

# Expert comment

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The sense of purpose in Brussels surrounding the progress of the Proposed General Data Protection Regulation is palpable. Although a great deal of work still lies ahead, the European Council under the Italian Presidency appears to have made some good progress.

In particular, the Italians have sought to reach agreement on the extremely difficult issue of 'one stop shop'. As the Presidency is readied for passing to the Latvians in January 2015, it is timely to stand back and consider the process for reaching agreement, and some of the key themes that are emerging from the respective texts.

## Timeline

Readers will recall that the original text was proposed by the European Commission in January 2012. Following that, the European Parliament adopted its agreed text in March 2014, after considering some four thousand proposed amendments. The process now awaits agreement by the Council, so that the trilogue can begin.

The DAPIX Working Group (which sits within the Council) is continuing to make good progress as it works through the text which, once finalised, must be agreed by the Council of Ministers. Meetings are scheduled for February, March and June 2015. It is not known when the DAPIX Working Group will be ready to send its final proposed text to the Council, but there is rumour that this will occur within the first six months of 2015.

## Themes from the Parliament's and Council's text

Turning to review the themes of the amended text proposed by the Parliament and the Council, the Parliament's text tends to favour the individual, although this is not necessarily negative for business.

In general terms, the Parliament's approach introduces some practical and pragmatic changes, strengthens the position of individuals, and increases the stringency of controls over data controllers. Practical changes include the very welcome extension of the one stop shop concept to groups of undertak-

ings (rather than being limited to a single undertaking), requiring agreements between joint controllers to allocate tasks associated with data subjects between the parties, developing the concepts of seals and certifications, restricting the requirements for prior approval, and generally reducing the amount of paperwork prescribed for controllers.

In terms of stronger rights, the Parliament's text extends the notice and transparency provisions. Notably, the proposed Article 13 requires standardised policies and icons. The text includes a very broad right to object to processing where it is carried out on the basis of legitimate interests, and restricts the use of data for new and incompatible purposes.

For data controllers, examples of more stringent obligations include the significant extension of the sensitive data category, the requirement that consent be purpose specific and loses its validity once the purpose ceases to exist, the inclusion of overseas controllers within the scope of the Regulation, tightening of exemptions, and a proposal to increase the maximum level of fine to 5% of global turnover.

In contrast, the Council text has not yet been agreed, and its final views are not known. Currently, the Council is examining the role of supervisory authorities, cooperative working and one stop shop. It has also sought to reduce the administrative burden on businesses from the Commission's text, and has introduced the concept of proportionality in responding to compliance challenges.

On the important issue of cooperative working between supervisory authorities and one stop shop, the Council is focused on local resolution of complaints, and directing individual complaints to the supervisory authority for the jurisdiction in which the data subject resides. It has also sought to distinguish investigatory, corrective and authorisation powers.

In seeking to reduce administrative burdens on controllers and processors, the Council text dealing with subject information is less detailed and less prescriptive.

Policy obligations are proportionate, and the record keeping requirements do not apply where the processing is low risk in nature.

In introducing a risk-based approach, the Council makes increased provision for exemptions and makes the right to object to processing more restrictive. Data breach reporting, for example, would only be required for breaches that have a serious impact, and steps taken after the breach to mitigate risk may be taken into account in deciding whether to notify.

There remain significant differences between the three texts, and resolving those differences will not be easy. Now, more than ever, organisations need to stay engaged with the process, and remain vigilant. It is understood that small changes to the text can have a significant impact, and may greatly increase the compliance burden for organisations. While there is no definitive timetable, there is much talk of an agreed text by the end of 2015.

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