

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

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Questionnaire addressed to national Parliaments

RESPONSE SUBMITTED ON BEHALF OF HOUSE OF LORDS EU SUB-COMMITTEE F (HOME AFFAIRS, HEALTH AND EDUCATION)

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)?

Yes, the Committee believes that this is an important package of measures. In general terms, the Committee does not consider that the proposal raise any subsidiarity concerns.

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 Committee has not adopted a position on this matter.

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 believes that the data protection elements of the Framework Decision are not robust enough (compared to the Directive and other equivalent measures) but that the current proposal will potentially address this deficiency.

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 has not adopted a position on this matter.

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 has considered that the “right to be forgotten” provisions is actually possible to implement in an online environment. For example, if one company were to comply with a data subject’s request and removed all content relating to that person from their website, they would not be in a position to remove copies of this content which may have been replicated or linked to on a different company’s website.

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 has not adopted a position on this matter.

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 has not adopted a position on this matter.

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 has not adopted a position on this matter.

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 has concerns that the proposed increase in citizen’s data protection rights, while admirable, may increase regulatory and financial burdens on businesses and public authorities – particularly SMEs. In this respect the Committee believes that it is important to ensure that an appropriate balance is struck between these two factors.

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 has not adopted a position on this matter.

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?

The Committee has not adopted a position on this matter.

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 has not adopted a position on this matter.

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 has not adopted a position on this matter.

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 has not adopted a position on this matter.

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 has not adopted a position on this matter.

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 has not adopted a position on this matter.

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

The Committee notes that there are a number of existing EU instruments relating to data exchange (including Europol, Eurojust, the Prum Decision and the Schengen Information System) which all include their own specific data protection provisions. As with the Framework Decision, these provisions will continue to take precedence over the more general provisions of the draft Directive. While, the Committee believes this to have been a common sense approach as each of these measures has been tailored to their particular operational requirements, the introduction of a new data protection legal base in the Treaty of Lisbon is arguably a missed opportunity for rationalising the fragmented nature of the existing EU legislative framework. However, the Committee notes that the Directive does include a provision requiring the Commission to review, within three years of the Directive coming into force, the data protection provisions in these other EU measures, with the intention of aligning them with the Directive where necessary.