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Předsedkyně Poslanecké sněmovny
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PRAGUE 1

Dear President,

The Commission would like to thank the Poslanecká sněmovna for its opinion on the European Commission's proposals for a General Data Protection Regulation¹ and for a Data Protection Directive for police and criminal justice authorities² and apologises for the long delay in replying.

The Commission would like to underline that the data protection reform package proposed by the Commission last January aims to build a modern, strong, consistent and comprehensive data protection framework for the European Union. It would benefit individuals by strengthening their fundamental rights and freedoms with respect to processing of personal data and their trust in the digital environment and simplify the legal environment for businesses and the public sector substantially. This is expected to stimulate the development of the digital economy across the EU's Single Market and beyond, in line with the objectives of the Europe 2020 strategy and the Digital Agenda for Europe.

Finally, the reform would enhance trust among law enforcement authorities in order to facilitate exchanges of data between them and cooperation in the fight against serious crime, while ensuring a high level of protection for individuals.

The package also responds to strong calls from the co-legislators, the Council³ and the European Parliament⁴ as well as from various stakeholders for a high standards legal framework based on a comprehensive approach.

¹ "Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)", COM (2012) 11 final ('Regulation').

² "Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data", COM (2012) 10 final ('Directive').

³ Council Conclusions on the Communication from the Commission to the European Parliament and the Council - A comprehensive approach on personal data protection in the European Union, 3071st Justice and Home Affairs Council meeting, Brussels, 24 and 25 February 2011.

⁴ European Parliament Resolution of 6 July 2011 on a comprehensive approach on personal data protection in the European Union P7_TA_(2011)0323.

The proposed Directive would replace Framework Decision 2008/977/JHA⁵ and is for that reason an integral, and important part of the European Commission's data protection reform package.

The principle of proportionality as set out in Article 5 of the Treaty on European Union requires that any intervention is targeted and does not go beyond what is necessary to achieve the objectives. This principle has guided the European Commission's preparation of its proposal from the identification and evaluation of alternative policy options to the drafting of the legislative proposal. The Commission also prepared an Implementation Report related to Framework Decision 2008/977/JHA, based on its Article 29(2), which was adopted as part of the data protection package⁶. The findings of the report, based on input from Member States, also fed into the preparation of the Impact Assessment.

As to the scope of application of the proposed Directive for police and criminal justice authorities, the entry into force of the Lisbon Treaty, and Article 16 TFEU as the new legal basis for EU data protection legislation, call for the establishment of a comprehensive data protection framework which covers also the processing by police and judicial criminal authorities. In its resolution on the Stockholm Programme, the European Parliament⁷ welcomed a comprehensive data protection scheme in the EU and explicitly called for the revision of the Framework Decision among other measures.

As you are aware, the current Framework Decision 2008/977/JHA in principle only applies to the cross-border exchange of personal data within the EU and not to domestic processing operations in the Member States. As the proposed Directive aims at achieving greater harmonisation of EU Member States' rules on data protection in the area of police and criminal justice, it follows the approach of Directive 95/46/EC and of the proposed Regulation, therefore also applying to domestic processing operations. This is necessary as neither Article 8 of the Charter nor Article 16 TFEU make a distinction between domestic and cross-border processing operations, but refer to processing activities that fall within the scope of EU law and the free movement of personal data. Likewise, the Council of Europe Convention No. 108 simply applies to the 'automatic processing of personal data in the public and private sectors'.⁸

Moreover, the Commission's assessment has shown the 'domestic vs. cross-border data' differentiation to be an artificial distinction and – as confirmed by some Member States during the Commission's consultations – that it may also create practical problems for law enforcement authorities: it is difficult for a police officer to distinguish between data of different 'origins' during an investigation and to apply different rules to such personal data. In addition, it is not always foreseeable in advance that personal data collected by one Member State will then be subject to cross-border exchange. Therefore, common rules covering both 'domestic' data processing and cross-border transmissions between

⁵ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350/2008, p. 60 ('Framework Decision').

⁶ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions based on Article 29 (2) of the Council Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, COM (2012) 12 final.

⁷ European Parliament resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme, P7_TA(2009)0090, point 143.

⁸ See Article 3 (1) of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28.1.1981 (ETS No 108).

Member States are a precondition for the effective exchange of personal data and will enhance law enforcement cooperation in the EU.

*As regards **other provisions** contained in the proposal, these build on the Data Protection Directive 95/46/EC⁹ and the Framework Decision. Where genuinely new provisions are proposed, these are inspired by similar rules either already existing in other Union data protection legislation (such as in the e-Privacy Directive 2002/58/EC, or in the rules for Europol¹⁰ and Eurojust¹¹), or by the Council of Europe's Recommendation No R (87)15 regulating the use of personal data in the police sector and its evaluation reports.*

Let me stress that, overall, the proposed Directive fully takes into account the sensitivity and the special nature of the work of the police and of the judiciary in the area of criminal justice. For these reasons the Commission believes that the proposal for a Data Protection Directive for police and criminal justice authorities complies with the principles of subsidiarity and proportionality.

The Commission hopes that these explanations clarify the issues on the proposals for new legal data protection instruments raised in your observations and questions and looks forward to continuing our dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

⁹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281/1995, p.31.

¹⁰ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121/2009, p. 37.

¹¹ Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 138/2009, p. 14.