



Brussels, 08 SEP. 2008
D(2008) 7168

Opinion

Title **Impact Assessment on: Recommendation on privacy, data protection, and security of RFID**
(draft version of 25 June 2008)

Lead DG **DG INFSO**

1) Impact Assessment Board Opinion

(A) Context

The Commission's Communication on "Radio Frequency Identification in Europe: steps towards a policy framework" from March 2007 addressed the need for a legal and policy framework to protect privacy and security to make the technology acceptable to users. It foresaw possible steps both in the field of specification and adoption of design criteria and drawing up specific codes of conducts on the use of RFID technology (complementary to or in explanation of Directive 95/46/EC). To this end the Communication announced that by the end of 2007 the Commission would propose a Recommendation to Member States to set out the principles that public authorities should apply in respect of RFID usage.

(B) Positive aspects

The technical comments which the Board had made on an earlier draft of the report have generally been well incorporated in the revised version to which this opinion relates.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance.

General recommendation: The report should clarify to what extent the planned recommendation will interpret Community legislation already in place, and explain the use of a Recommendation rather than another form of guidance document; state whether the proposed flexibility in the application of the opt-in principle is in conformity with the opinion of the European Data Protection Supervisor; quantify the administrative burdens; and ensure a balanced presentation of the overall impact of RFID on society. The report needs to be substantially shortened.

(1) Clarify whether the proposed Recommendation is limited to interpretation of the existing legal framework. Considering that the proposed Recommendation relates to an area where Community legislation is already in place, the report should clearly state which provisions are about interpreting Community law, and which (if any) go beyond that and have different objectives such as promoting good practice or ensuring a harmonised approach by Member States. The reasons for proposing a Recommendation rather than another type of guidance instrument should be presented in the report.

(2) State whether the "flexible approach" is in conformity with the advice of the European Data Protection Supervisor. The report should state explicitly whether in the Commission's view the various aspects of flexibility in the application of the opt-in principle, and especially the identification of tags that present no more than a negligible privacy risk, is in conformity with the opinion that was issued by the EDPS in December 2007.

(3) Quantify the impact on administrative burdens. Several provisions appear to create new administrative burdens, notably the requirement to carry out privacy impact assessments, the requirement to carry out audits, the requirement to provide written information, and labelling of tags. To the extent that these provisions do not directly derive from existing legislation, and to the extent that the size of the administrative burdens is significant, they should be quantified using the EU Standard Cost Model. If quantification is not possible at this stage then the report should say when this will be possible and that quantification will be provided at that stage. The report should also make clear that this analysis of costs will be taken into account when the recommendation will be evaluated.

(4) Give a balanced appraisal of the general impacts of RFID. Throughout the report, the impacts of this initiative should be clearly separated from the general impacts that RFID as a technology will have on society. To the extent that the report comments on these latter impacts, it should ensure a balanced appraisal which has due regard to potentially significant job losses in, for instance, the labour intensive parts of the retail industry.

(D) Procedure and presentation

It is essential that the length of the report is substantially reduced to reflect more closely the recommended maximum length of 30 pages (excl. annexes).

2) IAB scrutiny process

Reference number	2007/INFSO/048 (Catalogue initiative)
Author DG	INFSO-D-4
External expertise used	No
Date of Board Meeting	3 September 2008
Date of adoption of Opinion	08 SEP. 2008