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NOTE

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| From: | Dutch delegation |
| To: | Delegations |
| Subject: | 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) - Chapter V: Article 44(5) |

Delegations will find below comments from Dutch delegation on Article 44(5) of the General Data Protection Regulation.

Non paper on Article 44, paragraph 5 of the Regulation

Introduction

Following the discussions on Chapter V in DAPIX, the NL would like to draw the attention to article 44 paragraph 5. As you already know, the NL attaches great value to this article. The current wording in the text is: (...) *”Union law or Member State law may, for important reasons of public interest, expressly prohibit the controller or processor to transfer personal data to a third country or an international organization”*.

According to the NL the proposed addition to article 44 paragraph 5 is very important to protect national databases that are of strategic importance. For the NL these are for example the National passport database and the Electronic Patient Dossier.

Dutch National Passport case

In the NL the government has switched from state printing to public procurement of the production processes of the national passport for Dutch citizens. These production processes are mostly working with sensitive personal data. According to the NL, it is important that these sensitive personal data are treated with maximum protection.

Therefore, in case that an authority or judge of a third country decides that a European company is forced to transfer personal data to a third country for e.g. further investigation of judicial trial, the NL wishes to have the possibility in the Regulation to block such a transfer to a third country based on European or national law.

Electronic Patient Dossier case

Recently Dutch medical professionals, health insurance companies and patients have created a national information-exchange system on a voluntary basis. Each patient has a personal file in a large data base, which is accessible, under certain safeguards, to health professionals concerned. This file is called Electronic Patient Dossier (EPD). Most of the information is sensitive personal data. The NL finds that it is important that these data deserve the maximum protection. Also in this case, the NL wishes to have the possibility to block a transfer to a third country.

To conclude: If the current draft of art. 44 paragraph 5 will be accepted, a national government will have the possibility, based on European law and national law, to block a transfer to a third country and will take the political consequences of this decision. In our view, the national government should always be able to protect their national data bases that are of strategic importance.
