

## **Brief Summary of the ARGE DATEN Position Paper "A comprehensive approach on personal data protection in the European Union"**

Document: (COM(2010) 609 final, Communication from the Commission of 4<sup>th</sup> November 2010,)

Position Paper in German (complete version): <http://ftp.freenet.at/privacy/ds-eu/eu-konsultation-stellungnahme-2011.pdf>

### **preliminary remark:**

Integration and implementation of useful new information technologies compliant with fundamental rights is a significant challenge for ARGE DATEN. We welcome technological progress made possible by new online-services, new communication media, new to interconnections and international networks. Technological progress must however not undermine our fundamental rights. We therefore emphasize the reinterpretation of personal rights in parallel with new technological developments. Below is the summary of our major points.

### **Reinterpreting Fundamental Rights**

The right to informational self-determination should be strengthened and extended to include information rights regarding scoring and profiling-procedures. Whether these procedures are used for automated or non-automated decision making processes should be irrelevant. Mechanisms of informed consent i.e. the field of health-data-collection need improvement.

The right to integrity of information infrastructure needs redefinition. Information systems like smart phones or notebooks cannot be compared with other electronic consumer goods. They are the extension of the individual's privacy and must therefore be protected from any kind of invasion.

The principle of integrity of information infrastructure, as stated by Germany's Federal Constitutional Court is not adequately acknowledged in the draft.

### **Redefining Personal Identification**

The definition of personal data in the current Directive (Art. 2 lit a RL 95/46/EG) was very innovative at the time, covering even new developments like video recordings, biometric data and biological databases. Other developments related to search engines online marketing i.e. behavioral and targeting marketing, smart phones need new specific regulations. These new services identify programs or simply electronic items. Practically electronic equipment like notebooks or smart phones are used by one particular person, the identification of the device is therefore equivalent to the identification of this person. Identification criteria like cookies, individualised web addresses, MAC-addresses, IP-addresses or IMSI- and IMEI addresses with smart phones assume similar functions for online services as personal identity numbers.

Data Subjects affected by functional identification must be granted equivalent rights to the current disclosure and information rights.

### **Technologically Neutral Character**

We welcome the technologically neutral character of the draft making no reference to the certain technical standards, protocols or IT-Systems. Service-neutral procedures are however not helpful when the legislation for offline-services is applied to online-services, for wire transmission to radio

transmission. New technologies bear new specific risks that can only be addressed in relation to the concrete service.