

EU Data Protection Reform: moving ahead in hot waters*

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On Monday 21 October, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) made an important and very welcome step towards stronger and more effective data protection in Europe. The LIBE vote on the data protection reform package - involving both the proposed General Data Protection Regulation and the proposed Directive on criminal law enforcement - was remarkable. All compromise amendments - dealing with both instruments - were adopted with very large majorities. As a result, both instruments have been improved in many ways, although some details will need further attention in the final stages of the legislative procedure.

The LIBE vote has opened the road for negotiations with the Council on the package, as soon as it is ready to engage in such an exercise. The Council has also made substantial progress in its discussions, but more on the Regulation than on the Directive, and it has not yet reached a comprehensive position on either one. The LIBE vote therefore increased the pressure on the Council to come to conclusions, so as to allow adoption of the package before the Parliament elections by Spring 2014. This was the target set by the Commission when it introduced the package in January 2012, and the responsible Vice-President of the Commission Mrs Reding has worked hard to make it a reality.

In the course of 2013, the temperature around the reform package has increased as a result of heavy lobbying. Nonetheless, the Parliament has found an effective internal consensus on most of the main issues. The need for reform has never been challenged, but there have been discussions, for instance on the right balance between European law and national law - with some space for national specificities, but also adequate consistency across the EU - and on the need to ensure sufficient compliance, without creating undue administrative burdens.

The Snowden revelations about large scale monitoring and interception of communications by the NSA have also increased the temperature. As a result, certain aspects of the package

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have drawn more attention than before, such as the extension of the scope of EU law to also cover operators from third countries active on the European market, and provisions to prevent unlawful data transfers to third countries. At some point, there was even the impression that the reform was a direct reaction to the NSA story. However, the main aim of the package still is to ensure stronger, more effective and more consistent data protection in Europe.

Fresh stories about large scale spying in EU member states, also involving the mobile phone of the German Chancellor Mrs Merkel, surfaced just ahead of the European Council summit meeting on 24-25 October. This created other priorities with a different focus. At the summit, Germany and France took the initiative for bilateral talks with the US in order to find "before the end of the year" an understanding on mutual relations in the field of intelligence gathering. Other EU countries are welcome to join this initiative. As national security is the sole responsibility of each Member State, this was only mentioned in an annex to the Council conclusions.

As to the data protection reform, the Council conclusions state that the "timely adoption" of a strong EU General Data Protection framework is essential for the completion of the Digital Single Market by 2015. The Commission rightly pushed for a more ambitious deadline "by Spring 2014", but consensus was eventually reached on a more flexible text. However, this leaves space for different scenario's, including one according to which the new framework should be delivered in the course of 2014.

Therefore, it would be extremely desirable to ensure that the work in Council continues at full speed, so as to safeguard "timely adoption" of a strong framework as expressly called for by the European Council. In other words, it will be up to the Justice and Home Affairs Council in December to clear the way for productive negotiations with the Parliament, as LIBE has so clearly demanded.