

Executive summary of the Opinion of the European Data Protection Supervisor on the Commission proposal for a Regulation amending Council Regulation (EC) No 1346/2000 on insolvency proceedings

(The full text of this Opinion can be found in English, French and German on the EDPS website <http://www.edps.europa.eu>)

(2013/C 358/09)

1. Introduction

1.1. Consultation of the EDPS

1. On 12 December 2012, the Commission adopted a proposal for a Regulation amending Council Regulation (EC) No 1346/2000 on insolvency proceedings ('the proposed Regulation')⁽¹⁾. This Proposal was sent to the EDPS for consultation on 13 December 2012.

2. The EDPS welcomes the fact that he is consulted by the Commission and that a reference to this Opinion is included in the preambles of the proposed legal instrument.

3. Before the adoption of the proposed Regulation, the EDPS was given the opportunity to provide informal comments to the Commission.

4. The EDPS regrets that only a few of his comments have been taken into account in the proposed Regulation. Even though an article is now dedicated to data protection, safeguards have not been strengthened accordingly.

1.2. Objectives and scope of the proposed Regulation

5. The proposed Regulation amends the Insolvency Regulation in order to cope with weaknesses revealed in its practical application⁽²⁾. It *inter alia* addresses issues relating to the scope of the Regulation, the determination of the Member State competent to open the proceedings, the opening of secondary proceedings and the rules on publicity of decisions opening and closing insolvency proceedings.

6. Amongst the measures proposed that will impact data protection, the Proposal provides for a mandatory publication of the decisions opening or closing a proceeding and encourages and organises cross-boarder exchanges of information between stakeholders.

7. Information thus published and/or exchanged may identify (either directly or indirectly) debtors, creditors, and liquidators involved in the proceeding. Therefore, EU data protection legislation applies. In particular, Directive 95/46/EC will apply to the processing of data by stakeholders in Member States and by national competent authorities, while Regulation (EC) No 45/2001 will apply to the processing of data by the Commission through the e-Justice Portal.

1.3. Aim of the EDPS Opinion

8. The proposed Regulation may affect the rights of individuals related to the processing of their personal data as, amongst other issues, it deals with the publication of personal data in a register accessible to the public on the Internet, free of charge, with the interconnection of existing national registers and with cross border exchange of information between stakeholders.

9. Although the EDPS welcomes the effort made by the Commission to guarantee the correct application of EU rules concerning the protection of personal data in the proposed Regulation, he has identified some shortcomings and inconsistencies in the way the proposed Regulation deals with issues related to/concerning personal data.

3. Conclusions

54. The EDPS welcomes the attention paid specifically to data protection in the proposed Regulation, but identified some scope for further improvement.

55. The EDPS recommends that:

— references to this Opinion are included in the preambles of all proposals,

⁽¹⁾ COM(2012) 744 final.

⁽²⁾ Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings (hereinafter: 'the Proposal').

- Article 46(a) of the proposed Regulation clarifies the reference to Directive 95/46/EC by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC,
- concrete and effective data protection safeguards are put in place for any situation in which personal data processing is envisaged,
- the necessity and the proportionality of the proposed system for the Internet publication of decisions opening and closing insolvency proceedings is assessed and it is verified whether the publication obligation does not go beyond what is necessary to achieve the public interest objective pursued and whether there are not less restrictive measures to attain the same objective. Subject to the outcome of this proportionality test, the publication obligation should in any event be supported by adequate safeguards to ensure full respect of the rights of the persons concerned, the security/accuracy of the data and their deletion after an adequate period of time.

56. The EDPS furthermore recommends that:

- the modalities of the functioning of national databases and the EU database with regard to data protection issues are clarified by introducing more detailed provisions in the proposed Regulations, in compliance with Directive 95/46/EC and Regulation (EC) No 45/2001. In particular, the provision establishing the database(s) must (i) identify the purpose of the processing operations and establish which are the compatible uses; (ii) identify which entities (competent authorities, Commission) will have access to which data stored in the database and will have the possibility to modify the data; (iii) ensure the right of access and appropriate information for all the data subjects whose personal data may be stored and exchanged (iv) define and limit the retention period for the personal data to the minimum necessary for the performance of such purpose,
- at least core principles of the decentralised system for the interconnection of insolvency registers such as necessity and proportionality are established in the present Proposal (while further safeguards are expected to be provided in the forthcoming Commission's legislative proposal for the e-Justice portal),
- it is specified whether any data will be stored in the e-Justice portal. If this is the case, specific safeguards should be added.

Done at Brussels, 27 March 2013.

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