



Strasbourg, 3 June / juin 2014

T-PD(2014)04Mos\_Addendum

**CONSULTATIVE COMMITTEE OF THE CONVENTION  
FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING  
OF PERSONAL DATA  
(T-PD)**

**LE COMITÉ CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES  
PERSONNES A L'ÉGARD DU TRAITEMENT AUTOMATISÉ  
DES DONNÉES A CARACTÈRE PERSONNEL  
(T-PD)**

Information on the recent developments at national level in the data protection field

Information sur les développements récents intervenus dans le domaine  
de la protection des données au niveau national

Directorate General Human Rights and Rule of Law /  
Direction Générale Droits de l'homme et Etat de droit

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## CROATIA / CROATIE

Croatian Personal Data Protection Agency may emphasize under major developments in the data protection field since the T-PD plenary meeting held in October 2013. as follows:

- **Public introduction of Ministry of Interior „Red Button“ online application for report of sexual abuse or exploitation of children** under cooperation within partnership in establishing and functioning of „Center for safer Internet“ (where Croatian Personal Data Protection Agency is one of strategic partners) all with objective to raising public awareness regarding safe using of Internet and promoting safe, responsible, adequate and efficient using of Internet by children and youth;
- In the occasion of 2014. Data Protection Day the Agency organized gala press conference with various activities such as **appointment of new Ambassadors of privacy** (well known persons who despite their popularity enjoy very positive reputation in public) with mission to promote privacy and protection of personal data;
- In the occasion of its 10th anniversary the Agency organized a series of activities (in May 2014.) which received very good perception in the Croatian public, and these activities are as follows:

1) **Gala press conference "10 steps against hate speech on Internet"** held in the Croatian Parliament in presence of many significant persons from the Croatian political and cultural life including the Ambassadors of privacy who read very dramatic testimonies written by the two Croatian adolescents who experienced very serious traumas due to very ferocious form of cyberbullying to which they were exposed in the very delicate period of life which is adolescence. In this way very important message has been sent to public regarding the consequences of hate speech. A detailed report from this conference was broadcast in prime time by NOVA TV in its central informational program which in Croatia has the highest ratings. Also, the representatives from Ministry of Interior, Academic Research Network (CARNET) and croatian journalists' association has held the presentations about the matter from their point of view.

2) The Agency is very proud of producing **promo materials** with educational messages regarding the subject of hate speech on internet which are as follows:

- educational poster "10 steps against hate speech on Internet" ;
- roll up poster 1: "Let's surf on the positiv waves!";
- roll up poster 2: "Everyone has the responsibility!".

3) **The Conference for data protection officers and information officers** with 5 imminent guest lecturers (experts) who held very useful presentations covering the latest trends in the data protection and neighbouring fields. The Agency was very praised for the initiative of organizing such conference which gave many useful information to more than 100 participants.

- **Regarding the previously accomplished internal reorganization** of the Croatian Personal Data Protection Agency especially in the supervision area at the end of 2013. **annual results show increased number of supervisions in total** (from 322 in 2012. to 330 in 2013.) **and especially significant increase of „in situ“ supervision part** (from 68 in 2012. to 238 in 2013.).“

Igor Vulje

## FINLAND / FINLANDE

### MAIN DEVELOPMENTS IN THE DATA PROTECTION FIELD IN FINLAND SINCE THE PREVIOUS T-PD MEETING

#### A. Summary of activities and news

As part of the implementation of the strategy of the Office of the Data Protection Ombudsman the Data Protection Ombudsman restructured his personnel planning system and integrated his internal competence management programme more thoroughly into the system. To ensure continued success in a volatile operating environment, he must secure the quality and quantity of internal competencies. Other cornerstones of his strategy include the ability to predict the impact of new phenomena and to prioritise the measures, the utilisation of information as a steering tool, and the formation of necessary alliances while retaining his independence and impartiality.

The Office also succeeded in achieving the level required by the Government decree on information security. As part of the effort, the entire personnel were obligated to take an information security test. Information security training is a permanent part of our competence management programme.

Independent of the completion of the data protection regulation or directive, the Data Protection Ombudsman is aware that there is a dire need of competence in Finland to be able to fill the increasing number of positions opening up for Privacy Officers. Therefore, the Data Protection Ombudsman launched an internal survey to investigate our potential of creating a brand for the required training. This product development effort is to be carried out in cooperation with educational organisations in accordance with the strategy of the Data Protection Ombudsman.

As part of striving towards maximum effectiveness, the Data Protection Ombudsman continued the business sector- and phenomenon-specific surveys. These surveys concerned targets such as telephone services financed through advertising, the payday loan industry, commercial use of personal data, and website information security surveyed in international cooperation (Sweep Day).

One of the areas of emphasis included data protection of entrepreneurs. Entrepreneurs have been targeted by a variety of forced selling operations. To ensure legal protection, the proper balance of information between the parties of the dispute is important. Within his sphere of competence, the Data Protection Ombudsman supported the Federation of Finnish Enterprises in conquering the problem.

Biobanks were introduced as a new target group among the Data Protection Ombudsman's personal data protection duties. National Supervisory Authority for Welfare and Health (Valvira) will act as the primary supervising authority.

#### B. Information on case-law

##### **Affiliate marketing**

The Act on the Protection of Privacy in Electronic Communications states that prior consent is required for electronic direct marketing targeted at consumers. To circumvent this unambiguous rule, affiliate marketing has been developed. In affiliate marketing, the actual marketing measure is taken by a company operating in an opt-out country, for example. The company that wishes to sell its products purchases marketing services from the other company, but claims not to purchase personal data processing services or personal data content. In one type of affiliate

marketing operations, publishing space is purchased from another company's marketing communication materials or other communication materials. The Data Protection Ombudsman intervened in these operations. Codes of conduct concerning such marketing actions are now being prepared together with the direct marketing industry.

### **Definition of a controller of a personal data file**

It has come to the attention of the Data Protection Ombudsman, that the representatives of a religious group have visited homes and collected personal data, neglecting to observe the obligations set out in the Personal Data Act. The issue was not whether the denomination is allowed to gather data as part of its operations, but who was responsible for the data collection operations as the controller. The denomination denied its responsibility and explained that the case concerned use of personal data for domestic purposes for which the Personal Data Act does not apply. The view of the Data Protection Ombudsman of the matter differed from this, and the Data Protection Board, which acted as competent authority in the matter, shared my view. The denomination appealed against the decision at an administrative court.

### **C. Other important information**

The new ecosystem of mobile communications set an increasing challenge to data protection and the position and rights of consumers on a more general level. Smartphones have taken us to the age of apps, or applications. Processing of personal data is moving from traditional central register files to increasingly complicated systems where large numbers of applications are run over the operating systems of devices connected to a network infrastructure.

In this context, a national cyber security strategy was issued in Finland.

The legislative framework concerning the protection of personal data has been continuously developed. On the other hand, the process has increased the supervisory duties of the Data Protection Ombudsman. The adequacy, or more appropriately, the scarcity of his resources seems to be a permanent condition, based on the survey carried out in connection with the NETSO project and pending publication.

The Information Society Code legislation project led by the Ministry of Transport and Communications proceeded swiftly. The project also raised the issue of net neutrality, or whether all Internet communications should continue to flow freely or should the operators, for example, have the right to give priority to some messages, i.e. those that are paid for with higher rates.

A survey carried out by the Data Protection Ombudsman showed that nearly all telecommunication operators who offer mobile subscriptions to consumers also offer an option with partial financing through advertising. The consumer consents to receiving advertisements in exchange for a discount on call prices. According to consumer authorities, a telephone is a necessity. The Data Protection Directive defines consent as a one-sided, withdrawable legal act. Consumers frequently subscribed to a service partially financed through the reception of advertisements, and then immediately withdrew their consent. The Data Protection Ombudsman established that in the case of such necessity product, the consent cannot constitute part of the customer agreement, but must be considered a separate declaration of intent instead. As a result, operators developed a special double pricing system.

Communication of necessary information to the public constitutes one of the biggest challenges of data protection. To relay correct and well-timed information, a restructuring of the website of the Data Protection Ombudsman has also been in process. He also participated in the development of the overall concept of the Tietosuoja magazine and made a decision to establish an information service group.

## SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

In relation to your request for major developments in the data protection field we would like to send you following contribution from the Slovak DPA's side:

The second half of 2013 is marked by implementation of adopted act No. 122/2013 Coll. on Personal Data Protection (Act 122/2013) which entered into force on 30 July 2013. The Act brought clearer and specific provisions which led to increased interest in the protection of personal data and opened a discussion within the whole society on data protection necessity, obligations of controllers, processors or data protection officers, rights of data subjects and especially on provisions of the Act 122/2013. The Office for Personal Data Protection of the Slovak Republic (hereinafter as "the Office") had to face increasing demands for information on the provisions of the new law from the side of all involved parties and answered 2263 questions on the matter of personal data protection in 2013 and 1094 by the end of May 2014. In relation to this the Data Protection Day 2014 has been used for information campaign and the Office made all necessary to increase awareness of data protection. After a communication with all stakeholders the Government has decided to put into National Parliament proposal for amendment of the Act 122/2013 on personal data protection and this amendment entered into force on 15 April 2014.

The Act 122/2013 introduced obligation for controllers to notify the Office on filing systems and special registration for filing systems. The first transitional provision requested the controllers to put registration of filing systems in accordance with new provisions by the end of 2013. The new act brought also the fee for special registration of filing system in amount of € 50 to cover the administrative expenditures of the Office. The Office registers 5588 notification of filing systems and 54 cases of special registration by the end of May 2014.

Other change introduced by section 19 of the Act 122/2013 relates to specification of security measures. Pursuant to this section the controller had to registered security measures either in a security directive or in a security project depending what kind of data he processes in the filing system and interconnection of latest with a publicly accessible computer network. Amendment to the Act 122/2013 from April 2014 abolished cases when it was necessary to elaborate the security directive. The obligation to elaborate the security project of personal data protection has remained.

The Act 122/2013 brought further a better specification of provisions on a data protection officer. The obligation to appoint the data protection officer initially related to the controllers processing personal data at the hand of 20 and more entitled persons. Only the entitled person passing successfully an exam at the Office can be appointed as the data protection officer. The condition of 20 and more entitled persons has been cancelled by latest amendment and now it is on free choice of the controller to appoint the data protection officer but he/she has an obligation to notify the Office on designation of the data protection officer. The condition to pass the exam at the Office still remains in the provisions of the Act 122/2013. The Office registers 4596 persons that have passed successfully the exam and 1990 of them already perform a function of data protection officer. Nonetheless the Office consider the institute of data protection officer as a very good tool of the personal data protection as well as spreading an awareness of this issue among all involved persons.

Very important provisions of the Act 122/2013 relate the Office and its competencies which have been reinforced. The Office has a full investigation power of data protection breaches and is fully responsible to issue a decision if infringement is disclosed.

Last change of the Act 122/2013 relates fines which have been compulsory and varied from € 300 until to € 300,000. There was a big fear from the part of controllers and processors that the fines imposed by Office will have liquidating impact to them, especially to small and medium enterprises. The Office imposed only 10 fines at amount € 24,860 in 2013 and € 14,800 in 2014. However, according to the amendment of the Act 122/2013 some fine are facultative and amount of has been decreased about 1/3 in average.

The Office organised a meeting with partners from The Office for Personal Data Protection of the Czech Republic in 2013. Both offices have discussed on possible synergy in the matter of data protection and have signed a Memorandum of Understanding focused on a common approach and investigation of important cases. One common issue are call centres and registration of telephone calls of data subjects. According to the revelations of both offices, the data subject has no possibility to refuse registration of his/her telephone call because. The call is cancelled after such refusing and a service is not provided. Other issue is that the registered calls are not use only for the service purposes but also for other analyses and data subject's profiling. The Office has an experience when the data subject has been declined the service due to profiling. Further concerns relate to registration of employees' calls of a call centre provider which should be explored in a separate way.