

BRE-JBZ

From: Kaai, Geran
Sent: vrijdag 3 april 2015 15:57
To: Verweij, Ellen
Subject: FW: HOTREC's position on the European Parliament plenary vote - proposal for a Data Protection Regulation
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From: BRE
Sent: woensdag 19 maart 2014 16:09
To: BRE-CDP; Kaai, Geran
Subject: FW: HOTREC's position on the European Parliament plenary vote - proposal for a Data Protection Regulation
Importance: High

From: Hotrec [<mailto:Hotrec@hotrec.eu>]
Sent: woensdag 19 maart 2014 15:51
To: BRE
Subject: HOTREC's position on the European Parliament plenary vote - proposal for a Data Protection Regulation
Importance: High

Your Excellency, Mr. DE GOOIJER,

Dear Mr/Ms. KAAI,

HOTREC, the European Association of Hotels, Restaurants and Cafés in Europe, would like to present you its position regarding the proposal for a Data Protection Regulation, in view of the European Parliament plenary vote on 12 March 2014.

Overall, HOTREC would like to bring to your attention that the threshold of 5,000 data subjects critical value is unnecessary burdensome (in economic and administrative terms) and, therefore, disproportionate. In particular HOTREC defends that:


- Designation of a Data Protection Officer (DPO) – the fee for hiring an external DPO can easily mount up to €12.000 per year. Even if the company attributes this task to an internal employee, there is no guarantee that the employee will have developed the level of expertise that is required to prevent a break of the Data Protection Law;

- Presumption of risk – the proportionality principle should apply. HOTREC insists that a small hotel or restaurant whose processing activities are limited to certain contact details of the data subjects, must not be considered to present specific risks;
- Necessity of developing an impact assessment – a case by case analysis should be developed by the controller in order for him/her to assess whether the impact assessment should be carried out or not.




In the document enclosed you will find HOTREC's detailed position on the topic (including some European Parliament proposals that HOTREC fully supports and would like that the Council would keep (e.g.: Lawfulness of processing – recital 39b and 6/1/f of the European Parliament position)).

We would very much appreciate if you could take our comments into account. If you need any further information, please do not hesitate to contact us.

Yours sincerely,


Public Affairs Manager



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HOTREC's position on the European Parliament's plenary vote on the proposal for a Data Protection Regulation

HOTREC followed closely the plenary session vote of the European Parliament regarding the report of MEP Jan-Philipp Albrecht focusing on a General Data Protection Regulation taking place on 12 March 2014, at the European Parliament.

HOTREC fully welcomes the need to create a set of single, harmonised and modern data protection rules that help to create a robust single market. Businesses need, indeed, clear and uniform rules that provide legal certainty and minimise administrative burden. This is essential to stimulate economic growth, create new jobs and foster innovation.

In this sense, HOTREC fully supports certain amendments approved by the European Parliament **and calls the Council to adopt them**, as they are entirely in line with HOTREC's position paper:

- **Lawfulness of processing** (art.6/1/f and recital 39b) – according with HOTREC's interpretation of these articles, and provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, the processing of personal data for the purpose of direct marketing for own or similar services should be presumed as carried out for the legitimate interest of the controller. In this way, former clients could be contacted by the hospitality businesses for marketing purposes (e.g.: promotions, newsletters, client loyalty programmes, etc.), without needing to receive an explicit consent by former clients;
- **Notification of a personal data breach to the supervisory authority** (art.31) – in the case of a personal data breach the controller shall without due delay notify the supervisory authority. The deadline of 24 hours has been eliminated. Recital 67 anticipates that "undue delay" is presumed not to be later than 72 hours. HOTREC believes that this proposal is sufficient to allocate consumers and businesses interests;
- **Deletion of the right to data portability** (art.18) – the proposal from the Commission was likely to bring costs to entrepreneurs if the electronic systems of the hospitality sector establishments would need to be upgraded to produce electronic forms for data subjects, so that the electronic data could be transferred;
- **Most of the delegated and implementing acts** (art.86) have been eliminated, which brings more certainty to the application of the proposed Regulation.

Nevertheless, HOTREC is seriously concerned about the content of other amendments approved by the European Parliament that will bring extra administrative burdens to companies. This might hinder one of the most important objectives of the proposal for a Regulation which is to cut red tape and eliminate administrative constraints. Moreover, they would impose economic costs, which given the current financial situation in Europe, would be difficult to implement, especially for SME's.

Above all, **HOTREC strongly disagrees with the idea that the threshold of 5,000 data subjects should be the reference that obliges a company to follow or not certain obligations foreseen in the proposed Regulation.** In fact:

- No justification has been provided with regard to the chosen threshold;
- The threshold is still clearly too low, as the vast majority of SMEs, including micro-enterprises, already process data related to more than 5,000 data subjects a year. In fact, **with an occupancy rate of 55%, any small hotel with only 25 rooms would fall under this category;**
- It is difficult for a company to anticipate the number of clients whose data will be processed per year;
- According to the Commission Recommendation (2003/361/EC), enterprises are distinguished by size. This categorisation is known and accepted all over Europe and should be considered as the pillar of the proposed Regulation, as it was the case in the original Commission proposal (COM (2012) 11 final);

In general, HOTREC considers the threshold of **5,000 data subjects' critical value as unnecessary burdensome (in economic and administrative terms)** and, therefore, **disproportionate**.

In particular, HOTREC disagrees with the following compromise amendments:

I - Designation of a Data Protection Officer (DPO) (art.35) - In the original text proposed by the Commission, enterprises employing less than 250 people were exempted from the obligation of designating a DPO, as long as their core activities do not consist of processing data operations. The text voted at the European Parliament eliminates this exemption. In fact, the European Parliament position stipulates that if the processing is carried out by a legal person and relates to more than 5,000 data subjects a year, a DPO should be designated to control the monitoring of the processing of the data. Even though HOTREC recognises that the threshold has substantially increased when compared with the original threshold proposed by Mr. Albrecht in his original report (500 data subjects)¹, the current number of data subjects proposed is still clearly too low and directly affects SME's.

Moreover, even if the DPO is contracted only for some hours a year, the cost that such a figure would imply, would have a direct impact on SME's. HOTREC would like to highlight the following estimates:

- o According to information provided by TÜV (Technical Supervisory Association) in Germany, the cost of an external DPO for SMEs could come to about 12.000 EUR in the first year (= 150 EUR per working hour, 10 working days needed per year, 8 hours per working day).
- o According to the impact assessment done by the European Commission an external consultant would be paid on average €250 per hour to develop and to implement his/her work²;
- o The UK Ministry of Justice's impact assessment regarding the EU Data Protection Regulation proposal estimates that a DPO could cost anywhere between £30–£180 million per annum (in 2012–13 earnings terms) depending on the contractual hours of the DPO³;

Finally, even if the company delegates the DPO tasks to an internal employee, there is no guarantee that this person will have developed the level of expertise that is required to prevent a breach of the Data Protection Law.

For all these reasons, **HOTREC calls the Council of the European Union to adopt the original text presented by the European Commission, which exempts SME's from the obligation of designating a DPO (art.35/1/b) if enterprises have less than 250 employees and if their core business is not data processing.**

¹Draft report on the General Data Protection Regulation, Committee of Civil Liberties, Justice and Home Affairs, 2012/0011 (COD).

²Page 117, Annex 6 of the Impact Assessment on the Commission proposal on a General Data Protection Regulation SEC (2012) 72 final.

³UK Minister of Justice impact assessment.