



EUROPEAN COMMISSION

Brussels, 18 OCT. 2012
C(2012) 7312 final

Dear Presidents,

Thank you very much for transmitting the Opinion of the Spanish Parliament, concerning the European Commission proposal for a Data Protection Directive for police and criminal justice authorities {COM(2012) 10 final}. Let me also apologise for the delay in replying.

I am pleased to see that the Opinion acknowledges that the above proposal respects the subsidiarity principle. I am also pleased to see that it welcomes the proposal as it will contribute to guarantee the same level of protection of the fundamental right to the protection of personal data across all the Member States.

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 proposed Directive, aiming at excluding matters that fall outside of the scope of the Union law, in particular national security. The Opinion considers that this concept should be defined in order to increase legal certainty.

EU Treaties refer in several instances to "national security". Article 5 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 Treaties by the Member States. 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 reflects the will of the Member States to refrain from establishing at European Union level a definition of "national security", so as to cover the varying organisational systems of national security in the Member States.

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Therefore the Commission cannot provide a definition of this concept in the proposed Directive.

I hope that that these clarifications address the concerns expressed by the Spanish Parliament and I look forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*