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**SUPPORT TO KOSOVO INSTITUTIONS IN THE FIELD OF FOR
PROTECTION OF PERSONAL DATA**

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**MEMORANDUM ON THE STATE OF PLAY REGARDING THE EU DATA
PROTECTION REFORM PACKAGE**

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SUPPORT TO KOSOVO INSTITUTIONS IN THE FIELD OF PROTECTION OF PERSONAL DATA
(Europe Aid/133806/C/SER/XK, SC № 2013/333-753)



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EU project “Support to Kosovo Institutions in the Field of For Protection Of Personal Data”

Europe Aid/133806/C/SER/XK

European Commission Contract No. 2013/333-753

Support to Kosovo Institutions in the Field of Protection of Personal Data

8th MEMORANDUM ON THE STATE OF PLAY REGARDING THE EU DATA PROTECTION REFORM PACKAGE

Pristina, Kosovo, 31/01/2016



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SUPPORT TO KOSOVO INSTITUTIONS IN THE FIELD OF PROTECTION OF PERSONAL DATA
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As we stated in our *7th Memorandum dated on October 30, 2015* on the state of the play of the EU data protection reform the some of the most important advancement were in the last reporting period:

- i. Trilogue negotiations between the Parliament, the Council and the Committee have continued
- ii. Ministers in the Justice Council have sealed an overall agreement on the EU's Data Protection Directive for *the police and criminal justice sector*
- iii. The European Data Protection Supervisor (EDPS) published his recommendations for the recitals of the general Data Protection Regulation (GDPR)
- iv. The EDPS issued recommendations on the Directive for data protection in the police and justice sectors

In the current reporting period (October 31-January 13) the most important improvements are the followings:

- i. On 15 December 2015, the European Parliament, the Council and the Commission reached agreement on the new data protection rules
 - ii. The agreement was welcomed by the European Council (Dec 17-18)
 - iii. On 17 December, in an extra-ordinary meeting, the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee endorsed the texts agreed in the trilogues¹.
 - iv. On 18 December 2015, the Permanent Representatives Committee (Coreper) confirmed the compromise texts agreed with the European Parliament on data protection reform.
 - v. Statement on the 2016 action plan for the implementation of the General Data Protection Regulation was released
- i. On 15 December 2015, the European Parliament, the Council and the Commission reached agreement on the new data protection rules**

The European Parliament and Council have reached agreement on the data protection reform proposed by the Commission. The reform is an essential step to strengthen citizens' fundamental rights in the digital age and facilitate business by simplifying rules for companies in the Digital Single Market. The General Data Protection Regulation establishes common privacy rules across Europe and creates strong enforcement power. The law will be fully applicable in about two years.²

The Reform consists of two instruments:

¹ The EDPS welcomes the outcome of the vote today by the European Parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the data protection reform package. The EU is once again setting the standard for modern and robust data protection legislation. See: <https://secure.edps.europa.eu/EDPSWEB/edps/EDPS/Pressnews/News/N2015>

² <https://epic.org/2015/12/european-institutions-conclude.html>



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- The **General Data Protection Regulation** will enable people to better control their personal data.
- The **Data Protection Directive** for the police and criminal justice sector will ensure that the data of victims, witnesses, and suspects of crimes, are duly protected in the context of a criminal investigation or a law enforcement action.³

The most important aspects of the reforms are to address different concerns such as follows:

a) A fundamental right for citizens

The reform will allow people to regain control of their personal data. Two-thirds of Europeans (67%), according to a recent Eurobarometer survey, stated they are concerned about not having complete control over the information they provide online. Seven Europeans out of ten worry about the potential use that companies may make of the information disclosed. The data protection reform will strengthen the right to data protection, which is a fundamental right in the EU, and allow them to have trust when they give their personal data.⁴

The new rules address these concerns by strengthening the existing rights and empowering individuals with more control over their personal data. Most notably, these include:

- **easier access to your own data:** individuals will have more information on how their data is processed and this information should be available in a clear and understandable way;
- **a right to data portability:** it will be easier to transfer your personal data between service providers;
- **a clarified "right to be forgotten":** when you no longer want your data to be processed, and provided that there are no legitimate grounds for retaining it, the data will be deleted;
- **the right to know when your data has been hacked:** For example, companies and organisations must notify the national supervisory authority of serious data breaches as soon as possible so that users can take appropriate measures.⁵

b) Clear modern rules for businesses

By unifying Europe's rules on data protection, lawmakers are creating a business opportunity and encouraging innovation.

- **One continent, one law:** The regulation will establish one single set of rules which will make it simpler and cheaper for companies to do business in the EU.
- **One-stop-shop:** businesses will only have to deal with one single supervisory authority. This is estimated to save €2.3 billion per year.
- **European rules on European soil**– companies based outside of Europe will have to apply the same rules when offering services in the EU.

³ http://europa.eu/rapid/press-release_IP-15-6321_en.htm

⁴ http://europa.eu/rapid/press-release_IP-15-6321_en.htm

⁵ http://europa.eu/rapid/press-release_IP-15-6321_en.htm



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- **Risk-based approach:** the rules will avoid a burdensome one-size-fits-all obligation and rather tailor them to the respective risks.

Rules fit for innovation: the regulation will guarantee that data protection safeguards are built into products and services from the earliest stage of development (Data protection by design). Privacy-friendly techniques such as pseudonymisation will be encouraged, to reap the benefits of big data innovation while protecting privacy.⁶

c) Benefits for big and small alike

The EU's data protection reform will help SMEs break into new markets. Under the new rules, SMEs will benefit from four reductions in red tape:

- **No more notifications:** Notifications to supervisory authorities are a formality that represents a cost for business of €130 million every year. The reform will scrap these entirely.
- **Every penny counts:** Where requests to access data are manifestly unfounded or excessive, SMEs will be able to charge a fee for providing access.
- **Data Protection Officers:** SMEs are exempt from the obligation to appoint a data protection officer insofar as data processing is not their core business activity.
- **Impact Assessments:** SMEs will have no obligation to carry out an impact assessment unless there is a high risk.⁷

d) Protecting personal data in the area of law enforcement

- **Better cooperation between law enforcement authorities**

With the new Data Protection Directive for Police and Criminal Justice Authorities, law enforcement authorities in EU Member States will be able to exchange information necessary for investigations more efficiently and effectively, improving cooperation in the fight against terrorism and other serious crime in Europe.

The Data Protection Directive for Police and Criminal Justice Authorities takes account of the specific needs of law enforcement, respects the different legal traditions in Member States and is fully in line with the Charter of Fundamental Rights.

- **Better protection of citizens 'data**

Individuals' personal data will be better protected, when processed for any law enforcement purpose including prevention of crime. It will protect everyone – regardless of whether they are a victim, criminal or witness. All law enforcement processing in the Union must comply with the principles of necessity, proportionality and legality, with appropriate safeguards for the individuals. Supervision is ensured by independent national data protection authorities, and effective judicial remedies must be provided.

⁶ http://europa.eu/rapid/press-release_IP-15-6321_en.htm

⁷ http://europa.eu/rapid/press-release_IP-15-6321_en.htm



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The Data Protection Directive for Police and Criminal Justice Authorities provides clear rules for the transfer of personal data by law enforcement authorities outside the EU, to ensure that the level of protection of individuals guaranteed in the EU is not undermined.

ii. The agreement was welcomed by the European Council

The agreements were welcomed by the European Council meetings of 17-18 December as a major step forward in the implementation of the Digital Single Market Strategy. Further to the Commission's initiatives to strengthen and deepen the Single Market, the European Council:⁸

a) Calls for ambition in the implementation of the roadmap to delivering on the Single Market Strategy to achieve a deeper and fairer Single Market for goods and services in all key areas;

b) In the interest of consumers and industry alike, invites the EU institutions to accelerate implementation of the Digital Single Market Strategy; welcomes the agreement reached on the data protection package as a major step forward;⁹

iii. On 17 December, in an extra-ordinary meeting, the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee endorsed the texts agreed in the trilogues.¹⁰

The EDPS welcomed the outcome of the vote by the European Parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the data protection reform package, claiming: the EU is once again set the standard for modern and robust data protection legislation.¹¹

iv. On 18 December 2015, the Permanent Representatives Committee (Coreper) confirmed the compromise texts agreed with the European Parliament on data protection reform.¹²

v.) Statement on the 2016 action plan for the implementation of the General Data Protection Regulation was released

On the second week of February 2016, the Working Party 29¹³ officially released its statement on the 2016 action plan for the implementation of the General Data Protection Regulation, laying out its four priorities during this major regulatory shift.¹⁴

⁸ European Council meeting (17 and 18 December 2015) – Conclusions, <http://www.consilium.europa.eu/en/meetings/european-council/2015/12/17-18/>

⁹ European Council meeting (17 and 18 December 2015) – Conclusions, <http://www.consilium.europa.eu/en/meetings/european-council/2015/12/17-18/>

¹⁰ <http://www.consilium.europa.eu/en/press/press-releases/2015/12/18-data-protection/>

¹¹ See: <https://secure.edps.europa.eu/EDPSWEB/edps/EDPS/Pressnews/News/N2015>

¹² <http://www.consilium.europa.eu/en/press/press-releases/2015/12/18-data-protection/>

¹³ The Article 29 Data Protection Working Party was set up under the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It has advisory status and acts independently. The



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The action plan includes main four actions as follows: 1) Setting up the EDPB structure in terms of administration (e.g. IT, human resources, service level agreements and budget), 2) Preparing the one stop shop and the consistency mechanism, 3) Issuing guidance for controllers and processors and 4) Communication around the EDPB/GDPR.¹⁵ Activities under each above mentioned action are summarized as follows:

1) Setting up the EDPB structure in terms of administration (e.g. IT, human resources, service level agreements and budget)

A WP29-EDPB task force has been set up with the Chair, the Vice -Chairs and the European Data Protection Supervisor (EDPS), as the secretariat will be ensured by the EDPS under the instructions of the Chair of the EDBP. A key element will be the development of the IT systems for the EDPB in the context of the one stop shop. The task force will also work on human resources, budget implications and the future rules of procedure of the EDPB.

2) Preparing the one stop shop and the consistency mechanism

Developments on several building blocks of the GDPR such as: → the designation of lead data protection authority → the one-stop -shop on enforcement cooperation → the EDPB consistency mechanism.

3) Issuing guidance for controllers and processors

Priority subject have been selected by the WP29 to provide guidelines or processes to help and accompany controllers and processors to get prepared for the entry into force. They will relate to the following topics:

- New portability right
- Notion of high risk, and Data Protection Impact Assessment (DPIA)
- Certification
- Data protection officer

4) Communication around the EDPB/GDPR

It is essential to make this new legal body of the EU already visible and identifiable as a key player which legitimacy stems from the DPA. → Creation of an online communication tool → Strengthening relationships with EU institutions agencies or other supervision groups → Participation in external events to promote the new governance model.

Article 29 Data Protection Working Party is composed of: a representative of the supervisory authority (ies) designated by each EU country; a representative of the authority (ies) established for the EU institutions and bodies; a representative of the European Commission.

¹⁴ <https://iapp.org/news/a/article-29-working-party-lays-out-gdpr-action-plan/>

¹⁵ <https://iapp.org/news/a/article-29-working-party-lays-out-gdpr-action-plan/>



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After a legal-linguistic review of the texts, they will be submitted for adoption by the Council and, subsequently, by the Parliament. The regulation and the directive are likely to enter into force in spring 2018.¹⁶

Once the Regulation and the Directive receive formal adoption from the European Parliament and Council. The new rules will become applicable two years thereafter. The Commission will work closely with Member State Data protection authorities to ensure a uniform application of the new rules. During the two-year transition phase, the Commission will inform citizens about their rights and companies about their obligations.¹⁷

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¹⁶ <http://www.consilium.europa.eu/en/press/press-releases/2015/12/18-data-protection/>

¹⁷ http://europa.eu/rapid/press-release_IP-15-6321_en.htm