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Modernisation of European data protection law

**Core positions of the Federation of German Consumer Organisations
(Verbraucherzentrale Bundesverband)**

on the proposal for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

Introduction

Data protection has become an increasingly essential part of consumer protection, above all due to digital development. Modernisation of the statutory provisions is therefore urgently required, in order to ensure continued protection of personal data and the consumers' privacy in the future and at the same time to strengthen the legal security and competitiveness of European businesses.

Verbraucherzentrale Bundesverband (vzbv) therefore supports the EU Commission in its efforts to ensure improved, harmonised and modern data protection in Europe¹. This is even more the case, as many of the proposed provisions named in the Commission's draft document pick up on long-standing demands of the Verbraucherzentrale Bundesverband. Despite welcoming the proposed provisions, from a consumer point of view there is still a need for far-reaching improvements and possibilities for optimisation. The rights of individual consumers must be consistently shifted into the focus of the provisions of the General Data Protection Regulation. The starting point of the considerations and arrangements for data protection must be the individual and their right to control over their own data, even and especially in the digital world.

Overall, with this draft the Verbraucherzentrale Bundesverband considers the Commission to be on the right track for heaving data protection in Europe onto a modern level. The European Parliament and the Council of the European Union must now also follow this path to strengthen consumer protection and rights and to prevent watering down of the Regulation.

Verbraucherzentrale Bundesverband's core positions

General: Verbraucherzentrale Bundesverband explicitly welcomes the EU Commission's plans to further develop existing data protection law in line with the currently applied and established basic principles, especially with regard to the broad definition of personal data and the principle of general prohibition with obligation to obtain explicit consent. Verbraucherzentrale Bundesverband strongly rejects the thoughts introduced to the discussion regarding the softening of these principles.

Territorial scope of the Regulation: The Commission's proposal regarding the territorial scope of the Regulation is welcomed, even if individual terms need still clearer definition. For example, it must be made clear in the Regulation that "goods and ser-

¹ See also the Verbraucherzentrale Bundesverband's comments on the EU Commission's draft Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of data (General Data Protection Regulation) dated 29 February 2012
http://www.vzbv.de/cps/rde/xbcr/vzbv/EU-Datenschutz-Grundverordnung_Stellungnahme-vzbv_2012-02-29.pdf

vices" includes services for which the user does not bear any financial costs (so-called "free services"). In addition, the provisions can only be effective if there is an international agreement for their legal enforcement. Therefore, the European Union must make such agreements its priority.

Personal data: In order to reasonably protect consumers' rights, it should be made explicitly clear that ID numbers, location data, online identifier or other comparable elements always are personal data if they can be used to determine the identity of a person.

"Legitimate interest" as the legal basis of processing: There is no clear definition of "legitimate interest" as the legal basis for data processing. Cases should be named, which clearly fall or do not fall under legitimate interest. In particular, it should be made clear that business models are not per se a legitimate interest (especially in the case of direct marketing).

Purpose limitation: The principle of purpose limitation should be retained and strengthened. Further processing of the data for a purpose incompatible with the specific purpose for which it was collected must be excluded.

Consent: We explicitly welcome that in future consent will require an "explicit indication of a will", in order to be valid. However, to date the draft has not contained any provisions regarding the banning of "coupling" (tied services). The use of a service should not depend on the consumer giving his consent to the use of his data - beyond the extent necessary for the provision of the service.

Transparency: Verbraucherzentrale Bundesverband supports the introduction of a general principle of transparency for the processing of personal data together with improved presentation of information relevant to data protection. However, this principle must be further strengthened, because in many points the type of information provided is not appropriate. But in order for the data subjects to be able to assess the consequences before giving their consent, they must, for example, also be informed about the type and scope of data processing.

Profiling: Verbraucherzentrale Bundesverband is concerned about the increased use of profiling of consumers. Therefore, vzbv welcomes corresponding provisions; however these must urgently be tightened. The wordings and provisions to date fall far short of what is needed to appropriately deal with the potential risks of profiling. It is important to differentiate profiling in the different economic sectors or legal relationships. For example, not only profiling on the internet but also in offline environments, such as credit scoring, must adequately be included.

Data protection by design / by default: The Commission's proposal is welcomed; however the protection objectives of this article should be defined in more specific terms. For example, it should include the introduction of an explicit obligation to use

services anonymously and pseudonymously– especially internet and payment services.

Right to lodge a complaint and judicial remedy: The current wording of the proposal does not change the fact that consumer protection organisations will be able to use the instruments of collective legal protection only to an extremely limited extent for consumers with regard to data protection issues. Qualified consumer organisations should therefore also be listed as having the right to action.