

Editorial

Bridget Treacy introduces Volume 11, Issue 1 of Privacy & Data Protection by considering what form the revised Data Protection Directive may take

There is growing interest — and much speculation — as to what the European Commission’s preliminary proposals for the revised EU Data Protection Directive will contain. There have been whispers and assertions as to when the first official outline might be released, and tantalising observations from those invited to provide feedback on early informal proposals. It now appears that we will need to wait until June 2011 to see the Commission’s legislative proposals. However, Vivian Reding, EU Commissioner for Justice, Fundamental Rights and Citizenship, and European Commission Vice-President, will outline her plans for reform in late October 2010. What can we expect?

Mrs Reding delivered a speech in Brussels on 16th September in which she gave numerous hints as to what a revised Data Protection Directive might contain. The speech, entitled ‘Doing the Single Market Justice’, focused on making the digital single market a reality for Europe. In this context, Mrs Reding touched on proposals for reform of the Consumer Rights Directive as well as the possibility of creating a European contract law. Against this background, she hinted at the likely areas for ‘revision’ of the Data Protection Directive.

Mrs Reding deliberately used the word ‘revision’ rather than ‘reform’ and it now seems widely accepted that we will not see any wholesale reform of the Data Protection Directive. Many of the submissions made to the Commission in 2009 confirmed that the underlying principles of the Directive remain sound. The chief difficulty lies in how they have been implemented.

In her 16th September speech Mrs Reding, unsurprisingly, focused on the consumer interest. A key objective of the revision is to ensure transparency of data processing activities. Mrs Reding indicated that she will focus on ensuring that consumers are given full, easy to understand information about how their data are being processed. Further, data processing must serve legitimate purposes, and there will be an increased focus on data minimisation.

In addition, Mrs Reding drew attention to the role of consent, a concept that is much misunderstood in a data protection context. She wants to “clarify and strengthen the rules of consent.”

There will also be a focus on enhancing the responsibility of data controllers. In an apparent reference to the concept of ‘accountability’ and in the context of an explicit reference to ‘Privacy by Design’, Mrs Reding noted that controllers will be encouraged to put in place “effective mechanisms to ensure compliance with data protection rules.” In return, Mrs Reding intends to reduce the administrative burden of compliance on controllers and to streamline and improve the procedures for international data transfers. These comments will be welcomed by Data Protection Officers, some of whom fear that the concept of accountability could be misunderstood and used to justify additional *ex ante* scrutiny by the national Data Protection Authorities.

Those who have been following the review will not be surprised by the issues Mrs Reding has chosen to highlight as being ripe for revision. Many will hope that the proposals will be rather more ambitious than these early comments suggest.

Readers of *Privacy & Data Protection* in the UK will be aware that the Ministry of Justice has already begun to prepare for EU negotiations on a revised Data Protection Directive by launching a ‘Call for Evidence’. The Ministry of Justice has actively sought evidence of how specific aspects of the UK Data Protection Act work in practice, and have gathered views on potential areas for reform. It will be interesting to see the results of the Ministry of Justice consultation.

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