

Parliament of Romania
Chamber of Deputies

Ref. No 1/1778/VZ

Date: 10 October 2012

OPINION

regarding the personal data protection package
COM(2012) 9, COM(2012) 10 and COM(2012) 11

Having regard to the Treaty of Lisbon and in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, as republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Taking into account the draft opinion presented by the Committee for Legal Affairs, Disciplinary Matters and Immunities at its meeting of 19 September 2012,

Taking into account the draft opinion presented by the Committee for Human Rights, Religious Affairs and Minorities at its meeting of 25 April 2012,

Taking into account the draft opinion presented by the Committee for Information Technology and Communications at its meeting of 24 May 2012,

Taking into account the note from the EU Law and Case Law Department of the Chamber of Deputies,

Taking into account the point of view of the Government of Romania, as expressed in the letter from the Ministry of European Affairs,

Considering the final draft opinion presented by the Committee for European Affairs at its meeting of 25 September 2012,

Having regard to the approval given by the Permanent Office of the Chamber of Deputies on 1 October 2012,

The Chamber of Deputies, acting in accordance with Article 40 of its Decision No 11/2011 of 27 April 2011, hereby adopts this Opinion:

In connection with the proposal for a Directive (**COM(2012) 10**), the Chamber of Deputies would point out the following:

- it is necessary to define clearly the scope of the Directive and the term 'national security', and to clarify, under Article 39, the phrase '...one or more public authorities are responsible for...' in order to avoid any confusion in this respect;
- the members of the supervisory authority should be appointed only by the Parliament, to ensure real institutional autonomy, and in correlation with the provisions of the Schengen Convention.

In connection with the proposal for a Regulation (COM(2012) 11), the Chamber of Deputies would point out the following:

- under Article 46, it is necessary to refer to one national supervisory authority and to those at the local level, where applicable, in line with Articles 47, 48 and 49, which refer to 'the supervisory authority' in the singular. As regards the appointment of the management of the supervisory authority (Article 48(1)), we would recommend that in the case of the national authorities this be done only by the Parliament, whereas in the case of the local authorities the Member States should be left to decide whether it should be done by the Parliament or the Government, as appropriate. In this context, we would mention the Judgment of the Court of Justice of the European Union in Case C-518/07 *European Commission v Federal Republic of Germany*, which states that by making the competent supervisory authorities in the different *Länder* subject to State oversight, Germany transposed the requirement of 'complete independence' of such authorities incorrectly;

- as regards the independent financial authority, it is necessary to request clarifications, because at present the financial oversight of the authority is also performed by the Ministry of Public Finance, which is part of the Executive Branch;

- in connection with Article 58, which provides for draft decisions to be communicated to the European Data Protection Board and the Commission before adoption by a supervisory authority, we consider that this places a national authority under the direct authority of a European body, which would be able to check national administrative acts that, under national law, can be checked only by the courts. Therefore, in our opinion it is necessary to examine this situation also relative to the Romanian Constitution;

- as regards the Commission delegated acts mentioned under Article 86, we would express our concern regarding the large number of such acts, which could restrict the scope for action by Member States in the area of personal data protection, in particular because no maximum adoption deadline has been provided for;

- in connection with the maximum deadline of one month within which the requested supervisory authority must act (Article 55(8)), we consider that it would be useful to specify a minimum and maximum deadline (for example, three months) depending on the nature and complexity of the case concerned;

- the tasks of the data protection officer should be laid down by means of a Regulation;

- the requests mentioned under Article 8(1), relating to the consent of the parents in the case of children below the age of 13 years, should refer to the national law applicable in this area in the Member State concerned;

- in connection with the special data categories mentioned under Article 9(1), we would recommend including also 'biometric data' among them, because such data can be processed only under conditions of high security and confidentiality;

- references to national law (Article 56(3)) should be clarified, considering that Act No 677/2001 transposing Directive 95/46/EC and laying down the tasks of the supervisory authority shall cease to apply;

- Article 17 on the right to be forgotten and freedom of expression should be rephrased more clearly, because in its current form it could have serious implications for the freedom of expression and could be used as a tool of censorship;

- Article 18 on data portability does not also specify who is to be charged for the cost of the data transfer;
- the right to data portability in the case of social networks is restricted by a requirement, with rather weak wording, referring to the format to be used for stored data. It is necessary to include also provisions on interconnection and interoperability;
- Articles 31 and 32 lay down the obligation to notify a personal data breach to the supervisory authority within 24 hours. Individual users should be notified of any personal data breach, where such breach can affect the safety of their private lives and personal data. The two Articles in question do not contain any provision relating to the setting up of a public central register containing information on such cases;
- regarding Article 42: since EU rules must ensure full respect of the citizens' civil and political rights, it is necessary to provide that, where a third state requests personal data, the operator or the person processing such data must obtain prior authorisation for the data transfer, from the local supervisory authority.

This opinion is addressed to the Presidents of the European Parliament, the Council and the European Commission.