



KYΠPΙΑKH ΔΗΜΟΚΡΑΤΙΑ
REPUBLIC OF CYPRUS



Informal Meeting of the Justice and Home Affairs Ministers

**Nicosia,
23-24 July 2012**

DISCUSSION PAPER – SESSION I (24/7/2012)

Data Protection Reform

Introduction

On 25 January 2012, the Commission presented a package of proposals to reform the EU data protection legal framework: a general Regulation, replacing Directive 95/46/EC, and a Directive regulating the processing of personal data by police and judicial authorities in the area of criminal law, replacing Framework Decision 977/2008/JHA.

These proposals aim at modernising EU data protection legislation and addressing the challenges posed by new technologies and globalisation. The objectives of the Commission proposals are to reinforce the protection of the fundamental right to data protection (particularly in digital environments) and to remove obstacles in the completion of the digital single market in the EU. Data protection is not only a fundamental right enshrined in the Charter but also a key element to boost individuals' trust in the digital environment and thereby a potential driver of economic growth and innovation.

A coherent and more uniform set of data protection rules consistently applied across the EU would be instrumental in eliminating the current costs and administrative burden for business deriving from different national data protection rules and requirements.

The discussions so far

The negotiation of these proposals is in progress both in Council and the European Parliament. Following their adoption by the Commission on 25 January 2012, the proposals have been subject to technical discussions at the working party level. An informal discussion on certain issues has taken place

at two lunches of the Ministers of Interior and Justice on 7/8 June under the Danish Presidency.

The discussions at working party level have shown a broad consensus among Member States on the need to reform the existing legal framework on data protection and to strengthen the rights of individuals to the protection of their personal data. Furthermore, a convergence of opinion among Member States has emerged on the necessity to ensure more harmonisation and consistency in the application of EU rules on data protection.

In the course of the discussions, particularly on the draft general Regulation, both at technical and political level, a number of horizontal themes have emerged, on which there appears to be scope for improvement on the Commission text. A large number of Member States have expressed concerns in relation to these issues, and have indicated the necessity to refine the Commission proposals. The nature of these emerging themes is such that they appear to merit horizontal approaches, steered by a discussion at political level, in order to frame a more structured technical dialogue in the most appropriate way.

Discussion points

Ministers are therefore invited to express their positions on the following issues emerging from the Commission's proposals:

1. Do Ministers agree that in order to facilitate the development of the digital single market, the strengthening of individuals' rights should be achieved without imposing disproportionate administrative burdens on those processing personal data? In this context, should certain formal requirements, not involving substantive principles, be better tailored – particularly for micro, small and medium-sized enterprises – on the basis of agreed criteria, such as the risks connected to the data processing activity, the size of the controller, the amount of personal data processed and/or the number of individuals (data subjects) affected? Are there any other differentiating criteria that could be appropriate to trigger the application of some rules?

2. The Commission's proposals, and the proposed Regulation in particular, contain a large number of cases where detailed rules would, on the basis of empowerments to the Commission, be adopted via delegated and implementing acts, based on Articles 290 and 291 of the TFEU. Discussions at Working Party level have shown that in many cases these are considered

as problematic by Member States and it appears there is therefore a need to review the necessity of such empowerments on their merits, including the likelihood of them being adopted in due time. Such case-by-case- review should obviously look at the conditions and safeguards (specified by the TFEU and other relevant legal texts) for framing the conferral of these powers. Do Ministers agree that in this context the following alternatives need to be investigated: (1) specify the detailed rules in the text of the Regulation itself, (2) leave the detailed rules, especially in cases of sector-specific arrangements, to be specified either in Member State law or in separate legislative proposals to be proposed by the Commission in the future. Those separate legislative acts would then complement the Regulation.
