



28.3.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0725/2017 by Geoffrey Arnold (British) on video surveillance of public and private spaces by private individuals in the EU**

### 1. Summary of petition

The petitioner asserts that there is a lack of clear and adequate EU legislation on the issue of video surveillance of public and private spaces by private individuals. He argues that such legislation should be adopted, in particular in order to allow owners to protect their property and other legitimate interests against crime. The petitioner references the Ryneš case, in which a home owner's video footage of perpetrators attacking his house was deemed by the Czech courts to be in breach of data protection legislation since it partially covered a public area.

### 2. Admissibility

Declared admissible on 27 November 2017. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 28 March 2018

The European Union has adopted on 27 April 2016 the General Data Protection Regulation (GDPR), repealing Directive 95/46/EC, which will become applicable as of 25 May 2018. The Regulation sets forth rules for the protection of personal data of individuals, which include on the one hand a number of obligations imposed on data controllers and on the other hand rights for individuals.

Similarly to Article 3(2) of Directive 95/46/EC, Article 2(2)(c) of the Regulation indicates that the data protection rules do not apply to the processing of personal data by a natural person in the course of a purely personal or household activity. Recital 18 of the Regulation further indicates that personal or household activities are "(...) *thus with no connection to a*

*professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. (...)*". The assessment of whether or not an activity of a natural person falls within the scope of the personal or household activities exception is carried out on a case by case basis.

The petitioner refers to the judgment of the Court of Justice of the European Union (CJEU) in the *Rynes* case<sup>1</sup> where the Court concluded that "*Consequently, the answer to the question referred is that the second indent of Article 3(2) of Directive 95/46 must be interpreted as meaning that the operation of a camera system, as a result of which a video recording of people is stored on a continuous recording device such as a hard disk drive, installed by an individual on his family home for the purposes of protecting the property, health and life of the home owners, but which also monitors a public space, does not amount to the processing of data in the course of a purely personal or household activity, for the purposes of that provision.*"

The CJEU therefore concluded that the installation of a camera by an individual on his family home which, in view of its positioning and settings, also monitors a public space does not constitute a processing of personal data in the course of a purely personal or household activity. In those circumstances, such a processing of personal data in the public space would fall under the scope of the EU data protection rules.

However, the CJEU did not consider that such a processing was as such prohibited. It underlined that the processing of personal data via a camera by an individual which also monitors a public space can be justified by the legitimate interests pursued by the individual, such as the protection of the property, health and life of his family and himself.<sup>2</sup> Furthermore, it underlined that the obligations of the EU data protection law must be complied with, including the obligation to inform individuals about the processing, unless the national law specifically provides for derogations for the prevention, investigation, detection and prosecution of criminal offences, or for the protection of the data subject or of the rights and freedoms of others.

The GDPR specifically addresses the systematic monitoring on a large scale (emphasis added) of a publicly accessible area or of individuals, requiring amongst others the data controller to perform a data protection impact assessment prior to implementing such a processing (Article 35 of the GDPR) and to appoint a data protection officer if regular and systematic monitoring of data subjects on a large scale is required for the core activities of the data controller (Article 37 of the GDPR).

In the case of an individual installing a camera to protect his or her home which also monitors a public space, this would usually not constitute a monitoring of a public space or of individuals 'on a large scale'. Therefore, the specific obligations of the Regulation in that respect would normally not apply in such a case. However, all other relevant provisions of the GDPR should still be complied with.

## Conclusion

---

<sup>1</sup> Judgment of the Court of justice of the EU of 11 December 2017 in case C-212/13.

<sup>2</sup> See para 34 of the judgment.

In the case of an individual installing a camera to protect his or her home which also monitors a public space, this would normally fall within the scope of the GDPR. This means the processing of the personal data has to comply with the relevant provisions of the GDPR. However, such camera surveillance would normally not constitute the systematic monitoring of a public space or of individuals 'on a large scale', which would imply that the specific obligations of the GDPR in that regard would not apply.