

## General comments on the "Data protection" Draft regulation

Brussels, 12 November 2012

PostEurop, representing 51 Universal Postal Service providers across Europe, supports the project of the revision of the 95/46/EC Directive on Data Protection.

The revision process of Directive 95/46/EC should not lead to unnecessary and disproportionate measures affecting postal direct marketing. PostEurop emphasises the fact that paper direct mail has a high added value for consumers and for the European economy and respects already citizen's privacy.

In this context, PostEurop has some comments and concerns on the draft regulation proposed by the Commission on January 25<sup>th</sup> 2012.

The draft regulation unfortunately highlights especially a certain legal uncertainty and an excessive burden for controllers and a risk of inappropriate sanctions.

### 1. Introduction : addressed paper direct mail

Postal operators welcome and support the project of the revision of the 95/46/EC Directive on Data Protection. Nevertheless, postal operators have certain comments and objections on the draft regulation proposed by the Commission on January 25<sup>th</sup> 2012. According to the Communication of the Commission<sup>1</sup>, the revision comes from the necessity to manage new risks linked to information technologies (social networks, RFID, geolocalization, ...). So, the new text does not aim at restructuring the legal framework of the directive 95/46 but aims at adapting these provisions to the technological evolutions of our society.

For years, postal operators have been providing advertisers with paper direct mail delivery services compliant with the data protection Directive. Postal operators emphasise the fact that paper direct mail has a high added value both for consumers and for the European economy. Indeed, on the one hand, surveys show that amongst others advertising media, paper direct mail is the most appreciated one by consumers, because it is also seen as less intrusive than f.i. e-mail. On the other hand, from the advertisers' perspective, paper direct mail is a very important promotional tool for SMEs. Small size companies do not have sufficient budget for expensive TV or radio advertising campaigns. Paper direct mail is better adapted to their needs. That is why paper direct mail has such an important weight in the European economy.

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<sup>1</sup> COM(2010) 609 final

It is important to highlight the distinction between addressed and unaddressed paper direct mail. While addressed mail implies a personal data processing, unaddressed mail is delivered in mail boxes according to neighbourhood criteria which are not considered as personal data.

Customisation and targeting are the main features of addressed direct mail and that is why it is so highly appreciated by both addressees and mailers.

PostEurop believes that addressed paper direct mail has to continue to be legally and loyally at the service of consumers (as a means of gathering information) and SMEs (as an affordable promotional media).

## **2. Legitimate interests**

The legitimate interests of companies and other organisations in using data have been moved to the background in the draft regulation; an imbalance that will impair paper direct mail related communication needed for economic development within the EU. This imbalance can be redressed by amending the current draft, especially article 20, in accordance with the advice that the Council of Europe issued in 2010 on the protection of individuals with regard to automatic processing of personal data in the context of profiling [Recommendation CM/Rec(2010)13 of the Council of Europe].

## **3. Legal uncertainty**

Postal operators and more generally all data controllers need legal certainty to operate on a safe basis. Postal operators note that the draft regulation proposed does not provide this legal certainty because of the possible interpretation of certain articles (for instance the "data minimization" article 5, c), and because of the use of the "delegated acts" procedure on important points of the regulation.

## **4. Excessive burden for controllers**

Postal operators support the Commission's objective to decrease the administrative burden of the controllers. But in addition to this, it stresses also the need for a lighter operational burden. That means that the controller cannot operate efficient processings if he must comply with too heavy, unrealistic or irrelevant obligations. That would be the case if the controller has to provide the data subject with information he does not know (providing data subject with the period of data conservation – article 14, 1, c) or so vague that they would be very questionable (description of his legitimate interest to process personal data – article 14, 1, b) or impossible to determine precisely (the extensive sources of the data – article 14, 3). That would also be the case if the data controller is obliged to notify any menial small data breach, or if he must realize unjustified impact assessment reports (articles 31 and 32).

## 5. Enforcement

Aligned with the Commission, postal operators consider that the legal framework is still valid but suffers from a lack of enforcement. Therefore, postal operators support the Commission's will to strengthen control and sanctions in case of rules violation. Postal operators emphasize however that those sanctions must be proportionate and may only be pronounced in courts offering more guaranties of a good administration of justice.

The regulation draft proposes very high sanctions which are not sufficiently in line with the seriousness of the violation. This is especially an issue when these sanctions are imposed by non judicial administrative independent authorities (article 79).

The European public postal operators as experts in the written communication field are glad to support the European decision making process via PostEurop.

This position paper is supported by the following public postal operators:

Country	Public Postal Operators
Austria	Österreichische Post AG
Belgium	bpost
Bulgaria	Bulgarian Posts
Cyprus	Cyprus Post
Czech Republic	Česká Pošta
Denmark	PostNord/Post Danmark
Estonia	Eesti Post
Finland	Itella
France	La Poste
Germany	Deutsche Post DHL
Greece	Hellenic Post – ELTA
Hungary	Magyar Posta
Iceland	Íslandspóstur
Ireland	An Post - General Post Office
Italy	Poste Italiane
Latvia	Latvijas Pasts
Liechtenstein	Liechtensteinische Post
Lithuania	AB Lietuvos paštas
Luxembourg	Entreprise des Postes et des Télécommunications Luxembourg
Malta	MaltaPost
Netherlands	PostNL
Poland	Poczta Polska
Portugal	CTT – Correios de Portugal
Romania	C.N. Posta Romana
Slovakia	Slovenská pošta
Slovenia	Pošta Slovenije
Spain	Correos y Telégrafos
Sweden	PostNord/Posten AB
United Kingdom	Royal Mail

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PostEurop is the association which represents the interest of 51 European public postal operators. Committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service, PostEurop promotes cooperation and innovation bringing added value to the European postal industry. Its members represent 2.1 million employees across Europe and serve to 800 million customers daily through over 175,000 counters. PostEurop is also an officially recognised *Restricted Union* of the Universal Postal Union (UPU).