

To: Members of Committee of the European Parliament for Civil Liberties, Justice and Home Affairs

Prot.No.454
Brussels, 22 November 2012

Dear Member of the Committee,

RE: Proposal for a General Data Protection Regulation

I write on behalf of UEAPME¹, the European Association of Crafts, Small and Medium-sized Enterprises, the representative SME organisation at European level with 12 million SMEs, regarding the ongoing discussions in the European Parliament on the proposal for a General Data Protection Regulation.

As we have already stated in our position papers, UEAPME welcomes the intention of the European legislators to establish a new framework adapted to the challenges and needs of new technological developments in the field of the personal data protection². Particular attention has to be given to this issue, since it concerns a fundamental right. For this reason, it is more than important that the most effective and most appropriate legislative act is adopted at European level. UEAPME does believe that every enterprise having data processing as core activity has to apply the necessary protection in order to ensure the aforementioned fundamental right.

The European Parliament has a particularly important role in the process of establishing a regulation which will ensure the protection of personal data and meet at the same time the challenges of new technologies, while not establishing unnecessary administrative burdens for SMEs. Despite of this difficult exercise, we believe that it is possible to find the right balance between these different elements.

During the discussions in the European Parliament's involved committees, several principles have been discussed. A wide range of meetings has taken place, with the involvement of experts, and the work is already in a very advanced stage. However, we have the impression that the question of which effects this proposal and the future regulation will have on SMEs – which are the backbone of the European economy – has not been sufficiently discussed in the European Parliament.

Since 99.9% of all enterprises in Europe are SMEs, and 50% of these are one person companies, this issue has to be given particular importance during the debate. Nevertheless, we have the impression that up to this moment this discussion has not taken place and the published documents of the European Parliament do not give attention to this issue at all.

The proposed regulation will have a horizontal effect on all SMEs, despite of their particularities. The introduction of any kind of unnecessary administrative burden can have serious and far reaching effects for the activities, innovation and chance of survival of this size of enterprises.

UEAPME members have assessed several provisions of the proposal as it stands at the moment, and they have concluded that it would increase significantly the costs of SMEs. Please find below some examples:

- Article 4, paragraph 8 on the required explicit consent and in this context the controller's burden of proof in light of article 7.
- Article 14 introduces a wide range of information which has to be provided to the data subject. In which way this would really have an added value is not clear, but at the same time for SMEs this will clearly add additional administrative burdens.
- The introduction of a general obligation for determining the period for which the data will be stored according to article 14.1.c) in a horizontal instrument would have less benefits than the difficulties it would cause in the implementation.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35.

² http://ueapme.com/IMG/pdf/110427_pp_data_protection.pdf, http://ueapme.com/IMG/pdf/110114_pp_personal_data_protection.pdf

- The fact that according to article 28 controllers and processors shall at any time maintain documentation on all processing information is also too burdensome for SMEs, while this article could easily be combined with article 14 and benefit to the data subject without generating disproportionate costs. The same can be mentioned with respect to article 18 on the right to data portability and the linked electronic format. The last might be defined by the European Commission and can have very labour intensive and costly consequences for SMEs.
- Furthermore, the technical standards which may be lay down by the European Commission according to article 23 on data protection by design and by default may be a barrier for small operators entering the market since their complexity and rigidity would be too costly to implement for SMEs.
- Finally, the requirement of Article 34.2 to consult the supervisory authority before processing data could cause significant delays and would be very costly for smaller businesses. Furthermore, when it comes to cloud computing services and SMEs who become controllers, they will be theoretically in charge of implementing all the organisational and technical measures. This would establish an impossible situation for SMEs, as it was also stated by Peter Hustinx, European Data Protection Supervisor.³

These are only some examples where UEAPME members would have wished a discussion from the SME point of view in the European Parliament, since this by far not extensive list shows already on which aspects SMEs will be affected by the new regulation. For this reason, we would like to call on the European Parliament to undertake actions in this field and assess the aforementioned issues with the involvement of the representative stakeholders at European level. We do believe that it is important to take the time in order to discuss all elements of such a far reaching legislation and not only a part of the problems.

We also would like to stress that, if the European Parliament undertakes changes compared to the current proposal affecting SMEs, a new impact assessment should be carried out by the responsible Unit of the European Parliament in this respect. Only in this way it can be ensured that the consequences of possible modifications in this field are assessed in an appropriate and responsible way. Because of the high importance and long lasting impacts of the future legislation of data protection for SMEs these aspects must be given the necessary attention.

UEAPME expects that the European Parliament takes the issue of SMEs as seriously as it is usually does also in this occasion. Therefore, we urge you to open the necessary discussion and give the appropriate attention to this serious question with the involvement of the representative SME stakeholders at European level before the presentation of the draft report of the Committee for Civil Liberties, Justice and Home Affairs.

We trust that you will take our comments on this important proposal into account and remain at your disposal for further discussions.

Yours sincerely,



Andrea Benassi,
Secretary General
UEAPME

Cc: Internal Market and Consumer Protection Committee of the European Parliament
Legal Affairs Committee of the European Parliament
Employment and Social Affairs Committee of the European Parliament
Industry, Research and Energy Committee of the European Parliament

³ "In theory, the controller is the cloud service client and the processor is the cloud service. In his opinion, the EU data protection supervisor notes that if a cloud computing client, such as an SME, is considered the sole controller, it should be able to implement organisational and technical measures and procedures to ensure that data processing carried out by the service provider complies with EU law (regulation). "This might prove to be difficult," notes the supervisor, who argues that it would be hard for a client, such as an SME, to "influence the technical and organisational structure of the service".", Europolitics, Cloud computing: Hustinx issues warning, by Manon Malh re, 16 November 2012