

UK GOVERNMENT BRIEFING FOR MEMBERS OF THE EUROPEAN PARLIAMENT

7 April 2011

Title: A comprehensive approach on personal data protection in the EU

EP Reference: INI/2011/2025 **Commission Communication:** COM(2010)0609

Legislative Procedure: Own-initiative report

Rapporteur: Axel Voss (DE EPP)

Lead EP Committee: Civil Liberties, Justice and Home Affairs (LIBE)

EP Committees (Opinions):

- Industry, Research and Energy (ITRE) – Giles Chichester (UK ECR)
- Internal Market and Consumer Protection (IMCO) – Matteo Salvini (IT EFD)
- Culture and Education (CULT) – Seán Kelly (IE EPP)
- Legal Affairs (JURI) – Françoise Castex (FR S&D)

Responsible Ministers in the UK:

The Minister of State for Justice, Lord McNally, is responsible for data protection policy.

I. UK Government's view on LIBE draft report and CULT and IMCO draft opinions

The UK Government welcomes the draft report from the LIBE Committee and the Opinions and amendments from the other Committees.

The UK Government agrees that the revised data protection regime should consider carefully the bureaucratic and financial burdens for organisations and believes that the potential benefits for citizens should be considered alongside a proper assessment of the costs of compliance. For example, the practical implications of the 'right to be forgotten' require detailed examination, not only in terms of the advantages it may bring to individuals when using social networking websites, but also in terms of the additional technical procedures that may be required in the context of the 'Cloud Computing' environment. The UK Government looks forward to these issues being explored fully in the Commission's impact assessment.

The UK Government remains concerned that the effect of increasing the number of categories of sensitive personal data could be that some existing 'routine' processing would be subject to unnecessary higher safeguards. The UK Government believes that it is the context in which the data is processed rather than the type of data itself that should be considered sensitive.

The UK Government believes that the mandatory appointment of Data Protection Officers is an area which should be examined further and agrees with the LIBE Rapporteur that it needs to be carefully assessed with regard to small and micro-enterprises. As noted in the UK Government's response to the Commission's public

consultation, many larger organisations already have employees whose responsibilities include responding to subject access requests, setting privacy policies, and ensuring that the processing of personal data is carried out securely and responsibly in accordance with the law. This proposal could potentially have significant additional bureaucratic and financial burdens for organisations.

The UK Government is concerned about strengthening and harmonising the status and powers of national data protection authorities merely on the basis of their deterrent value. As noted in its response to the Commission's public consultation, the UK Government has recently granted additional powers and penalties to its national data protection authority, the Information Commissioner's Office, and believes that any future powers should be informed by an analysis of the effectiveness of existing powers and rigorous impact assessments on their costs and benefits.

The UK Government agrees with members of the CULT Committee that there is an educational aspect to protecting children and minors, especially in the social networking environment. However, it does not believe that this should be an element of formal education or part of the curriculum in schools and other educational establishments. The UK Government has **concerns** about the proposals relating to the collection and processing of children and minors' personal data as proposed in **amendments to the CULT Committee's Opinion**, including making school pupils' personal data subject to explicit consent and the prohibition of collection of children's sensitive data. The UK Government believes this could irretrievably undermine the data which is essential for the administration of the education system, child protection and general welfare such as free school meals, special needs etc. and related research.

The UK Government has further **concerns** in relation to the **amendment to the IMCO Committee's Opinion** on giving individuals the right to be informed (subject access) free of charge about data collected about them and believes that a discretionary fee or nominal charge acknowledges the costs to organisations and helps to deter vexatious requests.

Further to the IMCO Committee's amendment on the modalities of redress, the UK Government believes that judicial collective redress should only be available where there is a genuine need, rather than as a general principle across a Member State's legal system. The UK Government has not yet been convinced there is evidence for such a need in the UK.

II. European Parliament consideration

The LIBE Committee will consider the Rapporteur's draft report on 11 April 2011, and decide on the deadline for tabling amendments. The CULT Committee is due to adopt its opinion on 11-12 April. The LIBE draft report is due to be adopted in Committee on 24 May, with the Plenary vote scheduled for 22 June.

III. Background / Views of others

The UK Government responded to the Commission's public consultation on the Communication on the 14 January 2011, highlighting the importance of evidence based arguments; the processing of personal data founded on the principles of necessity and proportionality; stringent data protection safeguards, especially when handling sensitive personal data; and independent data protection oversight.

The UK Government launched a Call for Evidence on the data protection legislative framework on 6 July 2010, which closed on 6 October. The Call for Evidence invited individuals, private organisations and public authorities to provide evidence on the current legislative framework on data protection, and in particular, how well they consider the UK's Data Protection Act 1998 (DPA) addresses certain specific or technical matters, how the current legislation is working and how it could be improved.

Over 160 written responses were received from a range of interested parties, including central and local government, law enforcement authorities, trade unions, retailers, finance, technology and telecom companies, utility companies, small and medium enterprises, health organisations, legal organisations and information rights experts along with members of the public, civil society associations and consumer groups.

As well as the publication of the evidence paper, the Call for Evidence included workshops and meetings with key interested parties which took place between August and October 2010.

The UK Government also carried out a Post-Implementation Review (PIR) of the UK's DPA to assess the costs and benefits it has brought. The full PIR Impact Assessment was published on 28 January 2011, alongside the findings from the Call for Evidence. The documents can be found at: www.justice.gov.uk/consultations/call-for-evidence-060710.htm

The findings from the Call for Evidence and the PIR will help inform the UK Government's views on the proposals stemming from the Communication.

IV. Official Contact Point for further information

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