RIIGIKOGU

PARLIAMENT OF ESTONIA
EUROPEAN UNION AFFAIRS COMMITTEE

Commissioner Viviane Reding
DG Justice
European Commission
B-1049 BRUSSELS

8. May 2012 No. 1-2/12-36/4

Position on the data protection reform – COM(2012)10 and 11

Dear Ms Reding,

The European Union Affairs Committee of the Riigikogu has examined the proposal for a directive of the European Parliament and of the Council 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] and the 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] and has adopted the following position:

1) An exhaustive, detailed and complex regulation that provides the delegation of legislative powers to the European Commission in various issues is not necessary for protecting personal data and allowing its free movement. The detailed nature and direct applicability of the regulation do not allow it to be implemented with required flexibility (e.g. taking into account the size of the company). The regulation includes many issues, such as cross-border exchange of data and cooperation with third countries, which should indeed be regulated by a directly applicable regulation. Nevertheless, the current objectives of the regulation – protection of the fundamental rights and freedoms of individuals in connection with the processing and free movement of personal data – are mostly also achievable by a directive which would give Member States wider discretion.

2) The regulation delegates broad legislative powers in important issues to the European Commission. Using these powers, the Commission can influence the future content and implementation of the regulation in a way which is usually available to the legislator or the courts. The right to issue implementation acts could in many cases, as in the case of defining undefined legal terms or determining the exact nature of the licence obligation, be given to the Member State. First of all, Member States are able to take into account the practical facts and can make decisions concerning individuals in the closest proximity to the latter. Secondly, Member States can react to technological changes with more flexibility and speed.

3) The delegation standards for adopting Commission acts are insufficiently defined. The conditions for using important fundamental rights (such as the fundamental rights and freedoms related to the protection of personal data, e.g. the right to be forgotten as provided in Article 17 of the regulation) must be regulated by the European legislator itself. An individual must be able to understand directly from the

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legislative act how extensively their fundamental rights and freedoms (incl. freedom of enterprise, freedom of speech) can be restricted in the interests of data protection or free movement of information.

4) Decision making will move further from the concerned individuals and become disproportionately time consuming if the decisions of data protection authorities must be coordinated with the Commission beforehand and the consistency mechanism is implemented (Chapter VII Section 2 of the proposal). During the coordination of decisions, further duties must be fulfilled (e.g. prior impact assessment). The benefits for the protection of personal data and its free movement are not sufficient enough to justify the generated administrative burden or the distancing of the right to make decisions from the individual. The right of the Commission to review the decisions of national data protection authorities seems superfluous.

5) Regulation of national data protection authorities ignores the fact that it is possible to ensure the rights and freedoms of individuals and free movement of personal data even after taking into account specific national conditions. In order to apply the personal data protection regulation in a more uniform way it is not necessary, for example, to regulate how members of national data protection authorities should be appointed and what should be their competence. Competence of and restrictions to the officials carrying out national supervision must be comparable to those of other similar authorities on the national level. Employees of data protection authorities should not find themselves in an unfavourable position compared to the employees of other supervisory authorities (e.g. concerning the prohibition of working on another position).

6) In order to achieve the objectives of the regulation, it is not necessary to determine the sums of pecuniary administrative sanctions in exact terms. In some Member States, the provided sanctions (up to EUR 1,000,000) can appear disproportionately large in relation to the general sanction system. Instead of the hoped legal behaviour, their application might lead to the insolvency of companies.

7) Basically similar problems may also result from the Directive on regulating the protection of data. Its implementation might lead to the harmonisation of criminal procedure law in certain issues, which for now remains outside the competence of the European Union. Establishment of rules might lead to the establishment of categories of parties in criminal procedure and to the establishment of the relevant data processing rules. The Directive would stipulate the obligation to distinguish between the personal data of different data subjects.

Yours sincerely,

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Chairman

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