

**Brandenburg State Commissioner for Data Protection
and Access to Information**

Ms Dagmar Hartge



*Chairwoman of the Conference of the German Data Protection
Commissioners of the Federation and of the Länder 2012*

Key elements

of the comments made by the Conference of the German
Data Protection Commissioners of the Federation and of the Länder

of 11 June 2012

concerning the General Data Protection Regulation

COM(2012)11 final of 25 January 2012

- It is a major concern of the Conference that the harmonization of the data protection law should bring about the **highest possible level of data protection** for all Member States. Therefore, with a view to a minimum European data protection level, Member States should be enabled to provide, in their national law, for stricter privacy rules than those contained in the Regulation, at least with regard to data processing by public administrative bodies (cf. comments, introduction and Articles 6, 21 and 80-85).

- The numerous empowerments of the Commission to adopt **delegated legal acts** must be reduced to what is absolutely necessary, in line with the essentiality principle contained in Article 290 of the TFEU. The issues which are essential for the protection of fundamental rights should be regulated in the Regulation itself or through domestic legislation (cf. comments, introduction and Article 86 as well as, i.a., Articles 6, 9, 12, 20, 26 and 39).
- Viable data protection comprises **technical and organizational measures** to provide an adequate level of data protection and data security. To this end, availability, integrity, confidentiality, transparency, non-linkability and the ability to intervene need to be included as elementary data protection targets to be achieved by technical and organizational means. This principle should be stipulated in the Regulation itself (cf. comments regarding, i.a., Articles 5, 12, 15, Chapter IV, Article 23, Articles 30-32).
- The rules on **profiling** need to be strengthened, and profiling should be completely banned in the case of minors. In this respect, the current proposal needs to be specified notably (cf. comments regarding Article 8 and in particular Article 20).
- The “one-stop-shop” approach for data protection supervisory authorities may only be viable if it is not meant as an exclusive competence, but is meant to help identify which authority has the lead. It should not be applied in all cases which primarily concern the application of the domestic data protection law of one Member State. As a general rule, the domestic data protection supervisory authority of one Member State cannot itself become active in other Member States, as there is no uniform law governing administrative proceedings, administrative procedure and administrative enforcement. Such sovereign action should therefore only be possible by way of mutual assistance (cf. comments regarding Articles 4, 51, 55/56).

- The **consistency mechanism** involves the supervisory authorities in a complex consultation procedure which makes data protection considerably more bureaucratic and may affect its independence. The mechanism must be made much more simple and workable and needs to be restricted to the major categories (cf. comments, introduction and Articles 58, and 59-63).
- The **supervisory authorities' independence** guaranteed by Article 8 of the Charter of Fundamental Rights of the EU and Article 16 of the TFEU applies also vis-à-vis the Commission. The powers of the Commission with regard to concrete measures taken by the supervisory bodies in applying the Regulation is not fully compatible with this guarantee (cf. comments, introduction and Articles 4/48, 59-63 in particular).