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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)

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jan Philipp Albrecht

1. Institutional aspects of Europe's data protection regulation

As indicated in Working Document 2, this Working Document addresses institutional aspects of the foreseen General Data Protection Regulation. Your rapporteur would like to achieve consensus on the following institutional cornerstones for the draft report.

2. Consistency and enforcement

While the fundamental principles of data protection are still valid and need to be strengthened, the lack of enforcement is driving this reform. The Regulation will ensure a unified working framework for all data protection authorities (DPAs). In order to function, a crucial element is that DPAs need to be sufficiently resourced.

The foreseen cooperation and consistency mechanism among national DPAs is a huge step towards a coherent application of data protection legislation across the EU. Nonetheless, a number of questions are still to be answered. It seems to be reasonable to grant the so called "one-stop shop" to both sides - the data controllers and the data subjects. In any case, there is a need to develop a lightweight mechanism that actually works in practice, including clear incentives and obligations for DPAs to cooperate. Furthermore, the role of the Commission in the consistency mechanism should respect the independence of DPAs. The feasibility of an obligation for DPAs to follow the decisions of the European Data Protection Board is currently subject to a request to the EP Legal Service.

3. Data protection in EU institutions and agencies

The application of the new data protection rules to EU institutions and agencies as well as the consistency with other legal instruments such as the proposed Data Protection Directive for law enforcement and the e-Privacy Directive is an issue of ongoing concern, as the current draft does not sufficiently address this. There is rough agreement with the shadow rapporteurs to cover EU institutions under the new Regulation, for instance by requiring an adjustment of Regulation (EC) No 45/2001¹ to be fully in line with the general Data Protection Regulation before the latter will be applied.

In any event, there is a need for a more horizontal debate (addressing the Regulation and the Directive) on how to address the current patchwork of data protection rules for different EU agencies.

4. Relationship to data protection for law enforcement

The relationship between the general Data Protection Regulation and the Data Protection Directive for the field of law enforcement also needs to be addressed horizontally in the package approach. This will be especially relevant in cases of law enforcement access to personal data held by private entities. The core rules may have to be regulated in the Directive or perhaps other EU criminal law instruments, such as on police/judicial cooperation or on criminal procedural rights. The Data Protection Regulation however will need clear

¹ Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 8, 12/01/2001 P. 0001 – 0022

provisions to ensure that data can only be handed over by companies to law enforcement agencies if based on law, fair proceedings and judicial safeguards and in full compliance with Article 52 of the EU Charter.

An open issue in this context is the material scope of existing data protection law. Some Member States apply the existing Directive 95/46/EC in internal situations for law enforcement matters (e.g. Austria), some apply it partially (e.g. Belgium), and some not at all. Consequently, there is a clear need for harmonisation in order to guarantee a proper protection of citizens based on a proper awareness about their rights.

5. Processing of personal data by public authorities

A narrow margin of manoeuvre for member states to adopt specific rules on data protection in certain public sectors can be envisaged, as long as a coherent and simple set of rules across the Union is maintained. Your rapporteur and shadow rapporteurs are open to accommodating these concerns as long as the aims and principles of the regulation are clearly spelled out and not undermined by national legislation. This is also the subject of an ongoing request to the EP Legal Service.

It is important to avoid a patchwork of national rules which the instrument of a regulation exactly is supposed to overcome. Where member states have the competence to restrict data subject rights, these more narrowly tailored.

6. Commission's delegated and implementing powers

There is broad support for the Commission's vision of public interest regulation, but debates in Parliament have clearly shown that there is no support for achieving this goal through an extensive use of delegated and implementing acts. Rapporteur and shadow rapporteurs agree on the need to limit them to the minimum necessary. On the other hand, the legislator should only delete specific delegated or implementing acts where there is a clear alternative to the use of delegated or implementing powers.

The upcoming evaluation of delegated and implementing acts with Council and Commission should be based on three categories: (a) technical implementation only, such as notification forms etc. – such acts should stay as proposed; (b) substantial delegation, but necessary for updating the regulation according to technical and business developments, such as categories of sensitive data, business models etc – such acts should stay, but need very clear guidance through criteria and limitations by the legislator; and (c) essential delegation that goes to the core of the legislation, such as defining “legitimate interest” – such acts need to be deleted and replaced by specific wording in the regulation.