



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

PRELIMINARY DRAFT AGENDA

(Version 1 - 20.07.2012)

INTERPARLIAMENTARY COMMITTEE MEETING¹

European Parliament - national Parliaments

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

Tuesday, 9 October 2012, 9.00-18.30
Wednesday, 10 October 2012, 9.00 – 18.30

European Parliament, Brussels

Organised with the support of the Directorate for Relations with national Parliaments

1. General introduction

¹ This is only a preliminary version of the draft agenda subject to further changes.

Version 1 - 23.07.2012

In the digitalised and global world the way in which personal data are collected, accessed, used and transferred has been profoundly transformed and become increasingly sophisticated. New technologies allow for an ever-increasing volume of personal data. Likewise law enforcement authorities have significantly increased their processing of personal data activities for the performance of their tasks.

In this challenging environment, the protection of personal data has become an essential issue of interest as regards the rights of the individual with regard to the protection of her/his personal data, on one-side, and the question of necessary and proportionate processing of personal data, by private entities and public authorities, on the other side. Data protection is a fundamental right enshrined in Article 8 of the Charter of Fundamental Rights of the European Union, and in Article 16 of the Treaty on the Functioning of the European Union (TFEU).

In that regard, based on the experience with the current Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31) and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60),¹ as well as the input of the European Parliament², the Commission has proposed two new legal instruments - proposal for a Regulation 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) 11) and proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (Data Protection Directive, COM(2012)10). Initially the Commission intended to present a single horizontal instrument.³ The two new instruments, if adopted, would substantially define the EU data protection principles and rules for the following decades. The aim of the two proposals, as stated by the Commission, is to establish a modern, strong and consistent legislative framework across Union policies, enhancing individuals' rights, deepening the Single Market dimension of data protection, cutting red tape for businesses, and addressing issues posed by transnational flows of personal data.

In that regard the two instruments should, inter alia, end the current fragmentation through specific national rules (therefore the form of a Regulation for the first proposal), extend common principles to purely internal data processing situations in the law enforcement area as well (as regards the Directive), so as to ensure a high level of protection of the fundamental right of the individual to data protection. As a consequence trust of individuals in the digital economy and trust of citizens in the

¹ See also Commission Communication on safeguarding privacy in a connected world - A European data protection framework for the 21st century (COM(2012)0009).

² Resolution of the European Parliament of 6 July 2011 on a comprehensive approach on personal data protection in the EU (P7_TA-PROV(2011)0323).

³ Commission Communication on a comprehensive approach on personal data protection in the European Union (COM(2010)0609).

protection of fundamental rights by police and judicial authorities of Member States would be enhanced, and hence contributing to economic growth and the efficient work of law enforcement authorities.

2. Main elements of the reform

The main elements of the reform are: - data protection as a fundamental right; - coverage of all kinds of situations and all kinds of sectors, - technological neutrality of the legal framework to cover different processing techniques - preventing fragmentation and providing legal certainty for individuals, enterprises and public entities, - providing harmonisation for processing of personal data by law enforcement authorities and the exchange between them, - ensuring the protection of EU individuals where personal data are transferred to third countries while providing safe and flexible tools for international data flows.¹

In that regard the proposed instruments envisage several novelties. The proposal for a Regulation will introduce the concept of "main establishment", a single law applicable to data processing of a controller, the so called "one stop shop", the recognition of the right to be forgotten and the right to portability of personal data, data protection by design and by default, notification of data breaches, data protection officers, international transfers based on adequacy decisions or other appropriate safeguards, namely binding corporate rules, specific rules on data protection authorities with adequate enforcement powers, a consistency mechanism, sanctions, specific provisions on freedom of expression or the employment context. The instruments also clarify several provisions such as the notion of "consent", the provisions on profiling or the exercise of the data subject's rights. The proposal for a Directive sets out a harmonised framework with a minimum level of protection which will apply to processing of personal data by law enforcement authorities both at domestic level and in cases of exchanges of personal data between Member States' law enforcement authorities.

Such goals and the proposed changes arose a legitimate debate regarding, inter alia, questions on the appropriateness of the proposals to achieve the mentioned goals, the relation between general Union law and national specific laws, the inter-linkage of both legislative instruments especially in cases of law enforcement access to data held by private companies, proper safeguards as regards international data sharing and onward transfers, reduction of regulatory/administrative burden and costs for data controllers, appropriateness and effectiveness of sanctions, clarifications on "profiling", "legitimate interest", "public interest" and "public security", portability of data, data protection by design and by default. Implementation as regards the role of the Commission through delegated and implementing acts and in the consistency mechanism, independence of and division of roles between data protection authorities, etc.

3. Objectives of this inter-parliamentary meeting

¹ See EP working document of 6 July 2012 on the General Data Protection Regulation and on the Directive on the processing of personal data for the purposes of prevention, investigation, detection or prosecution of criminal offences (PE491.322v01).

The Interparliamentary Committee Meeting prepared jointly by the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Legislative Dialogue Unit (LDU) is intended to reflect on some of the mentioned issues and to engage members of the European Parliament and national Parliaments in an exchange of views and a constructive dialogue. Such a dialogue is essential, as already several national Parliaments took special interest in the proposed instruments, as shown by several reasoned opinions and contributions issued by national Parliaments.¹

The two day meeting will be divided into seven sessions reflecting the main questions raised by the two proposals: I. The reform of the EU Data Protection framework (general discussion), II. Data protection rights, III. Data protection and law enforcement, IV. Data processors and controllers in the private sector, V. Implementation, DPAs and consistency, VI. Police data sharing and access to private data bases, and VII. Data protection in the global context. For each topic some specific questions were raised and provided beforehand to national Parliaments (see Annex).

Such a structured dialogue and its output will help the two LIBE Rapporteurs and the other Members of the LIBE Committee and the European Parliament in general to duly reflect on and take into account the concerns of national parliamentarians in the framework of the legislative procedure being conducted at EU level.

¹ From Belgium, France, Germany, Italy and Sweden for the proposed Regulation, and from Germany and Sweden for the proposed Directive.

Order of business

Tuesday, 9 October 2012

9.00 - 9.30 **Opening by President of the European Parliament Martin SCHULZ**

9.30 - 10.30	SESSION I - The reform of the EU Data Protection framework Building trust in a digital and global world
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Moderator: **Juan Fernando LÓPEZ AGUILAR**, Chair of the Committee on Civil Liberties, Justice and Home Affairs
Speakers: CYPRUS PARLIAMENT, Chair of the corresponding committee (tbc)
CYPRUS PRESIDENCY, Minister (tbc)
Francoise LE BAIL, European Commission (tbc)
Academia

Questions and Answers from national parliamentarians and MEPs

10.30 - 12.30	SESSION II - Data protection rights - Harmonised rights for a clear and better protection, easier enforcement and building more trust
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Moderator: **Jan Philipp ALBRECHT**, MEP, Rapporteur on the Data Protection Regulation
Speakers Representative of a national Parliament
National DPA
Academia
Industry
NGO

Questions and Answers from national parliamentarians and MEPs

Lunch Break

15.00 - 15.30 **Opening by Commissioner Viviane REDING (tbc)**

15.30 - 17.00	SESSION III - Data protection and law enforcement
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Moderator: **Dimitrios DROUTSAS**, MEP, Rapporteur on the Data Protection Directive
Speakers Representative of a national Parliament
Eurojust
Europol

Academia

Questions and Answers from national parliamentarians and MEPs

17.00 - 18.30	SESSION IV - Data controllers and processors in the private sector and free flow of information in the internal market
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Moderators: **Sean KELLY**, MEP, ITRE Draftsperson, and **Nadja HIRSCH**, MEP, EMPL Draftsperson

Speakers: Representative of a national Parliament
Pegado Luz, Rapporteur of the European Economic and Social Committee on the proposed regulation (tbc)
Industry,
Consumer protection NGO

Questions and Answers from national parliamentarians and MEPs

Wednesday, 10 October 2012

9.00- 10.45	SESSION V - Implementation, DPAs and ensuring consistency
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Moderator: **Marielle GALLO**, MEP, JURI Draftsperson, and **Lara COMI**, MEP, IMCO Draftsperson

Speakers: Representative of a national Parliament
Peter HUSTINX, European Data Protection Supervisor
Jacob Kohnstamm , President of the Article 29 Working Party
Fundamental Rights Agency

Questions and Answers from national parliamentarians and MEPs

10.45- 12.30	SESSION VI - Police data sharing and access to private data bases
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Moderator: **Sophia IN'T VELD**, MEP, and **Timothy KIRKHOPE**, MEP

Speakers: Representative of a national Parliament
National police
Private sector
Academia

Questions and Answers from national parliamentarians and MEPs

Lunch Break

15.00- 18.00

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

Moderator:

Alexander **ALVARO**, MEP, and **Axel VOSS**, MEP

Speakers:

Representative of a national Parliament

U.S. representatives

Other third country representatives

Council of Europe

Questions and Answers from national parliamentarians and MEPs

18.00 - 18.30

Closing

LIBE Rapporteurs Jan Philipp **ALBRECHT** and Dimitrios **DROUTSAS**

CYPRUS PARLIAMENT, Chair of the corresponding committee

ANNEX

IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE MEETING

This meeting is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the secretariat (libe-secretariat@europarl.europa.eu) **before 1 October 2012 at noon**. It is essential to provide us with your **LAST NAME, First name, date of birth, nationality, type of the ID (passport, identity card, driving licence, etc.), number of the ID, address and company/institution/organisation**. Without this information, the Security Service will not provide entry passes.¹

All participants from the national Parliaments (Members, officials and Brussels based representatives) need to complete the online registration form for the event (a link will be provided at the beginning of September 2012).

PRACTICAL GUIDELINES FOR THE DEBATE

- *During the discussion, so as to make it possible for the highest number of parliamentarians to intervene, speaking time of speakers will be limited to **ten minutes** and speaking time of other participants to **two minutes** per contribution or question.*
- *Members are kindly asked to fill in the sheet requesting speaking time (indicating their name and parliament) which will be distributed in the meeting room.*
- *Speakers wishing to supplement their speeches may do so in writing by submitting a document (preferably in English or French) in advance to the secretariat (email: libe-secretariat@europarl.europa.eu). These documents will be circulated during the meeting.*
- *Meeting documents will be progressively added to the Hearings section of the LIBE Committee pages: <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=LIBE> and to the EP webpage on Relations with national Parliaments <http://www.europarl.europa.eu/webnp/cms/lang/en/pid/15>*

THE MEETING IS BROADCASTED LIVE AND RECORDED

LIBE Committee pages:

<http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=LIBE>

ADDITIONAL INFORMATION

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¹ The processing of personal data is subject to Regulation (EC) No 45/2001 of 18 December 2001 (OJ.L 8 12.1.2001, p. 1)

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Interparliamentary Committee Meeting on

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

9/10 October 2012

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)?

As regards necessity, the Senate is of the opinion that there is need for a reform of the current framework, as it seems obsolete vis-à-vis the rapid development of the IT sector. The Senate is not convinced that a regulation is the suitable legal form for a general framework of data protection.

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?

The Senate has expressed in its resolution from May 2012 its belief that the European Commission had not adequately reasoned the use of the form of regulation. Furthermore, the Senate is not convinced that the proposal (even in the form of regulation) would lead to clear and simplified functioning of the system.

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 main problem is that the rapid technological changes and massive use of personal data for example in social networks like Facebook or large e-shops have made the Directive 95/46/EC obsolete.

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 Senate, while scrutinizing the current proposals, did not deal with this particular issue. It is difficult to anticipate the development of technologies and their impact on data protection.

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 Senate’s resolution has not addressed these issues.

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 Senate’s resolution has not addressed these issues.

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.)?

In the opinion of the Senate, the scope of the directive should be limited to cross-border cases only. This opinion is based on the interpretation of the Article 16 Paragraph 2 of the TFEU that empowers the EU to set rules for Member States when carrying out activities which fall within the scope of Union law. Domestic processing activities do not fall within the scope of EU law.

Based on the abovementioned, the Senate has found that the proposal of the directive is in breach with the principle of conferral, as there is no legal base for regulation of domestic data processing by the EU.

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 Senate has not discussed this issue.

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)?

From the Senate's point of view, it is not. Au contraire, it is increasing the burden in some aspects (increase of the volume of regulation), with no added value visible.

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 Senate has not specifically discussed this issue.

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 point 4.

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?

Senate's resolution has not addressed these issues.

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?

While scrutinizing the proposals, the Senate dealt with this issue, although it is not included in the adopted text of the resolution. Senate's Standing Commission on Privacy Protection (SCPP) has rather supported the role of the Court of Justice of the European Union in securing the consistency of application of the rules, over the introduction of a new mechanism, mainly because of a fear that using of this mechanism might interfere in the areas outside the scope of the regulation, i.e. encroach upon the discretion of the Member States.

As regards the European Commission and its role, the SCPP has warned that too many areas are left unresolved in the proposals and the resulting scope of competence of the European Commission (delegated acts) is too broad.

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 Senate is not aware of the inadequacies of resource of the Czech Office 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?

Generally the SCPP found no problems. Yet Article 60 of the Directive seemed problematic, as when applied to the treaties already in power, it could interfere with the external competences of the Member States.

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 Senate does not think so.

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