

Interesting Times for EU Data Protection *

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In recent months, there has not been a lack of news for legal professionals interested in EU data protection. At the centre of stage is no doubt the review of the EU legal framework for data protection, including a Commission proposal for a Regulation designed to replace Directive 95/46/EC and apply directly in all the Member States. But other relevant issues have recently also taken some of the limelight.

The Commission proposal - discussed in this issue - aims to serve three objectives. First and foremost, it is designed to update and reinforce the current EU framework for data protection. The current Directive was adopted in an era when the Internet was still far from its present highly dynamic reality. This means that existing safeguards for the rights and freedoms of EU citizens not only need to be modernised, but also strengthened substantially in order to provide a more effective protection against the ongoing challenges of the 21st century.

A second important objective is to make EU data protection law also more consistent across all member states. The current Directive - although designed to ensure a greater harmonisation of national law - has resulted in a situation of many, sometimes quite different national versions of the same rights and obligations. This translates not only in unnecessary costs for - private or public - cross border activities, but also in a loss of effectiveness of protection for citizens, who also increasingly move across borders. Ensuring greater consistency across the EU will require a greater focus on a common result at a sufficiently high level.

A third objective of the Commission was to ensure a more horizontal approach in data protection across all EU policy areas. The Lisbon Treaty has provided a horizontal legal basis for more effective protection in all those areas, including the field of criminal law enforcement. Here, the current proposals are less comprehensive than

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they could and should have been. But it is also possible to see the review as a process in different stages. The Regulation will probably be the first deliverable, but the other elements should follow very soon, including those for criminal law enforcement.

The European Parliament and the Council are now preparing their midterm positions on the proposal. Under the Irish Presidency, the Council has made great progress and will soon be ready to work with the Parliament on a common text. If such a text would be available by early next year, it would be possible to deliver a major portion of the Reform by spring 2014, just before the end of the Parliament's current mandate.

This is indeed essential. However, the lobbying by organisations both from Europe and elsewhere has been exceptional. Following the presentation of the EDPS Annual Report for 2012, I have therefore warned the EU legislator to guard against undue pressure from industry and third countries to lower the existing level of data protection, and instead seize the opportunity to ensure stronger and more effective protection to individuals across the EU.

Other relevant issues have now also appeared on the stage. Earlier this year, the EU has launched a Cyber Security Strategy, including proposals for a high common level of network and information security across the Union. In my view, a credible cyber security strategy needs to be based on privacy and trust. Privacy and data protection should therefore serve as guiding principles. Cyber security should never be an excuse for unlimited monitoring of individuals.

However, exactly this basis of trust was compromised by recent news of large scale monitoring in the US. This subject has raised grave concerns and therefore requires profound clarification and explanation. European leaders have indeed insisted on both, and with unusually strong language.

Meanwhile, the Council has cleared the road for negotiations on an EU-US Trade and Investment agreement, which will help to create jobs and strengthen the economies at both sides of the Atlantic. The European Commission has insisted that EU standards of consumer, environment or health protection, including privacy and data protection, will not be affected.

In other words, there is still much work to be done on different levels, but we should keep our focus. All issues should be addressed, but we should not get confused or be distracted from delivering a result within reach: a much stronger EU legal framework for data protection. In fact, most building blocks are now on the table, it just takes the courage and the ambition to take the right decisions.