



## EUROPEAN COMMISSION

Brussels, 21.02.2013  
C(2012) 357 final

Sen. Renato SCHIFANI  
Presidente  
Senato della Repubblica  
Palazzo Madama  
IT – 00100 ROMA

*Dear President,*

*The Commission would like to thank the Italian Senato della Repubblica for its proposals for a General Data Protection Regulation {COM (2012) 11 final} and for a Data Protection Directive for police and criminal justice authorities {COM(2012) 10 final} and apologizes for the delay in replying.*

*I would like to underline that the data protection reform package 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.*

*Furthermore, 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 Council<sup>1</sup> and the European Parliament<sup>2</sup> as well as from various stakeholders for a legal framework based on high standards and a comprehensive approach. The Commission is pleased to see that the Opinion of the Senato acknowledges that both proposals respect the principles of subsidiarity and proportionality and that the Senato agrees that intervention at the European Union level is needed to achieve greater harmonisation in respect of a highly sensitive issue that affects*

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<sup>1</sup> 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.

<sup>2</sup> European Parliament Resolution of 6 July 2011 on a comprehensive approach on personal data protection in the European Union P7\_TA\_(2011)0323.

the fundamental rights of individuals. This is essential in order to set high and uniform standards of protection to be enforced consistently throughout the entire European Union.

The Opinion raises, however, some concerns on some specific aspects of the Data Protection reform package that I would like to clarify.

Insofar the 'right to be forgotten' is concerned, although the Senate acknowledges that the Commission's draft aims at enhancing the level of protection provided for by Directive 95/46/EC, the Opinion considers that the proposed Regulation should define in greater detail in which way this right should be implemented. The 'right to be forgotten' as proposed by the Commission (Article 17 of the proposal) is itself a clarification and a strengthening of the existing right to demand erasure of data that is no longer needed for any legitimate purpose, taking into account the huge technological developments that occurred since the current Directive came into force. However, given the technological neutrality of the proposed Regulation, Article 17 empowers the Commission to adopt delegated acts in order to ensure the regulatory framework to be flexible enough for technological innovation and for adapting to changing consumer practices. Additionally, Article 16 of the draft Regulation empowers data subjects to obtain the rectification of inaccurate and incomplete data.

Secondly, the Commission would like to reassure the Senate that the so-called 'one-stop-shop' would not deprive individuals of the ability to complain to the DPA in their own country. They would always be able to address their own DPA of residence: it would then be for the latter to cooperate with the competent DPA of the country where the main establishment is located, and inform the individual on the outcome of the complaint. Moreover, in cases where the competent DPA would not act in response to a specific request from another DPA, the latter would be able to take provisional measures under its jurisdiction to protect the interests and rights of the individual concerned. For these reasons, this measure is to be considered undoubtedly as an element of simplification, as businesses which conduct processing activities in several Member States would have one single law and also one single supervisory authority to deal with, at the same time guaranteeing individuals a high level of protection in their own jurisdiction and enhancing the cooperation between national supervisory authorities.

Thirdly, the Senate is of the opinion that the proposed Regulation provides for excessive empowerment for the European Commission to adopt delegated acts. Under the Treaty on the Functioning of the European Union (TFEU), Article 290 allows the European legislator to delegate to the European Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act.

The proposed Regulation has been deliberately drafted as a technologically neutral legal instrument. It wants to be open to the future and does not try to anticipate all technological developments of the next twenty years, but should be broad enough for technological innovation and changing consumer practices. Delegated acts are the instruments foreseen by

*the Lisbon Treaty to allow, also in the future, that the rules and principles of the Regulation can be supplemented without always leading to a revision of the Regulation itself.*

*Furthermore, legal acts adopted by the European Commission in this way are subject to the control of the legislator<sup>3</sup>: delegated acts can only enter into force if no objection has been expressed by the European Parliament or the Council – in effect, the two legislators have a veto power. In addition, the legislator can reserve the right to revoke the European Commission's delegated powers at a later stage. When preparing delegated acts, the European Commission will, moreover, broadly consult relevant experts, particularly from Member States' authorities, as well as other relevant stakeholders, depending on the matter. Experts from the European Parliament may also be consulted, should the EP so require.*

*Finally, as far as the proposal for a Data Protection Directive for police and criminal justice authorities is concerned, the Opinion considers that there is a need to clearly specify the material scope of the proposal by defining the meaning and the scope of the terms 'national security' set forth in Article 2 of the draft Directive, aiming at excluding matters that fall outside of the scope of the Union law, in particular national security.*

*EU Treaties refer in several instances to 'national security'. Article 4 of the Treaty on European Union (TEU) lays down that the European Union shall act within the limits of competences conferred upon it by the Member States in the Treaties. Article 4(2) TEU states that "national security remains the sole responsibility of each Member State". Likewise, Articles 72 and 73 of the Treaty on the Functioning of the European Union (TFEU) refer to internal and national security as a competence of the Member States. However, no definition of 'national security' is provided for by the treaties or by any other instrument of EU law. This lack of definition reflects the will of the Member States of not establishing at European Union level a definition of "national security", so as to cover the different Member States' organisational systems of national security.*

*The Commission believes that providing an ad hoc definition of this concept does not therefore seem appropriate.*

*The Commission hopes that these clarifications address the concerns raised by the Italian Senato in its Opinion and looks forward to continuing our dialogue on these important issues.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>3</sup> See Article 86 of the draft regulation. Cf. equally Communication from the Commission to the European Parliament and the Council – "Implementation of Article 290 of the Treaty on the Functioning of the European Union", COM (2009) 673 final.