

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)?

Answer: The Swedish Parliament (henceforth called "the Riksdag") believes that there is a need to modernise the current legislation in order to ensure that it provides effective protection. The aim for the new legal framework should be to strike a fair balance between data protection and other public and private interests. However the proposed legislation (regulation and directive) will in the Riksdag's view go farther than necessary to achieve the objectives pursued and would therefore be contrary to the principle of subsidiarity. As the European Parliament underlined in its report of July 2011 the Riksdag believes that it is important that data protection rules do not unnecessarily hinder everyday processing of personal data.

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

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processing in special situations? How would this affect the harmonisation of the internal market?

Answer: Regarding proposal COM(2012) 10 (henceforth called “the directive”) the Riksdag considers that it is too early to draw any conclusions about the effectiveness of the framework decision. It is difficult to see the justification for an expanded area of application of EU regulations on the protection of personal data in the field of criminal justice. There is a risk that extended legislation at EU level covering processing of personal data within the framework of preliminary investigations and prosecution of criminal offences will be in conflict with the member states' national criminal law and law of legal procedure. The Riksdag thus (and this has been expressed in a reasoned opinion) considers that the parts of the Commission's proposal for a directive that regulate purely national processing are not in compliance with the principle of subsidiarity.

Regarding proposal COM(2012) 11 (henceforth called “the regulation”) the Riksdag would like to remind of its statement made in its reasoned opinion where the Riksdag found that a regulation – containing what was then proposed – would go farther than necessary to achieve the objectives pursued and would therefore be contrary to the principle of subsidiarity. The Riksdag's view is thus that a change of the legal form from a directive to a regulation would create a number of problems. Therefore, the Riksdag believes that the objective to strengthen the internal market should be pursued within the framework of a reinforced directive instead of a regulation.

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?

Answer: The Riksdag believes that when reforming directive 95/46/EC, it should be taken into account that the technological development has led to a vast increase in the use of information technologies for ordinary and normally harmless purposes. E-mail, word processing and individuals' use of social media can be mentioned as a few examples. It is often very difficult to comply with the complicated and detailed rules on data protection when carrying out such processing. As the European Parliament underlined in its report of July 2011 (see Initiative report (2011/2025(INI)), section 5), it is important that data protection rules do not unnecessarily hinder everyday processing of personal data. However, the proposed regulation does not take sufficient account of these issues.

According to the Riksdag it is too early to draw any conclusions about the effectiveness of the Council framework decision 2008/977/JHA since it was to be implemented by the member states no later than 27 November 2010. This was pointed out in the reasoned opinion from the Riksdag on the directive. In its reasoned opinion the Riksdag also pointed at the lack of an independent impact assessment from the Commission on the proposal for the directive.

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?

Answer: No formal answer or text regarding these issues has been adopted by the Riksdag.

SESSION II - Harmonised and strengthened data protection rights and principles for an interconnected world

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?

Answer: *No formal answer or text regarding these issues has been adopted by the Riksdag.*

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?

Answer: *No formal answer or text regarding these issues has been adopted by the Riksdag.*

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.)?

Answer: *The scope of the directive should be limited to processing activities by competent authorities in law enforcement cross-border cases, which is the case under the current framework decision. As stated in the reasoned opinion from the Riksdag on the proposal for a directive, the Riksdag considers that the parts of the Commission's proposal that regulate purely national 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 conflict with the principle of subsidiarity. According to the Riksdag it is difficult to see the justification for such an expanded area of application of EU regulations on the protection of personal data. There is also a risk that extended legislation at EU level covering processing of personal data within the framework of preliminary investigations and prosecution of criminal offences will be in conflict with the member states' national criminal law and law of legal procedure.*

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?

Answer: *The Riksdag has stressed the importance of striking a balance between the need for law enforcement of access to personal data on one hand and protection of privacy and other fundamental rights on the other. Storage periods should be short. The purpose of storing information and usage of stored information should be clearly defined, and the*

benefit should be measurable/quantifiable. It is vital to monitor the compliance of data protection rules.

SESSION IV - Data controllers and processors in the private sector and employment sector (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)?

Answer: As mentioned above in answer to question 3 it is important that data protection rules do not unnecessarily hinder everyday processing of personal data for ordinary and normally harmless purposes. However, the proposed regulation does not take sufficient account of these issues. In so far as this means that SMEs will suffer from overregulation considering the evolution of technological development which increases the use of information for innocuous purposes, the proposal is not reducing the regulatory/administrative burden.

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?

Answer: No formal answer or text regarding these issues has been adopted by the Riksdag.

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?

Answer: No formal answer or text regarding these issues has been adopted by the Riksdag.

SESSION V - Implementation of data protection law. Ensuring consistency and efficiency.

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?

Answer: The Riksdag has not made any statement explicitly regarding the sanction mechanism. The Riksdag, in its reasoned opinion mentioned above, has stated that the regulation concerning national supervisory authorities and administrative fines, as put forward in the proposal, is more detailed than is necessary to achieve the objectives pursued and it leaves too little scope for consideration of the conditions in individual member states.

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?

Answer: The Riksdag has not made any statement explicitly regarding the consistency mechanism. The Riksdag, in its reasoned opinion mentioned above, has stated that the extent to which it is proposed that the Commission should be authorised to adopt delegated acts appears inappropriate. This inappropriateness resides amongst other things in the fact that the proposal gives the Commission a legislative role, which the Commission may use in an unpredictable way to influence the future form and content of the proposed regulation in a manner that in many respects would normally be the responsibility of legislators or courts.

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?

Answer: No formal evaluation has been executed by the Riksdag. On the 20th September the Swedish Government proposed to allocate 42,6 million SEK (approx. 5,1 million €) to the Swedish Data Inspection Board (Datainspektionen) for the budget year of 2013. In 2012 the Riksdag allocated 37,4 million SEK (approx. 4,4 million €) to the agency.

SESSION VII - Data Protection in the global context-

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?

Answer: No formal answer or text regarding these issues has been adopted by the Riksdag.

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?

Answer: No formal answer or text regarding these issues has been adopted by the Riksdag.

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

Answer: See answers to questions 3, 4, 7, 8 and 9.