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Committee on Civil Liberties, Justice and Home Affairs

Interparliamentary Committee Meeting on

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

9/10 October 2012

Response submitted on behalf of House of Representatives of Cyprus

Questionnaire addressed to national Parliaments

Please, find attached a number of questions that will serve as the basis for the panels of the Interparliamentary Committee Meeting on 9/10 October 2012.

Replies to the questionnaire (in English, French or German) should be sent by Friday, 21 September 2012 to libe-secretariat@europarl.europa.eu.

Please, find below for your convenience a link to the website of the European Commission on EU data protection in general and specifically on the two legislative proposals on data protection (General Data Protection Regulation and Data Protection Directive on criminal law):

http://ec.europa.eu/justice/data-protection/index_en.htm

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

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)?

The Committee on Legal Affairs welcomes the initiative of the European Commission to improve the EU regulatory framework for the protection of personal data. The Committee also shares the view with the European Commission that the existing EU legislation framework needs an update in

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the light of the rapid development of technological change. The Committee agrees with the need to reduce the considerable divergences that exist among different European legal systems, regarding a highly sensitive issue that concerns the fundamental rights of individuals.

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?

As also mentioned, the Committee on Legal Affairs considers that the implementation of Directive 95/46/EC has not achieved the desired degree of harmonization and has created many legal uncertainties regarding data protection. Therefore, it supports the Commission's proposal for a new reform framework and also believes that this reform will have a positive impact to internal market.

The Committee understands the necessity to adopt a less flexible legal instrument which will ensure legal certainty, a high level of protection and at the same time effectiveness efficiency in the protection of human rights.

Concerning the proposed new directive on the protection of individuals with regards to the processing of personal data by the competent authorities, the Committee on Legal Affairs shares the view that this area should be regulated by a directive rather than a regulation, in order to take into account the many differences in national criminal law and judicial systems of the Member States.

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 Committee on Legal Affairs considers that Directive 95/46/EC has proven its value over the past years but the rules need to be revised in order to comply with the new technological developments. The legal disparities in the transposition of the directive of 1995 between the member states have had an impact on the protection of human rights and to the EU Single Market.

The Committee on Legal Affairs also considers that the decision 2008/977/JHA has limited legal scope since it covers the processing of personal data for the purpose of preventing, investigating, detecting or prosecuting criminal offences or executing criminal penalties of data which are or have been transmitted or made available between Member States, by Member States to authorities.

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?

The Committee on Legal Affairs shares the view that in order for the regulation to respond to contemporary challenges arising from globalization and rapid technological developments; it should maintain a technologically neutral format so as to be able to meet up with technology over the next decades.

The Committee on Legal Affairs welcomes the introduction of new principles such as “privacy by design” or “privacy by default” which has been included explicitly in the proposed Regulation.

SESSION II - 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?

The Committee on Legal Affairs welcomes the fact that the proposed Regulation is enriched by these principles but, however believes that a number of provisions relating to these rights need to be improved in order to avoid the creation of legal uncertainty.

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?

The Committee on Legal Affairs considers that in relation with Directive 95/46EK, the provisions of the proposed regulation concerning the basic principles of protection of personal data is much improved and meet the challenges of the times. The Committee on Legal Affairs also regards the introduction of the principle of transparency, as a substantial improvement which was not so clear in the directive.

SESSION III - 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.)?

The Committee on Legal Affairs supports the position that the scope of the directive should cover the processing of data at national level, as well as this is required by the Treaty of Lisbon and by the Stockholm Programme.

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?

The Committee on Legal Affairs supports that the issue should be subject to legislation in order to ensure a balance between the needs of law enforcement authorities and civil rights. The Committee is of the opinion that the implementation of such a practice should be, inter alia, on the basis of the principle of proportionality, and under the supervision of an independent institution.

SESSION IV - 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)?

The Committee on Legal Affairs is aware and supports the on-going discussion regarding the need for amendments of the provisions of the new Regulation in order, to reduce administrative costs for small businesses on the basis of specific criteria. The Committee also believes that, it will be better giving more emphasis on the risk processing involved rather than the size of the processing.

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?

The Committee on Legal Affairs welcomes the introduction of the one stop shop mechanism which will simplify the administrative procedures and reduce costs, since that every company and every citizen will lodge a complaint only to the national data protection Authority where the business has its main establishment.

The Committee on Legal Affairs also believes that, these provisions need to be improved in order to solve various procedural problems such as allowing any citizen to submit a complaint to the authorities of another Member State to his language.

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?

See answer to question with 4 above.

SESSION V - 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?

The Committee on Legal Affairs welcomes the provision of the regulation regarding to sanction mechanism and also has the opinion that the proposed system will strengthen the role and the work of the national Authority for protection of personal data.

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 Committee on Legal Affairs in generally agrees to the establishment of a consistency mechanism, but is also of the opinion that the role of the national Authority should not be weakened.

The Committee on Legal Affairs also believes that the role of the European Data Protection Council should be form as to ensure its independency. Accordingly the role of the Commission, must contribute to the independency of the European Data Protection Council.

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?

The Committee on Legal Affairs recognizes the new responsibilities and the enhanced role that the proposed Regulation assigns to the Office of the Commissioner for personal data Protection.

SESSION VII - 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?

The Committee on Legal Affairs believes that, the proposed provisions of the regulation relating to the transfer of data to third countries, is a step in the right direction but need to be improved.

Regarding the directive, the Committee on Legal Affairs shares the concerns of the other member states regarding the provisions regulating the transmission to third countries and in particular the obligation to renegotiate existing bilateral agreements .

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?

The Committee on Legal Affairs, shares the view that the new provision regarding international transfer will not affect the protection of the data subject's rights.

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

No.