to adopt delegated or implementing acts needs to be further considered.

It is reasonable regulation of some areas of public sector by the directive. That regulation enables Member States to implement data protection rules into specific areas of the activity like law enforcement bodies and etc.

However Lithuanian proposal is to regulate data protection issues by only one legal act – the directive in both in the public, including enforcement bodies, and private sectors.

3. What are in your opinion the main missing elements, if any, of the current EU system of data protection based on Directive 95/46/EC and Framework Decision 2008/977/JHA?

The current legal framework has not prevented fragmentation in the Directive 95/46/EB because of exceptions and other issues related to law enforcement and other non regulated public sectors early considered as III pillow matters.

Framework Decision 2008/977/JHA is applicable when data are transferred abroad but not EU. Regulation of the same issues when data exchanges are organized inside EU are missed.

4. How to ensure that the envisaged legislation will keep up with technological developments? Are, in your opinion, the principles of “privacy by design” and “privacy by default” an adequate approach?

Following requirements of the Directive 95/46/EB the data controller is responsible for implementation of organisational and technical measures to ensure data security the Regulation go a few steps forward ensuring the data protection principles to be implemented before data processing. However is not clear what type of particular measures the data controller should implement. Principles of “privacy by design” and “privacy by default” is an adequate approach, but the problem is that there is no clear substance of two concepts.

Data protection rights and principles - Harmonised rights for a clear and better protection, easier enforcement and building more trust

5. What is your opinion about the provisions regarding the rights of data subjects and their applicability in practice, such as portability, right to be forgotten, deadlines to address requests for access, rectification?

Taking into account spread of the information via internet and possibilities of control this information the right to be forgotten is the most important right because it means that the data controller should delete information without delay when it is do not needed for legitimate purpose. It is not clear what type of actions of data controller informing third parties about data subject' request are reasonable. An obligation to inform third parties about deletion of data might create significant financial and time costs. The risk that third parties are not properly informed determines that the rights of data subject would be partly implemented. Also is not clear what is responsible for disclosure of data if the data controller issued permission for data processing to third party.

6. What is your opinion about the principles underlying these rights, such as the need for a legal basis for data processing, the conditions for consent, or the notions of “public security” or “legitimate interest” as a basis for data processing?

Lawfulness of the processing of personal data only if the data subject has given consent to the processing of their personal data for one or more specific purposes is unconditional ground for data processing. The data controller should be obligated to proof that the consent is freely given.

Uncertainty of a definition „public interest” determines difficulties in implementation of some clauses of the Regulation. Clarification is needed who is an authorized body to evaluate and to decide being of the public interest.

Definition „legitimate interests“ as ground for the lawfulness of a data processing without data subject's consent rises the same problems as already written regarding definition „public interest.“

Data protection and law enforcement/SESSION VI - Police data sharing and access to private data bases

7. Should such a new framework also apply to purely domestic processing activities by law enforcement or should it be limited to cross-border cases only (question of reversed discrimination, data protection as a common fundamental right from the Charter, subsidiarity, etc.)?

Processing of personal data by the police and justice both at national level and in a cross-border context are covered by Law on Criminal Procedure, Law on Police Activity and specific Law to implement certain provisions of the Framework Decision 2008/977/JHA of 27 November 2008 not covered by the general legislation, which only apply to cross-border processing of personal data. The scope of the Framework Decision is limited and problematic. A new regulation of data protection issues in law enforcement area and setting common rules within EU are more than welcome.

8. There is a growing tendency by law enforcement to have access to data held by private companies for commercial purposes; how to ensure a proper balance between law enforcement needs and fundamental rights?

An obligation of electronic services providers to retain traffic data for law enforcement sector use (the Directive 2006/24/EC) show that law enforcement need to have access to data held by private companies for commercial purposes and it is for public interest. However these procedures should be regulated due to data subjects' rights to be guaranteed.

Data controllers and processors in the private sector and free flow of information in the internal market

9. Is the proposal reducing regulatory/administrative burden for data controllers, especially as regards small and medium enterprises (SMEs)?

New obligations of a the data controllers' settled in the Regulation such as maintain documentation of all processing operations under its responsibility (Article 28), also requirement to carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (Article 33), designation of a data protection officer and requirement to have documentation about prior consultations do not reduce administrative burden for data controllers and might increase administrative costs especially for small and medium enterprises. According to Article 22 an obligations of data controller's would create new functions for implementation of these additional human, technical and financial resources are needed.

10. How will the "one-stop shop" mechanism impact on the laws of the Member States and on the rights of the data subject (legal and linguistic obstacles, etc.)? How to guarantee that decisions are lawfully enforceable in the Member State of residence of the data subject?

"One-stop shop" mechanism will have significant impact on the laws of the Member States due to linguistic obstacles especially for small countries like Baltic countries because translation to the national language will increase administrative costs.

11. How to ensure that the envisaged legislation will keep up with technological developments? Are, in your opinion, the principles of "privacy by design" and "privacy by default" an adequate approach?

Laws making is always going after technological development and technologies are the reasons of changes in the laws. "Privacy by design" and other principles are helpful but not one way to ensure legislation procedure in line with technological development.

Implementation, DPAs and ensuring consistency

12. How do you evaluate the proposed sanction mechanism (level of sanctions, proportionality, discretion, legal remedies, etc.)? How would this affect provisions in your Member State, and what are the experiences with the current model?

Proposed sanction mechanism should be revised because level of sanctions is too high for small economies. It would be reasonable to delegate such powers for the Members States discretion.

13. How do you evaluate the proposed consistency mechanism (the fact that national DPAs will be required to abide by the decision taken within the consistency mechanism, and the questions of their independence and the risk to act in breach of national law)? How do you perceive the proposed role of the Commission in that regard, especially as regards the question of independence of the European Data Protection Board?

The proposed role of the Commission is questionable. Lithuanian suggestion is to discuss once again items related with powers and functions of the Commission and try to change it in more practical manner.

14. How do you evaluate the resources of the data protection authority/authorities in your Member State? How to ensure they are sufficient in a world of ever more data processing?

According to the economic situation in Lithuania and EU, we think that the recourses of the DPA are appropriate. The sufficiency question should be revised at the EU level according to the amendments of the new regulation.

Data Protection in the global context- Protecting rights in the global world

15. How do you evaluate the proposed international transfer mechanism in both proposals taking into account that the EU and third states frameworks are not always based on same principles and do not offer the same protections for individuals?

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country is a bottle neck problem especially taking into account new technologies like cloud computing or needs of global companies to process personal data including for onward transfers of personal data from the third country to another third country. Lithuanian authorities are still analysing requirements of the Regulation regarding international transfer mechanism.

16. The Commission has indicated that its proposal aims at simplifying international transfers and overcome burden for controllers. Does this mean that data subjects' rights will be less protected?

It might happen that data subjects' rights will be less protected especially due to interest of data controllers' personal data for secondary use. For the goal to guarantee proper protection of data subjects' rights issues related to the data transfer to the third countries should be regulated on the EU level.

17. Do you have any other remarks as regards the proposed reform package?

Lithuanian authorities are still analysing reform package.