



Perspectives on Data Notification, Data Retention and Data Protection from the European Commission

Philippe Renaudière,
Data Protection Officer
European Commission

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Data Retention

- Directive 2006/24
- Implementation by Member States: deadline 15/09/2007, except for internet data 15/03/2009; several MS failed to adopt legislation in time
- Conference May 2009: "Implementation of the directive uneven in several respects; industry criticised lack of harmonisation of reimbursement of costs and technical requirements"
- Expert Group papers
- Evaluation of the Directive due by 14/09/2010



Data Retention

- **Legal challenges:**
 - CoJ C301/06 10/02/2009:
legal basis art 95 OK
 - Constitutional Court of Romania 8/10/2009:
"the regulation of a positive obligation that foresees the continuous limitation of the privacy right and secrecy of correspondence makes the essence of the right disappear"



Perspectives for data protection

New context, New Impetus:

- Lisbon Treaty
- Stockholm Programme
- New Commission
- "Security vs Liberty" debate is going on...
- Review of the Data Protection Directive



Lisbon Treaty

- Art 8 Charter of Fundamental Rights of the EU
- Art 16 TFEU legal basis for the protection of personal data in EU
- Uniform level of protection across all areas of EU competences, including police/justice (only CFSP excluded)



Stockholm Programme

- **The Stockholm Programme - an open and secure Europe serving and protecting the citizen**
- **2.5 Protecting citizen's rights in the information society**
"The Union must address the necessity for increased exchange of personal data whilst ensuring the utmost respect for the protection of privacy"
- **4.2.2 Managing the flow of information:**
"implement an EU Information Management Strategy, which includes a strong data protection regime"



Stockholm Programme

- **European Council**, 10-11 Dec, 2009
- ***"Promoting citizenship and fundamental rights:***
European citizenship must become a tangible reality. The area of freedom, security and justice must above all be a single area in which fundamental rights are protected(...)
For example, the exercise of these freedoms and citizens' privacy must be preserved beyond national borders, especially by protecting personal data."
- Action Plan June 2010 / review 2012



Review of Data Protection Directive

- **Open Consultation:**
163 responses received (citizens 34, business organisations and associations 118, public authorities 11)
- **Central message:**
The main principles of data protection are still valid today and will continue to be so in the future



Review of Data Protection Directive

Challenges ahead for the Commission:

- need to **clarify** some key rules and principles: consent, transparency
- need to **introduce new principles**: privacy by design, accountability
- need to ensure protection **regardless of the location of the controller**
- need to **strengthen enforcement**
- need to **limit bureaucratic burden**



Review of Data Protection Directive

- Art 29 Working Party Document
(WP 168 of 1 December 2009)
"The Future of Privacy"
- One comprehensive framework
- Globalisation: applicable law, international standards, adequacy decisions, international agreements, BCR



Review of Data Protection Directive

- Technological changes:
privacy by design as a new principle
(+ regulation for specific technological contexts may be necessary, such as RFID, social networks, behavioural advertisement)
- Empowering data subjects
(redress mechanisms, transparency, consent)



Review of Data Protection Directive

Strengthening controllers' responsibility:

- embedding data protection in organisations:
internal policies, complaints mechanisms, audits, 3rd-party certification, privacy impact assessment, appointment of responsible persons
- Accountability Principle
(demonstrate compliance)
- Simplification of notifications



Data Protection in (ex) Third Pillar

- Stockholm Programme : Commission to work towards a comprehensive protection scheme across pillars
- Revision of Framework Decision 2008/977/JHA
- Declaration 50 Lisbon Treaty: replacement of former 3rd pillar acts in 5 years

Next Steps:

- 2010 Commission's Communication
- 2011 Legislative Proposals (based on 2010 evaluation, impact assessment)



Notification of Data Breaches

Reform of e-privacy directive 2002/58:

- Directive 2009/136 of 25/11/2009
- Extension to other sectors: recital 59
- "Pending a review to be carried out by the Commission of all relevant Community legislation in this field, the Commission, in consultation with the European Data Protection Supervisor, should take appropriate steps without delay to encourage the application throughout the Community of the principles embodied in the data breach notification rules contained in Directive 2002/58/EC (Directive on privacy and electronic communications), regardless of the sector, or the type, of data concerned."



Conclusion

- More to come...Stay tuned!
- Thank you for your attention
- For more information, please visit:
- DG JLS
http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm
- Data Protection Officer
<http://ec.europa.eu/dataprotectionofficer/index.cfm>