

ISOC European Regional Bureau Newsletter

1-7 March 2014

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Data protection

EU: Member States' divisions over data protection Regulation proposal

- The EU Ministers of Justice met this week in Brussels to discuss the **proposed EU data protection Regulation**. Main issues at stake were whether the Regulation should **apply to non-EU companies**; measures allowing businesses to **transfer EU citizens' data outside the EU**; **pseudonymisation** and **profiling**.
- While the **EU Justice Commissioner Reding** underlined the progress made so far, the Council meeting exposed **tensions between Member States** about unnecessary burden for companies, as well as countries seeking guarantees for the highest privacy standards for the EU citizens.
- According to the official Council press release, the **Ministers broadly supported the provisions** with regards to the **regulations' territorial scope** and confirmed that international data transfers outside the EU should be based on key principles (specified in chapter V of the proposal). Pseudonymisation has been underlined as an element of the risk-based approach.
- **Application of the proposed law to non-EU companies** should ensure that companies do not relocate outside the EU. But, several countries (UK, Denmark and the Netherlands) warned that enforcing European law among companies with no EU presence would prove difficult.
- As for **data transfers**, Ministers discussed three mechanisms that would allow transfers of EU citizens' data. The first mechanism would be a check of adequacy of a third country's data protection rules done by the European Commission, advised by Member States Data Protection Authorities. The second mechanism is composed of safeguards, such as binding corporate rules that would allow companies to circulate data internally; derogations, such as a citizen's explicit consent to have personal data moved abroad, would constitute the third mechanism. British Justice Minister Grayling stated that the EU transfer rules must not restrict online services, such as cloud computing.
- The discussions on **profiling** indicated that there is a general preference to regulate how profiles are used, rather than how they are made. The majority of Member States agreed that the scope of profiling should remain similar to the one included in the 1995 Directive currently in force.

Comment: The plenary of the European Parliament will discuss the proposed overhaul of the EU data protection framework on 11 March and a vote on 12 March. The vote should enable the incoming Parliament to launch negotiations with the Member States as soon as the Council adopts its position. A partial agreement of the Council is expected in June; this would allow the three-way talks to start after the summer break.

EU: MEPs to vote on Parliament's NSA report

- On 12 March, MEPs are to vote on the Parliament's final report on the inquiry into the US data snooping. The work on the *Report on the US NSA surveillance programme, surveillance bodies in various EU Member States and their impact on EU citizen's fundamental rights and on transatlantic cooperation in Justice and Home affairs* has been led by **MEP Claude Moraes** (UK, S&D).
- Listing the main findings of the LIBE Committee's inquiry, the report has called for the EU not to allow that the on-going negotiations on the Transatlantic Trade and Investment Partnership (TTIP) water down EU's data protection standards. It has also called on the EU to suspend data transfer agreements with the US, including the so-called Safe Harbour, as data are not adequately protected under its current provisions.
- Several provisions of the report are said to be controversial among centre-right MEPs; nevertheless, the report is expected to be adopted.

Copyright

EU: Member States oppose copyright regime overhaul

- As the public consultation on the **EU's copyright regime** comes to an end, it appears that **EU Member States would not support the Commission's call for an overhaul of the EU's copyright regime**.
- At last week's meeting of national experts, a majority of Member States indicated that they do not perceive any major problems with the current framework of the EU copyright regime, considering that the **time is not right to introduce any major changes**.
- Internal sources reported that several countries, including Austria, the Czech Republic and Sweden opposed a major overhaul of the framework, underlining that a country-by-country organisation of the copyright, as it is the case now, should not be revised. On the other hand, the **Dutch representative insisted that modernisation of the system is necessary**. Spain is said to have supported the Dutch call for modernisation, especially when it comes to **enforcement rules for intermediaries and ISPs**.
- **The Greek Presidency** is to hold another meeting on the subject next month.

Open Internet

Italy: ISPs ordered to block dozens of websites

- In what is thought to be the largest anti-piracy operation to date (not requested by copyright holders), **Italian ISPs have been ordered to block access to 46 streaming and torrent websites**. The ban request followed a ruling by Rome's Public Prosecutor in which the sites were accused of sharing protected cinematographic works.
- The Italian Financial Policy indicated that in the future it might also look into the **companies' advertisements** on those sites as, by buying ad services, the companies support illegal activities of the incriminated site.
- The ruling comes **shortly before a new copyright regulation** - giving Italy's communications regulation AgCom the power to order ISPs to block customers' access to sites that are deemed to be violating copyright laws - comes into effect on 31 March. A grouping of media organisation has stated it will challenge the law in front of the country's highest administrative court as it believes that AgCom does not have the authority to determine regulation on those matters.

Turkey: PM Erdogan hints at possible Youtube and Facebook ban

- During a live televised appearance on 6 March, Prime Minister **Recep Tayyip Erdoğan** said that if needed, they will ban down Facebook and Youtube following local elections in March. Prime Minister Erdoğan noted these outlets promote spying and immorality.

- Following the **Prime Minister's remarks, Minister of Transport, Maritime Affairs and Communications Lütü Elvan supported the possibility of a ban.** Minister Elvan explained that there are people who use these platforms to insult the Prime Minister and the President. He noted that they cannot let illegal images (referring to leaked phone calls that hint government corruption) be circulated online. Elvan emphasised that every act that is considered a crime in real life is also considered a crime if committed online.
- However, **President Abdullah Gül dismissed the possibility that Youtube and Facebook would be banned.**

Netherlands: Ban lift

- The biggest Dutch Telco KPN has **stopped blocking** its customers' access to **Pirate Bay**, as it reached an agreement with the Dutch anti-piracy organisation BREIN. The ban has been lifted following a recent ruling that abolished requirements on two Dutch ISPs (XS4ALL and Ziggo) to block users' access to torrent website.
- BREIN indicated that it considers the suspension of the ban as temporary. A Supreme Court ruling on the matter is not expected sooner than in a year. Until then, Dutch Internet users can access the site.

Internet governance

EU: Deadline for contributions to Internet governance conference approaches

- As the deadline for submission of contributions to the upcoming **NetMundial**, that will take place in Sao Paulo on 24 and 25 April, is approaching (8 March), the **European Union is said to be struggling to agree on a common position.**
- While the EU Member States are said to **broadly support the views on the globalisation of Internet governance** compromised in Commission's **Internet governance strategy** that **Commissioner Kroes** presented on 12 February, **divergences emerged with regards to governments' roles.**
- In its contribution to NetMundial, the **UK** has called for as little interference as possible with the current Internet governance framework. **Germany** has stressed the need for a transparent and inclusive model of Internet governance, while **France** has called for a balanced position between governments and other stakeholders.
- According to media reports, the EU is expected to mainly underline the big principles, such as respect of human rights, stakeholders' participation and transparent processes.