

COMMUNICATION

**from the European Affairs Committee of the Federal Council
to the European Commission, the European Parliament and the Council
pursuant to Article 23 f (4) of the Austrian Constitutional Act
15 September 2015**

COUNCIL 9565/15

Proposal for a Regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and the free movement of such data (General Data Protection Regulation) – Preparation of a general approach

With the start of the trilogue negotiations, work on the new General Data Protection Regulation has entered into its decisive phase.

The new regulation is to replace and/or modernise the existing data protection rules from 1995 and create a uniform data protection framework for the European Union. In concrete terms, the regulation is intended to harmonise the rules for the processing of personal data by individuals and public authorities throughout the European Union. This is to ensure the protection of personal data within the EU and, at the same time, facilitate the free flow of personal data in the single market.

Austria has always taken the position that the level of personal data protection currently provided by Directive 95/46/EC should be enhanced through the new General Data Protection Regulation. At the Council of Ministers of 15 June 2015, the representative of the Austrian Federal Government – together with the representative of the Republic of Slovenia – voted against the compromise text submitted to the Council, which would have meant a step backwards in a number of areas, compared with the high level of data protection guaranteed in Austria.

In principle, the Austrian Federal Council welcomes attempts to harmonise European data protection standards, but wishes to draw attention to the following issues:

- Data protection provided by the new regulation must not fall below the high level of data protection currently guaranteed in Austria and through the provisions of the Charter of Fundamental Rights of the European Union.

- Moreover, it should be ensured (at least through the inclusion of an appropriate recital in the Regulation) that data protection for legal persons, as enshrined in the Austrian Data Protection Act of 2000, can be maintained (at least at national level).
- The General Data Protection Regulation should contribute towards restoring the confidence of European citizens in data security, especially in view of recent scandals (NSA) involving international data exchanges.
- Lawful data applications, such as those currently implemented for the benefit of third parties, must not be deprived of their legal basis through the new rules of the General Data Protection Regulation.
- One of the main aspects of the regulation regarding data on the Internet, i.e. the “right to erasure and the right to be forgotten”, must be maintained by all means, so that European citizens can be sure to remain in control of their own personal data.
- The abuse of data is no trivial matter. Compliance with the European data protection rules, above all by internationally operating organisations in possession of large volumes of personal data, is to be safeguarded through the imposition of penal sanctions on corporations. At the same time, however, such sanctions should be based on the principle of proportionality. SMEs and sole traders should not be driven into bankruptcy through the sanctions imposed.
- The requirement for every business to employ a data protection officer would constitute an insurmountable obstacle, above all for SMEs and sole traders. A practical solution should be found in this matter.