



# The EU Data Protection Reform: challenges for the Judiciary

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# A New Data Protection Legal Framework

## Reasons for a substantive reform

- Globalisation: increased transnational flows of data to be facilitated while ensuring adequate protection
- Technological changes
- Institutional changes: the Lisbon Treaty and the Charter
- A fragmented legal framework at EU level: need for more harmonisation and of new coherent and uniformly applied EU rules
- Legal certainty
- Need for change with regard to police and judicial activities

## A. The *Chapeau* communication

## B. The draft Regulation

- I. General assessment
- II. Scope, new definitions or principles
- III. Data subjects
- IV. Controllers
- V. Supervision and enforcement
- VI. Transfer to third countries

## C. The Directive on police and judicial activities

- **The future DP Legal Framework:**

- a huge step forward for data protection in the EU;
- enhances harmonisation of data protection;
- reinforces position and rights of data subjects particularly on-line;
  - strengthens responsibility of controllers;
  - strengthens DPA's supervision and enforcement.

# One of the most important EU dossiers

- Heavy lobbying, 3999 amendments;
- European Parliament:
  - compromise text adopted in March 2014
  - ready to start relevant negotiations within trilogues;
- EU Council:
  - commitment to reach an agreement (European Council, October 2013);
  - partial agreement under IE Presidency;
  - JHA Council second partial general approach (6 June 2014);
  - Key role for the IT Presidency.

# The « trias politica » principle within European countries

- The judiciary as independent and autonomous power from others
- Checks, balances and connections between powers, including the judiciary (i.e. organisation of supporting services and tribunals by a Ministry of Justice)

# Data protection for the judiciary ?

- The judiciary as a State branch
- Does its mission require different data protection rules ?
- To what extent are adjustments, specific provisions or derogations justified?

# The EU legal framework on data protection

Article 16 of the TFUE: a new fundamental right enforceable before a judge in each MS

Need to establish a comprehensive data protection scheme

A legally binding Charter of FR: Articles 7 and 8

The Area of FSJ and e-Justice initiatives



# **Data protection as a tool for an efficient judiciary/1**

Data protection as a form of engineering personal information

Successful interaction and mutual trust between judiciary and law enforcement

Support and supervision by DPAs

# **Data protection as a tool for an efficient judiciary/2**

Too few or too many law enforcement databases?

How many really intelligent databases and efficient instruments are available for the judiciary?

What about the quality level of information currently communicated to the wider public or exchanged for law enforcement purposes?

How much information is used or overlapping?

# **Data protection as a tool for an efficient judiciary/3**

Privacy by design and privacy by default applied to the judiciary

Centralised/decentralised architecture of data systems

Means of connectivity, secured access, on-line access by citizens to court files

# Some ideas on how to implement in practice data protection principles

Principles of necessity and transparency

Not everything that is technically feasible is socially acceptable or legally permitted

The « one box only » principle

Data Protection Officers

Administrative data/delicate information

# What can Europe and data protection do ?

Common training programmes

Additional networks for mutual exchanges

The role of large scale IT systems

# Data protection and communication/1

A snapshot of the databases and of the most important categories of processing of data

Identify and allocate responsibilities: databases shared by several courts or investigative bodies

Controllers and processors

Activities of an administrative nature or relevant for the « ius dicere »

# Data protection and communication/2

The role of the heads of the courts and tribunals

Old fashioned rules on communication of data in the  
national codes

Convention 108/1981 and Directive 95/46/EC

Retention of data

Rights of access: parties to proceedings and  
interested third parties

# Data protection and communication/3

How to draw up decisions that can be accessed by  
third parties

Accessible files

Anonymity or right to oblivion ?

The role of the judicial websites

External and internal search engines



**Need for an intelligent and less  
formal data protection policy**

**More justice for citizens also  
demands increased data protection**

**Thank you for your attention**