OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on a comprehensive approach to personal data protection in the European Union
(2011/2025(INI))

Rapporteur: Françoise Castex
PA_NonLeg
SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Stresses that the rapid pace of technological development in the global information society calls for comprehensive and coherent rules on data protection; notes that, following the entry into force of the Lisbon Treaty and the Charter of Fundamental Rights becoming legally binding, Article 16 of the Treaty on the Functioning of the European Union (TFEU) could provide a specific legal basis for the adoption of one legal instrument on the protection of personal data, if based on the highest level of protection provided for in EU legislation, and that this would provide greater legal certainty; whereas Article 8 of the Charter must be fully complied with in this respect;

2. Considers that this increasing complexity of data protection issues and the current lack of harmonisation between Member States’ national laws call for the adoption of a comprehensive legal instrument at European level; calls, in this connection, on the Commission to establish a personal data breach notification system along the lines of that introduced by the ePrivacy Directive regarding the telecommunications sector;

3. Calls on the Commission to seize the opportunity to consolidate and reinforce a high level of protection for data subjects, so as to improve European data protection legislation;

4. Stresses that the right of access covers not only full access to data processes affecting the data subject, including the source and recipients, but also intelligible information about the logic involved in any automatic processing; emphasises that the latter will become even more important with profiling and data-mining;

5. Calls on the Commission to guarantee synergies between data protection rights and consumer rights;

6. Points to the need to provide for specific forms of protection for vulnerable persons, especially children, for instance by requiring a high level of data protection to be used as the default setting and by taking appropriate specific measures to protect their personal data; believes that national data protection authorities should conduct awareness-raising campaigns targeting minors in particular;

7. Calls on the Commission to take account of the risk of ‘forum shopping’ in its proposals on determining applicable law;

8. Maintains that transparency should be established as the general principle governing the processing of personal data, as this would make it easier for individual data subjects to check their own data;

9. Strongly endorses the Commission communication when it comes to informed consent as a basic principle and asks it to clarify and strengthen the relevant rules;
10. Is concerned about the abuses stemming from online behavioural targeting and points out that, under the directive on privacy and electronic communications, the prior explicit consent of the person concerned is required for the display of cookies and for further monitoring of his or her web-browsing behaviour for the purpose of delivering personalised advertisements;

11. Welcomes the Commission’s decision to consider how a personal data breach notification requirement might be established on a general basis, bearing in mind that such a requirement at present applies to the telecommunications sector only;

12. Calls on the Commission to propose specific measures for children, who are not always aware of the risks involved in the use of the Internet;

13. Points out that revision of the European rules must not entail excessive costs for European firms, as this would adversely affect their competitiveness in relation to rivals from non-EU countries;

14. Considers that self-regulation, for instance through codes of conduct, should be encouraged;

15. Points out that protection of personal data applies to everyone, but the enforcement of this right must not serve to protect criminal activities or offenders; notes that Article 47 of the European Charter of Fundamental Rights provides for the right to an effective remedy in the event of violation of rights and freedoms guaranteed by EU law;

16. Supports efforts further to advance enforceable and binding self-regulatory initiatives based on the legal framework within the revision on the data protection framework, as suggested in the Commission communication, and is in favour of further support for EU certification schemes; points out that the public procurement sector should play an important role by taking the lead here;

17. Strongly endorses the Commission communication and asks the Member States to ensure that national data protection authorities are provided with appropriate powers and own resources allowing them to properly perform their tasks at the national level and to guarantee their independence;

18. Calls on the Commission to continue the dialogue with non-EU countries with a view to establishing a coherent international legal framework, given that cloud computing and other technological developments enable controllers to operate in more than one country; calls on the Commission also to strengthen the concept of ‘binding corporate rules’ in the field of international data transfer;

19. Calls on the Commission to take measures in order to reaffirm and strengthen the place and role of the Article 29 Working Party in order to ensure its impartiality and the transparency of its activities, to improve cooperation between national authorities and to enhance harmonisation as regards the implementation of rules on personal data protection; At the same time, calls on the Commission to propose a legal framework making for coherence in the exercise of the powers and responsibilities of the EDPS, national data protection authorities, and the Article 29 Working Party;
20. Calls on the Commission to ensure that the directive provides clear and harmonised definitions;

21. Calls on the Commission to provide for a high level of transparency when it comes to processing of personal data in the legal framework

22. Calls on the Commission to ensure compliance with the principles of data minimisation and purpose limitation;

23. Stresses the importance of the rights of access, rectification and deletion;

24. Calls on the Commission to provide for a special restrictive regime for ‘sensitive data’, which will require a clear definition of this category of data;

25. Calls on the Commission to ensure that the exceptions allowed for journalistic purposes in Article 9 of the current Data Protection Directive are maintained and that every effort is made to evaluate the need to develop those exceptions further in the light of any new provisions in order to protect the freedom of the press;

26. Calls on the Commission to ensure that all internet operators assume their responsibilities with regard to data protection, and urges advertising space agencies and publishers to clearly inform internet users in advance about the collection of any data relating to them.
RESULT OF FINAL VOTE IN COMMITTEE

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<th>Date adopted</th>
<th>24.5.2011</th>
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| Result of final vote | +: 23  
| | -: 0  
| | 0: 2  |
| Substitute(s) present for the final vote | Piotr Borys, Kurt Lechner, Eva Lichtenberger, József Szájer
| Substitute(s) under Rule 187(2) present for the final vote | Pablo Arias Echeverria |