



Meeting of the Committee on Civil Liberties, Justice and Home Affairs

Presentation of the Reports on the draft General Data Protection Regulation and on the draft Directive on the processing of data for the purposes of prevention, investigation, detection or prosecution of criminal offences

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Speaking notes

- I would like to thank the Chairman for giving us the opportunity to participate in this first discussion on the two reports.
- As you know, in the EDPS' view, the data protection package is a huge and necessary step forward for data protection in Europe. We appreciate any further contribution aimed to ensure a full comprehensiveness of the two legal instruments - the Regulation and the Directive - , to increase the level of protection ensured by the Directive as well as solutions aimed to improve some provisions of both legal instruments which need to be adjusted, clarified or fine tuned.
- At the EDPS we have been closely following the various discussions on the package through seminars, workshops, hearings and meetings involving relevant stakeholders. We should first recognize that after one year of intensive discussions it was not so simple for the two rapporteurs to make a proper balance with full satisfaction of all relevant expectations.
- Last year, we have been delighted to see that most of the points we raised in our Opinion of 7 March 2012 have been taken up in the three working documents of the rapporteurs published in October.
- We're now impressed about the huge amount of the work done more recently.
- At the EDPS we just started with an in-depth analysis of the two very detailed reports, which require a careful evaluation. However, I am very pleased to make a preliminary statement by saying that the rapporteurs seem to follow the same,

proactive approach.

- We are grateful to them since we're impressed by the huge efforts aimed to make a proper balance of the various –sometimes conflicting- concerns of different stakeholders in the private and public sectors. Many of the EDPS (and Working Party 29) recommendations have been fully or partly considered.
- We basically welcome this careful approach and we encourage all of you to continue to work in the same perspective.
- The two reports build on the Commission's proposals although they partly depart from them on some key points.
- This is not the right moment for me to enter into details. I have been asked to be very brief, so I will only focus today on few main points which appear clear from a first, quick reading.
- First of all, we strongly support the approach aimed to consider jointly the two legal instrument as a package, and the attempts of the report of MEP Droutsas to better align the both instruments and to strengthen the Directive. Some further efforts might be needed.
- About the Regulation, in principle -subject to details- we may subscribe all ten main lines highlighted yesterday by MEP Albrecht in his press conference.
- On the same Regulation, I could find within the amendments many improvements. Being extremely selective, I would only mention that we appreciated, among others, the efforts aimed to clarify:
 - 1) some provisions on the rights of the individuals and the transparency of the processing;
 - 2) the notion of lead authority, which should be seen not as an *exclusive* competence, but as a structured way of cooperation with other competent supervisory authorities;
 - 3) the consistency mechanism and the selective conditions which will trigger the mechanism, with a view to prevent that the mechanism will be overburdened;
 - 4) the necessary flexibility and the more realistic deadlines necessary for the adoption of the EDPB opinions;
 - 5) the more selective powers of the Commission in the consistency mechanism, which should be limited to triggering the seizure of the EDPB and the power to submit valuable opinions without overruling decisions in individual cases;
 - 6) the more selective approach on delegated and implementing acts;
 - 7) the necessary margin of appreciation with regard to the application of administrative sanctions, to better ensure that they will always be effective and proportional to the infringement. We also find it important to point at remedial sanctions, which can be very effective as well;
 - 8) the way in which the purpose limitation principle is to be respected;
 - 9) the reduction where appropriate of administrative burdens, by focusing on what is crucial for a substantive and effective protection of fundamental rights.

About the draft Directive, as a result of a very first analysis, we welcome the clear attempt to increase its level of data protection, for instance by:

- 1) inserting certain positive elements from the proposed Regulation under the so-called principle of accountability which were missing in the same Directive, such as the privacy impact assessments and the more specific requirements on the status and role of DPOs;
- 2) aligning the powers of the DPAs with those described in the proposed Regulation;
- 3) introducing provisions that regulate the exchange of information between the law enforcement sector and the private sector;
- 4) enforcing the provisions on the transfers to third countries.

As said, we are in an important phase where there is no room for mistakes.

This is why at the EDPS we will continue to follow all further developments and contribute to the debate also through additional, formal contributions, where necessary. In the meantime, we continue to be available for all of you for further co-operation on relevant details.

In conclusion, we appreciate the commitment of the two rapporteurs to improve the current proposals with a view to respond to the concerns of various stakeholders including DPAs.

Thank you for your attention.