



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Poslanecká sněmovna for its Opinion on the Proposal for a Regulation on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC {COM(2017) 8 final}, on the Proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) {COM(2017)10 final} and on the Communication from the Commission: Exchanging and Protecting Personal Data in a Globalised World {COM(2017) 7 final}.

The Commission welcomes the support of the Poslanecká sněmovna for the above-mentioned proposals and duly notes its observations.

The Communication on Exchanging and Protecting Personal Data in a Globalised World {COM(2017) 7 final} sets out the Commission's policy to facilitate international data transfers – which are increasingly important for commercial exchanges and law enforcement cooperation – while ensuring a high level of protection of personal data. In this respect, the objective of the Communication is to ensure that, when the data of Europeans are travelling abroad, the protection travels with the data.

In the area of law enforcement, cooperation will be facilitated through mutual trust and legal certainty and this in turn requires clear and strong data protection standards. The European Union - United States Umbrella Agreement is an example of how this can be accomplished. The Umbrella Agreement constitutes the first bilateral international agreement in relation to the prevention, investigation, detection or prosecution of criminal offences, including terrorism, with a comprehensive catalogue of data protection rights and obligations in line with the European Union acquis, which also takes into account the specific nature of law enforcement processing. The Commission may use this agreement as a model for negotiating similar agreements with other third countries in the field of judicial and police cooperation. At the same time, with some international partners it might not be necessary to conclude an Umbrella-type data protection agreement because their domestic rules already provide for a level of data protection that is essentially equivalent to that in the European Union. In those

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cases, the free flow of personal data may be achieved by using the instrument of an adequacy finding.

When it comes to law enforcement, one of the fields in which European Union law enforcement authorities and bodies are facing global challenges is the fight against cybercrime. The Commission, following a mandate from the Council, is working on solutions to ensure that law enforcement authorities are able to obtain the electronic evidence needed for an investigation, in full respect of the data protection rules and other guarantees (e.g. due process). The conclusion of this work, including possible options, was presented to the Justice and Home Affairs (JHA) Council on 8 June 2017. During the Council, Member States asked the Commission to pursue its work on the practical measures suggested, but also to propose legislation. An impact assessment will therefore be prepared, and consultation with Member States experts will continue.

The Commission shares the view on the importance of modernising Council of Europe Convention 108. This work is relevant not only for better aligning this convention with the Union's new data protection rules, but also because the Commission wants to promote Convention 108 as a multilateral instrument setting high data protection standards at international level. The negotiations are still ongoing and the Commission is working together with the Member States to ensure the best result in that regard.

As regards the Proposal for a Regulation on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC {COM(2017) 8 final}, the Commission fully shares the view of Poslanecká sněmovna that European institutions should apply the same high data protection standards that we expect of the Member States. The Commission believes that its proposal achieves this goal by aligning the provisions of the proposed Regulation to the fullest extent possible with the General Data Protection Regulation (EU) 2016/679¹ and providing an even greater level of detail in some instances². As one of the objectives of the proposed Regulation is to complete the rules on the free flow of personal data within the Union, the transmissions of personal data from Union institutions and bodies to other recipients in the Union will continue to take place in accordance with the safeguards laid down in Article 9. Finally, we believe that restrictions on data subject rights can be laid down in internal rules of Union institutions and bodies³, as long as they meet the 'quality of law' requirement developed by the European Court of Human Rights and the Court of Justice of the European Union. In other words, such internal rules should be accessible, sufficiently foreseeable and clear, in order to give an adequate indication as to the circumstances in which and the conditions on which they will allow Union institutions and bodies to restrict some of the data subject rights.

On the Proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) {COM(2017) 10 final}, the Commission takes note of the observations and concerns expressed by the Poslanecká sněmovna concerning the proposed Regulation.

¹ OJ L 119, 4.5.2016, p. 1-88.

² For example, the rules on data protection officers.

³ In matters relating to their operation.

One of the primary objectives of the proposed regulation is to ensure protection of confidentiality of communications, in line with the fundamental right to the respect of private and family life (including communications) enshrined in Article 7 of the European Union Charter of Fundamental Rights of the European Union. The proposal also seeks to implement Article 8 of the European Union Charter on the right to personal data of individuals within the electronic communications sector. In this respect, the proposal is a lex specialis to the General Data Protection Regulation and seeks to particularise and complement it as regards electronic communications data that qualify as personal data. The General Data Protection Regulation applies to any matter concerning the processing of personal data that is not explicitly regulated by the proposal, such as for instance the obligations of the controllers and rights of data subjects, key definitions like consent, principles relating to the processing of personal data or rules on liability for processing.

The provisions of the proposal have different scopes of application. As far as Electronic Communications Services are subject to the provisions of the proposal, it relies on the definitions of the proposed European Electronic Communications Code⁴. One difference is that the European Electronic Communications Code does not apply to an interpersonal and interactive communication facility if it is a purely ancillary feature to another service, while the proposed ePrivacy regulation does include this service in the scope of its application. This is because the inclusion of ancillary communications services within the scope of the proposed Regulation corresponds to the objective of ensuring the confidentiality of communications. The Commission will pay due attention to a coherent approach to the definitions during the discussions on both legal instruments in the Parliament and the Council.

The relationship with Directive 2000/31/EC (eCommerce Directive)⁵ is regulated by Article 2(4) of the proposal. This Article states that the application of the provisions of the proposed Regulation, are without prejudice to the application of the provisions of the eCommerce Directive. This means that the Directive, in particular Articles 12 to 15 of the eCommerce Directive, may apply on top of the provisions of the proposed Regulation.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Poslanecká sněmovna and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*

⁴ Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) COM(2016) 590 final.

⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1–16.