

Data Protection Reform: Strengthening individuals' rights in the digital era

No. 21 May 2015

By Pagona Tsormpatzoudi

The data protection reform addresses the challenge to develop a harmonized framework for the protection of personal data in Europe. It aspires to facilitate the completion of the internal market and establish a European stance towards data protection at global level. It also places at the center of attention the individual. Within its subject matter is to strengthen, besides data protection, other individuals' fundamental rights (Article 1 paragraph 2 of the proposed General Data Protection Regulation), as for instance, the right to privacy.

Privacy has been enshrined in Article 8 of the Council of Europe European Convention on Human rights as "the right to respect for one's private and family life, home and correspondence" since 1950. Data protection emerged as a separate and partly overlapping fundamental right later, in response to the processing of huge amounts of data within government and large corporations¹. That was the case of the SAFARI program in France, where government plans to store citizens' personal data files in centralized databases caused huge public outcry². Similar was the case of the German population census which triggered the emergence of the right to informational self-determination introduced by the German Constitutional Court³.

The above discourse gave birth to the right to data protection in Europe which reflected the intention to tame technology and ensure that the interests of the society are respected at large⁴. Whereas the first national data protection acts were enacted in the 1970s, the Data protection Directive 95/46/EC was adopted in 1995.

A bit later, in 2000, the European Charter of Fundamental Rights enshrined the both rights to privacy and data protection⁵. That was the time that the internet arrived and started expanding in Europe. Progressively the use of internet and communication technologies grew exponentially and by the end of 2000s Europe was entering a new digital era. Nowadays, technological developments continue in a fast pace and result in "datafication", i.e. the "ability to render into data many aspects of the world that have never been quantified before"⁶.

This created a pressing need to update the existing data protection rules. To that end, the Commission introduced in 2012 two legislative proposals: The General Data Protection Regulation⁷ and the Directive on the protection of personal data when data processing takes place for law enforcement purposes⁸. User empowerment by providing more transparency and control over own data, stricter obligations for data controllers and an enhanced role for data protection authorities seem to be the highlights of the reform. Currently the priority is to finalise core aspects proposed in the General Data Protection Regulation; elaborating on the specificities the Directive will eventually follow. Both legislative acts are being adopted under the ordinary legislative procedure as laid down in Treaty of Lisbon (formerly known as "co-decision" procedure), which represents the so-called "Community method" and reflects the Union's supranational powers to adopt legislation.

With regards to the Regulation, the Commission exhausted its legislative initiative by providing a first draft in 25 January 2012.

Then it was time for the Parliament to take the floor (first reading). In order to form a common position, the draft regulation had to go through certain stages: First the rapporteurs, MEPs Jan Philipp Albrecht and Dimitris Droutsas had to provide an initial report compiling all the amendments proposed by MEPs. Second, the Liberties Justice and Home Affairs (“LIBE”) Committee had to vote on the report and adopt a common position. After the adoption from the LIBE Committee and in view of the European Elections of May 2014, the plenary of the parliament was called to fix their position which would not change after the elections. The adoption by the plenary in March 2014 signaled that the Parliament was ready to negotiate with the Council once the latter one defined a common position.

Currently the draft is under discussion in the Council, which represents the Union’s governments. The Council which elaborates on the Regulation chapter by chapter has to adopt a position and communicate it to the other institutions. While negotiations on the most controversial articles have not been concluded, the Council’s first reading is expected to be finalized by the summer 2015. If no agreement between the Parliament and the Council can be reached, a second reading and eventually a reconciliation process amongst the different opinions will be needed (Article 294 Treaty of the Functioning on the European Union).

Pagona Tsormpatzoudi

is a ZEI Alumna (Class of 2012) and currently affiliated with Katholieke Universiteit Leuven, Interdisciplinary Center for Law and ICT/Center for Intellectual Property (ICRI/CIR)

1. Mayer-Schönberger, V., ‘Generational Development of Data Protection in Europe’, in P. Agre & M. Rotenberg (eds.) *Technology and Privacy: The New Landscape* (MIT Press 1998) 219-242.

2. Senat, Dossiers d’ histoire : 1977 - 1978 : Le Senat invente les autorités administratives indépendantes. Retrieved from <http://www.senat.fr/evenement/archives/D45/context.html>. SAFARI stands for ‘Système Automatisé pour les Fichiers Administratifs et le Répertoire des Individus’ (Automated System for Administrative Files and the Repertory of Individuals).
3. Hornung, G. & Schnabel, C. ‘Data protection in Germany I: The population census decision and the right to informational self-determination’ *Computer Law & Security Report*, 25, 1 (2009) 84-88.
4. Mayer-Schönberger.
5. The Charter became legally binding with the entry into force of the Treaty of Lisbon in December 2009.
6. Mayer-Schönberger, V., & Cukier, K., ‘Big Data: A Revolution that Will Transform how We Live, Work, and Think’ Eamon Dolan/Houghton Mifflin (2013).
7. Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) / COM/2012/011 final.
8. Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data / COM/2012/010 final.

ZEI Insights are a part of the Research Project - Governance and Regulation in the EU: [The Future of Europe](#)

ZEI Insights provide commentary and critical analysis on governance and regulation issues related to the future of the European Union. Authors are responsible for their own views.