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NOTE

from:	General Secretariat
to:	Delegations
Subject:	Proposed data protection directive - personal data processed in the framework of police and judicial cooperation in criminal matters, Commission statement, Plenary session of the European Parliament, 21 November 2012

On behalf of the European Commission, Ms DAMANAKI, Member of the Commission, delivered the statement annexed to this report.

Her intervention was followed by a round of speakers representing political groups.

Mr KELLY (IE), on behalf of the EPP group, pointed out the need to update the current Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. He considered that this Decision was leading to a very wide range of interpretation at Member State level, the result being that some Member States had high data protection standards while others had very low standards. Mr KELLY recalled that Parliament itself would have preferred a single instrument in order to revise the Decision, but could accept the Commission's proposals for a Regulation and a Directive. Mr KELLY also expressed the concern of his political group on the lack of urgency at Council level to deal with the directive, noting however that there was some progress on the Regulation. He also said that he would ask the Council to bring forward a roadmap for the future work on this dossier and noted that the Irish Prime Minister said that during the Irish Presidency they would have this as one of their priorities.

As a "blue card" question, Ms TIÇAU (S&D, RO) asked how the new package would influence international agreements such as those on SWIFT or Passenger Name Records, stressing that it was important to know how these and future international agreements of this type would be aligned to the new data protection package. Mr KELLY replied that, in his opinion, it was a very important point, because there must be consistency right across the board and all these matters must be taken into consideration; he again urged the Council to show some sense of urgency regarding this matter in order to complete it during the current mandate of EP.

On behalf of the S&D group, Mr DROUTSAS (EL) recalled that the EP considered data protection a very important issue and stressed the necessity for a comprehensive approach. He confirmed that the goal of the Parliament was to have a comprehensive single instrument on data protection, addressing all relevant issues and areas. He regretted that the Commission had not proposed a single instrument but rather two, but welcomed the commitment, confirmed by Ms Damanaki, to consider the draft Regulation and the draft Directive as a legislative package. Mr DROUTSAS considered cooperation with the Commission excellent and regretted that such was not the case with the Council. He criticised the Council's absence from the debate.

Ms IN'T VELD (ALDE, NL) supported this opinion and also criticised the absence of the Council. She supported the package approach and insisted on quick results on this dossier in the Council. She said that if the Council was keen on further measures in the area of police and justice cooperation, there were several examples such as: EU PNR and investigation order. Ms IN'T VELD stated that the EP would work very hard to align the Directive with the Regulation and to ensure a single harmonised level of data protection for all use of personal data.

On behalf of the Greens, Mr ALBRECHT (DE) recalled that the EP had repeatedly insisted on the importance of common standards for the rule of law and protection of fundamental rights in the area of data protection. He called on the Council to cooperate actively in the design of the Data Protection Directive and reconfirmed his opinion that common minimum standards were need.

Mr KIRKHOPE (UK), on behalf of the ECR Group and speaking as rapporteur for the EU PNR agreement, considered the directive essential to increase the confidence of European citizens in the work that law enforcement agencies carry out. He therefore expressed his hope that the directive would achieve two main goals: protecting civil liberties and lives, but also creating mechanisms to allow for the safe exchange of law enforcement data.

On behalf of the GUE group, Ms ERNST (DE) also strongly criticised the absence of the Council. She pointed out that equal protection standards were needed in the area of data protection for both public and private sectors, in order to guarantee fundamental rights.

In conclusion, Ms DAMANAKI referred again to two main points. Firstly, she reconfirmed that, for the Commission, progress on this very important issue means that the negotiations would be on both the regulation and the directive as a package. Secondly, she stressed that the Commission would make all possible efforts to ensure that the new legislation – the new post-Lisbon legislation on data protection – would be taken into account in all agreements and proposals having some relevance to the data protection issue. She also called for the difficulties both with the Council and with Parliament to be overcome and underlined that the Commission would welcome any initiatives from the Irish Presidency of the Council.

Speech of Ms Maria Damanaki, Member of the Commission

Mr President,

The Commission presented the reform proposal for the EU data protection regime in January for two reasons: first, to ensure a high level of data protection for individuals as provided for in the treaties and second, to offer European businesses a future-proof and technologically neutral data protection regime.

We must now make rapid progress to reach agreement on the package on the table. In Parliament the progress has been particularly noticeable in the different working documents and draft reports prepared by the rapporteurs. For the Commission, progress means that the regulation and the directive continue to be negotiated as a package. The freedom and security of our European citizens are two sides of the same coin. These are two policy objectives that should be reached with the adoption of the proposals to reform the European Union rules on data protection.

As regards the personal data processed in the context of police and judicial cooperation, we currently have a multitude of rules and different legal instruments. The entry into force of the Lisbon Treaty allows the establishment of a comprehensive data protection framework. We can ensure a high level of protection for individuals' data whilst respecting the specific nature of the field of police and judicial cooperation in criminal matters. In particular, the revised EU data protection framework can now cover both cross-border and domestic processing of personal data. This would reduce differences between the legislation in Member States.

The status quo may not always facilitate the smooth exchange of information between Member States. The rules set by the pre-Lisbon Framework Decision that the proposed Directive aims to replace are limited to cross-border processing. In practice, police and law enforcement authorities may not have always distinguished between cross-border and domestic processing. It is not always feasible to draw this distinction in the daily work of a policeman or of a court. For instance, a single national database used in the law enforcement field may contain personal data that were both collected nationally and received from another Member State.

It would be inefficient to create two separate databases in such situations; it would also be inefficient to apply two different sets of data protection rules within a single database. The proposed directive aims to cover both domestic and cross-border processing. This has been a longstanding request from Parliament. The proposed directive also contains the same protection principles as those enshrined in the Regulation. This also echoes Parliament's request to extend the application of the general data protection rules to the areas of police and judicial cooperation.

Key elements enshrined in the draft regulation are also introduced in the proposed directive, such as: data protection by design and by default; the appointment of data protection officers; the obligation to notify personal data breaches; and the extension of the powers of the Commission to adopt adequacy decisions for international transfers to third countries. These novelties emphasise the importance of robust protection rules in instruments allowing for data exchange. Let us never lose sight of the fact that the protection of personal data is a right enshrined in the Union's Treaties and in the Charter of Fundamental Rights.

This is why the new data protection rules will have to be taken into account in sectoral instruments, in particular in the area of the former third pillar. Once a directive has entered into force the Commission, within three years, will have to review and possibly amend other acts adopted by the European Union which regulate the processing of personal data by law enforcement authorities.