



EXECUTIVE SUMMARY

Public Position

*of the Confederation of European Data Protection Organisations
(CEDPO)*

on the European Commission Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND 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) 11



Germany



AFCDP

France



The Netherlands



Spain

I. INTRODUCTION

On January 25th 2012 the European Commission adopted the proposal of a Regulation to set up the future data protection framework within the European Union – COM(2012) 11 final. Created in September 2011 by the leading German, French, Dutch and Spanish data protection organisations, the Confederation of European Data Protection Organisations (CEDPO) meanwhile provided two position papers (see attachments 1 and 2) to the Commission as well as to members of the European Parliament and the Council, including the following points:

II. GENERAL COMMENTS ON THE COMMISSION PROPOSAL

CEDPO welcomes the Commission's initiative to harmonise and modernise the legal framework of data protection in the EU and considers that it is essential to reduce administrative burdens bearing upon data controllers and processors. However, CEDPO feels that the Commission's proposal does not exploit the full potential of administrative simplification, especially with regard to the role of the Data Protection Officer (DPO).

Generally, the envisaged strengthening and harmonisation of the role and position of the DPO is very welcome by CEDPO, as this is an important measure in order to intensify internal compliance mechanisms and also because this reflects the growing importance of DPOs in organisations worldwide. From a CEDPO point of view, appointing DPOs is essential to make effective the accountability principle.

III. THE ROLE AND POSITION OF THE DATA PROTECTION OFFICER (DPO)

CEDPO would have preferred that the obligation to appoint a DPO be based on criteria relating to the risks implied by the contemplated data processing activity.

CEDPO believes that it is necessary that the Regulation provides for incentives in favor of the appointment of a DPO for those controllers and processors who are bound to appoint a DPO but also for those who make the compliance choice to appoint a DPO even when they are not subject to a legal obligation to do so. In addition, the Confederation suggests communication campaigns at European and Member States level to promote the role of the DPO as well as the positive effects of the appointment of a DPO on the activities of data controllers.

In order to incentivize the appointment of DPOs and to strengthen the efficiency of the DPO, several concrete measures are suggested:

- **the avoidance of unnecessary prior consultation procedures with national data protection authorities**, when a DPO is appointed. This measure would adequately reduce the administrative burden without weakening the protection of personal data;
- **the setting up of a mediation with the DPO** which should take place before a lawsuit or the filing of a claim with a data protection authority when a data subject brings a claim or contemplates to complain;

- **in the framework of the future obligation to notify data protection breaches** to the national data protection authority, the analysis of the concerned incident by the DPO and the advice of the DPO to the data controller on the relevance of the notification of the incident to the data protection authority should be secured;
- **the obligation of the data controller to provide the DPO with an adequate qualification:** CEDPO recommends an explicit provision according to which the employer must allow the DPO to benefit from qualified, continuous training;
- **the creation of a protective framework for the DPO's independence:** Not only the monitoring functions of the DPOs, but also their strategic and proactive role, supported by effective means, should explicitly be mentioned in the Regulation. This will considerably contribute to the value of the DPO to the benefit of all parties involved, especially the data subjects and the controllers / processors themselves. Furthermore, CEDPO questions the envisaged appointment of a DPO for a minimum duration of two years, renewable. In order to grant the DPOs the necessary level of independence to perform properly their mission, CEDPO proposes instead to provide the DPO with protections against unfair dismissal.

CEDPO has expressed its position in a first position paper released on the 30th of March 2012 (see attachment 1; also available at www.cedpo.eu). Since then, CEDPO has released a second document proposing draft amendments to the Regulation proposal (see attachment 2; also available at www.cedpo.eu). The latter document, issued on October 19th 2012, also develops additional key points especially with regard to the need for the Regulation's recitals to precise the central role of the DPO in all processes required under the Regulation. In addition, because DPOs have had practical experience of the implementation of data protection rules for as long as 35 years (since the enactment of German data protection law), CEDPO advocates in favour of the presence of DPO representatives within the European Data Protection Board, alongside to data protection authority representatives.

Bonn,

Den Haag,

Madrid,

Paris,

November 9th 2012