



Joint position UEAPME and HOTREC

General Data Protection Regulation

(specifically the obligation for SMEs to designate a Data Protection Officer)

UEAPME, the European Association of Craft, Small and Medium-Sized Enterprises, representing 12 million enterprises across Europe and HOTREC, the umbrella Association of Hotels, Restaurants and Cafés in Europe, representing 1.7 million businesses, would like to highlight their views on the General Data Protection Regulation regarding the exclusion of SMEs from certain provisions of the proposal, and in particular on the designation of a data protection officer (DPO) in small and medium-sized enterprises.

The European Commission's proposal foresees a general obligation on the designation of a data protection officer, according to article 35, with some exemptions¹. One of these exemptions introduces a **“lighter” regime for SMEs**, in case their core activity does not “require regular and systematic monitoring of data subjects”.

On the contrary, the draft report presented to the LIBE Committee of the European Parliament deleted and altered this approach in its amendment 223². The draft report makes the obligation of designating a DPO mandatory whenever “the processing is carried out by a legal person and relates to more than 500 data subjects per year.” As justification, it has been put forward that nowadays with all the technological developments even an SME is able to process a significant amount of data and, therefore, the exclusion should be based “on the relevance of the processing” and not on the size of the company. Further it is explained that this “relevance of the processing” “includes the categories of personal data processed, the type of processing activity, and the number of individuals whose data are processed. Nevertheless, the draft report has not taken its own proposed criteria into account.

After having evaluated the number of 500 data subjects, it has become clear for both organisations that rarely any SME will fall under a lighter regime, even if it might not have data processing as core activity. It is to highlight that any SME has usually more than 500 potential contacts and in this way processes their personal data. The costs of such an exercise are high. In fact, the European Commission's impact assessment calculated a rate of 250 euro per hour as an average cost of employing an external DPO³. Further, it is explained that for an SME, it would take four hours on average to deal with compliance checking, which would have a cost of 1000 euro per year⁴. If we take into account that in Europe 99,8% of all companies are SMEs and 50% of these are one person companies, an additional 1000 euro cost represents a significantly unproportional burden. In fact, the

¹ Proposal for a General Data Protection Regulation, COM(2012) 11 final

² Draft report on the General Data Protection Regulation, Committee of Civil Liberties, Justice and Home Affairs, 2012/0011 (COD)

³ p. 117 Annex 6 and 142 Annex 9 of the Impact Assessment on the Commission proposal on a General Data Protection Regulation [SEC \(2012\) 72 final](#)

⁴ p. 121 Annex 6 of the Impact Assessment on the Commission proposal on a General Data Protection Regulation [SEC \(2012\) 72 final](#)

new threshold of 500 data subjects introduced by the draft report would not even protect microenterprises. **Indeed, all SMEs would have the extra cost of paying the DPO and would need to face unnecessary administrative burdens.** And in most of the cases, these costs would not imply a greater protection of fundamental rights. Actually, why should a little restaurant or hotel with few employees face this burden, when their processing activity, which is limited to some contact details of the data subject, is not a threat to the data subject at all? In particular in these times of crisis, this would have a serious effect on them. The same can be said about any little shop of craft persons.

The categories of data being processed and the type of processing activity that is done should be the only decisive factors to be taken into account. However, the draft report has not presented an approach to apply this new criteria and, therefore, the solution presented is not a reasonable one (aforementioned threshold of 500 data subjects). In fact, in this particular field it is not possible to establish a "one size fits all approach". **In fact, the particularities of SMEs, the majority of which do not have data processing as core activity, have to be accepted.**

The **proportionality principle** should be applied as a basic rule whenever SME policies' are concerned.

For these reasons, **UEAPME and HOTREC call on the European Parliament to put forward the exclusion of SMEs as it has been presented in the European Commission's proposal.** The reintroduction of this exemption is the only way to ensure that the new legislative act will be effective and practical. A stronger data protection set of rules is without purpose, if it is not reliable and possible to implement.

Nevertheless, if the European Parliament is not willing to follow our recommendations, it is important to point out that a new **impact assessment** must be carried out, should the introduction of any exclusion be linked to the number of the data subjects. Whereas the economic effects of the future Regulation and its provision on the designation of a data protection officer are based on the European Commission's impact assessment, the draft report has not presented the necessary studies to estimate the consequences of its proposal on this point. For this reason UEAPME and HOTREC call on European Parliament to meet these requirements before a possible introduction of a new approach in this respect.

The relevance of this question is also confirmed by the fact that, after the Impact Assessment Board's opinion was issued, further details on the impacts of the data protection officer towards SMEs have been introduced in the final impact assessment⁵.

UEAPME and HOTREC trust that these important comments will be taken into account during the legislative procedure of the proposal for a General Data Protection Regulation.

Brussels, 7 February 2013

⁵ p.5 Proposal for a General Data Protection Regulation, COM(2012) 11 final