

Position Paper

UEAPME¹ position on a comprehensive approach on personal data protection in the European Union

General remarks

UEAPME, the European Association of Craft, Small and Medium-sized Enterprises, welcomes the fact that the European Commission is putting forward its work on the issue of data protection, after the consultation on the legal framework for fundamental rights to protection of personal data in December 2009.

As we have already stated in the consultation from 2009, we consider that there is the need to review the existing legal framework in some aspects because of the new technologies and technical developments. At the same time, we consider that the current legal framework ensures a high level of data protection in the European Union although the text is indeed not in accordance with the state of new technologies and services.

For this reasons it is important that the European Commission carries out the review of the current legal framework on a very balanced way. On the one hand there is the need to adapt the current legal framework to the new technological developments, but on the other hand the review should not lead to inappropriate obstacles and to higher administrative burdens for SMEs.

It is important to avoid the establishment of disproportional revision, which would not afford effective protection through overregulation. UEAPME supports the aim of the revision but the instruments which are foreseen by the Commission in the communication to achieve this aim do not always seem appropriate and sufficient. For example, more transparency cannot be achieved through the flood of obsessive information or so cannot be clarification of infringements through mandatory personal data breach notification.

For all these reasons the aim of the revision of the personal data protection in the European Union should be the improvement of the legal basis, which means safeguarding of data protection in international context and proper and clearly worded rights and obligations for the data subjects and data controllers.

So far, the lack of **harmonisation** has led to legal inequality and unfair competition within the Internal Market. The principles of “smart regulation” should be taken into account when reviewing the directive. This means, in the first place, taking the end-users into account.

Because of the extreme complexity of this technical topic, it is more than important to draft understandable law in order to avoid more burdens on small and medium sized-enterprises. It has to be kept short, simple and practical. SMEs need to be able to understand the main objectives and rules of data protection.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

In addition, UEAPME calls for actions for more active and improved information campaigns toward consumers and SMEs on data protection. These kinds of campaigns should be carried out at European, national and regional level in partnership with representative SME organisations.

Specific remarks

1) Adaptation to new technological developments

The adaptation to new technological developments should be carried out in a balanced way. On the one side it is important that the rules are designed in a technological neutral way, with more interoperability and open source systems. Only in this way it will be ensured that rules can apply in all situations and are not affected by the fast technical developments. It would be much more useful if the approach would focus on the awareness raising of consumers dealing with personal data in particular regarding the use of new media.

2) Increasing transparency for data subjects

We do consider the importance of transparency with respect to the collection or use of personal data since SMEs are often affected by that as well. However, we would like to underline that transparency should not mean to overload the data subject with plenty of information. It should mean that the data subject receives relevant and targeted information with real value. With respect to the introduction of general information duties the European Commission should bear in mind during the drafting procedure that it must be avoided to put more administrative burdens on SMEs. It is more important that the data subject receives the really relevant information instead of getting lost in a maze of useless information. For this reason UEAPME could agree on the introduction of one or more "EU standard forms (privacy information notices)" only if these would not have a mandatory character and if they are drafted in an SME friendly way. Too many general principles concerning information duties would cause the increase of prices for the data subject, since it would mean more costs and administrative burdens for the data controller, not to mention that the data subject would not even consider big part of those information as relevant.

3) Mandatory personal data breach notification

A mandatory personal data breach notification could be welcomed in principle. However, we do not think that this is in line with the practical reality of the everyday life of an SME, which should be taken into account by the Commission. The data controller is most of the time not aware of his illegal behaviour, which means again that he will not be able to give information about it to the person concerned. In case the data controller is recognising the prohibited processing of data, he will give information to the person concerned irrespective of a mandatory data breach notification.

4) Enhancing control over one's own data

The Commission's intention of clarifying and strengthening the rules on consent should focus on such kind of data usages which concerns unusual data (and we do not mean here the issue of sensible data) or data with special quality. Data which are anyway publicly accessible should be able to be used without former consent. The data subject is still protected since he can make use his appeal in order to stop the use of his data.

5) Making remedies more and sanctions more effective

The extension of the power in order to bring an action before national courts to data protection organisation is far too dangerous for SMEs. This power can be easily abused by these organisations and creates a high potential for blackmail. Although until the final judgment it is still open on whether the claim is justified, the whole procedure alone means already an enormous damage concerning the image of the enterprise. Especially smaller enterprises cannot recover from this damage even if the judgment is positive for them. For these reasons we ask the Commission to deal with this question on a very sensitive way and weight the pro and contra of both sides.

Furthermore, UEAPME do not see the need to strengthen the existing provisions on sanctions. Already nowadays are the sanctions, especially high fines, introduced in the Member States sufficient.

6) Reducing administrative burdens

UEAPME welcomes the Commission's intention to reduce administrative burdens for controllers and to simplify the current notification system.

7) Enhancing data controllers' responsibility

UEAPME can only support the mandatory appointment of an independent "Data Protection Officer" if this instrument would not cause extra costs and administrative burdens for SMEs. If this new instrument will be aligned with costs for SMEs it can be used only on voluntary basis. Nevertheless, UEAPME believes that internal data protection responsible are – because of their knowledge and experience – more useful and are more able to minimise risk and prevent illegal behaviour in a more effective way. However this issue has to be dealt in a very sensitive way, since this can have a major operational impact on SMEs at European and at national level.

The obligation to carry out "data protection impact assessment" can be introduced only in cases with specific risks etc. Those cases have to be well defined, justified and clearly listed in the new framework in order to avoid any uncertainty. However, the sense of this internal impact assessment is questionable, since data controllers are anyway obliged by the law to maintain the legal framework.

8) Encouraging self-regulatory initiatives and exploring EU certification schemes

UEAPME supports self-regulatory initiatives in this respect.

With respect to the establishment of an "EU certification schemes" in the field of privacy and data protection UEAPME takes reference on its reply to the consultation on legal framework for fundamental rights to protection of personal data from the 18 December 2009. In this position paper it was already stated that the EC proposal to introduce a European certification scheme for "privacy aware" technologies, products and services rests an inside instrument. There are already experiences with this discussion in Member States (Germany) which show that a practicable implementation of a European Certification scheme is not able to appropriate to all necessary exigencies. According to our view a general qualification of privacy awareness referring to technologies, products and services is not possible. It has to be taken into consideration that because of the wide range of different technologies, products and services every single one has to be qualified and certified individually. Furthermore the qualification has to be permanent to guarantee the validity of the certification, which requires a personal and bureaucratic effort. The introduction of this kind of certification scheme can be only a voluntary instrument. In case of a comprehensive duty for all new technologies, products and services would lead to commercial damages like market entries of new products or innovative services could not be performed in time.

Therefore we suggest that the scope should not contain those new technologies, products and services which do not have special or high data relevance. Everything else would mean more bureaucratic obstacles, which are especially burdensome for SMEs. For this reason the European Certification scheme should meet the “think small first” fundamental principle introduced by the Small Business Act.

9) The need for a single point of contact for the processing of personal data

UEAPME has concerns regarding main uncertainties concerning the unsecured data transfers existing outside of the EU.

To boost cross-border and international trade an easy transfers of data (data of clients) to third countries is necessary. This transfer is allowed if the third country in question ensures an adequate level of protection. This level shall be assessed in the light of all the circumstances surrounding a data transfer operation. However, the scope of these circumstances is not further defined and not always very clear, although it is positive that there is an open and flexible approach. It is the functionality of the chosen solution that prevails and not the form in which it has to be done. On the other hand we miss a clear frame of reference. Therefore UEAPME believes that the revision must clearly define the balance between the free movement of personal data and the protection of them.

When the processing of personal data has been notified in one member state, this notification should be valid in all the Member States and the data should be allowed to move freely without endangering the protection of the personal data. To ensure this unique notification it is necessary that in all the Members States for the same kind of data, the same protection, in conformity with the principles of the directive, is guaranteed. In any case it should be possible to do the notification electronically, in a simplified way, through **one single point of contact**. This is not clear.

10) Need for an integrated vision on data protection: Should the scope of the directive be extended

In many Member States various forms of company statutes exist where the difference concerning the personal data between the legal person and the natural person are not that clear. The data published in some company directories concern then directly the identifiable natural person behind the legal person and concern thus real ‘personal data’. As often the published data are only the lost/profit data or turnover of the company, this gives a biased view of the company and can harm the reputation of the enterprise/entrepreneur.

It would be appropriate that also legal persons should give their explicit consent for the processing of data that are not solely a reproduction of neutral, objective, public available and transparent data. However, the flexibility of the data processing and the data transfer should not be needlessly affected, should not add unnecessary administrative burdens for SMEs and should be in line with the “Think small first” principle.

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